

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

**Student v. Belchertown Public Schools**

**BSEA # 2112052**

**DECISION/RULING ON BELCHERTOWN'S MOTION TO STRIKE  
A PORTION OF PARENTS' CLOSING ARGUMENT**

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

**PROCEDURAL HISTORY**

Parents requested a hearing in the above-noted matter on June 30, 2021 which was scheduled for August 4, 2021. Parents assented to Belchertown's request to postpone the Hearing for good cause, and it was rescheduled on October 26, 27, and 28, 2021. A Pre-Hearing Conference was held on September 13, 2021. The Parties' joint request to postpone the Hearing until February 15, 16, and 17, 2022 was allowed for good cause. The Hearing was held on February 15, 16, 17, and March 23, 2022. The Parties requested an extension so that the record would remain open for submission of closing arguments until April 21, 2022. Both parties submitted their closing arguments on April 21, 2021 and the record closed on said date.

Those present for all or part of the hearing were:

Mother

Father

Jessica Lee Bean Jaworski

Teresa Dooley-Smith

Jeanne Tuthill

Laurel Peltier

Marie Philpott

Kimberly Sarnacki

Erika Aponte

Johanna Hammer

Laura Bourdeau

Ruth Kampe

Parents' Neuropsychologist

Parents' speech language pathologist

Speech language pathologist, Belchertown Public Schools  
Curriculum and Instructional Specialist, Collaborative for  
Educational Services

Occupational Therapist, Belchertown Public Schools

Physical therapist, Belchertown Public Schools

Transitions Specialist/ special education teacher,  
Belchertown Public Schools

Licensed Clinical Social Worker, Belchertown Public  
Schools

Speech language pathologist, Belchertown Public Schools

Special Education Teacher, Belchertown Public Schools

Andrea Hojnacki	Program Coordinator, MAICEI, Holyoke Community College
Jacqueline Deiana	Vice President of Admissions and Marketing, Berkshire Hills Music Academy
Rebecca Kudron	Director of Student Support Services, Belchertown Public Schools
Timothy Welch	Board Certified Behavior Analyst, Belchertown Public Schools
Debby Clarke	Consultant Board Certified Behavior Analyst (BCBA)
Kyle Deskus	Attorney, Dr. Bean Jaworski
Todd Richard-Peckham	Paralegal, Parents
Sherry Rajaniemi-Gregg	Attorney, Parents
Felicia Vasudevan	Attorney, Belchertown Public Schools
Carol Kusnitz	Court Reporter
Catherine Putney-Yaceshyn	Hearing Officer

The official record of this hearing consists of: Parents’ exhibits marked P-1 through P-9 and P11 through P-45; Belchertown Public Schools’ exhibits marked S-1 through S-51; and approximately 29 hours of recorded oral testimony.

**ISSUES**

1. Whether the IEP and placement proposed for the 2019-2020 school year were reasonably calculated to provide Student with a free appropriate public education in which she could make effective progress in the least restrictive environment.
2. Whether the IEPs and placement proposed for the 2020-2021 school year were reasonably calculated to provide Student with a free appropriate public education in which she could make effective progress in the least restrictive environment.
3. Whether the IEPs and placement proposed for the 2021-2022 school year were reasonably calculated to provide Student with a free and appropriate public education in which she could make effective progress in the least restrictive environment toward her transition needs and goals.
4. If the answer to number 3 is no, then whether there are changes to Student’s IEP such as supplementary accommodations and/or services that could be added to Student’s IEP that would result in the provision of a free and appropriate public education in which she could make effective progress toward her transition needs and goals in the least restrictive environment.
5. If the answer to number 4 is no, then whether Student requires a day placement at the Berkshire Hills Music Academy in order to receive a free and appropriate public education in the least restrictive environment in order to make effective progress toward her transition needs and goals.

## **SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, "Student") is a 19-year-old student residing within the Belchertown Public Schools (hereinafter, Belchertown). She has been diagnosed with Tetrasomy 18-p, a chromosomal disorder which has resulted in global developmental delays. She has secondary diagnoses of Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Childhood Apraxia of Speech, anxiety, and Developmental Coordination Disorder. She has also been identified as having a moderate intellectual disability. (S-3, P-11, P-13) Student requires adult assistance for academics, specials, small group instruction, large group instruction, individual work, peer interactions, attention, non-compliance issues, expressive/receptive language, sign language, feeding, toileting, personal care, mobility, safety and transitions. (P-22, S-2)
2. The IEP proposed by Belchertown for the period from May 2019 through January 27, 2020 contained goals in reading comprehension; functional writing; functional math; receptive/expressive language; social skills; self-determination; transition; and activities of daily living (ADLs). For the period from January 28, 2019 through June 13, 2019 the A Grid proposed: vision consult with a teacher of the visually impaired 60 minutes per month; academic consult with the special education teacher/paraprofessional 60 minutes per week; assistive technology consult with the assistive technology specialist 4 hours per month; occupational therapy consult with the occupational therapist/COTA 3 hours per month; autism consult with the BCBA 60 minutes per month; speech language consult with a speech language pathologist/SLPA 60 minutes per week; social skills consult with a behavior/autism specialist 30 minutes per week; physical therapy consult with a physical therapist/PTA 30 minutes per week; transitional/vocational services with a transition specialist 60 minutes per month.

For the period from January 28, 2019 through June 13, 2019 the B grid proposed: additional adult support with a special education teacher/paraprofessional 7 x 45 minutes per week; transitional/vocational services with a transition specialist 3.5 hours per week; additional adult support 7 x 45 per week and transitional/vocational services with a transition specialist 3.5 hours per week. It provided for the same services for the period from August 28, 2019 through January 27, 2020.

For the periods from January 28, 2019 through June 13, 2019 and August 28, 2019 through January 27, 2020, the C grid proposed additional adult support 16 x 45 minutes per week; academic instruction 16 x 45 minutes per week; speech language therapy 90 minutes per week; social skills 60 minutes per week; physical therapy 60 minutes per week; and transitional/vocational services 2 hours per week. The IEP proposed the following extended school year (ESY) services: academics 7.75 hours per week; speech/language therapy 45 minutes per week; and social skills 1 x 30 minutes per week. (S-1, P-28)

3. The post-secondary vision in the Transition Planning Form stated Student would have a part-time job (with support), most likely in the music field; Student would participate in on-the-job training with support and go to community college; and Student would have options to continue to live with family and/or live independently (or with friends) with support. Further, it stated that Student's range of interests "intensely focused on music, specifically, singing and performing. [Student]'s love for music has always been central to her life: she sang before she spoke, and has always performed best in any setting and circumstance that involves music. It is impossible to imagine [Student]'s future without music playing a vital role. Her musical passion and skills are not only great strengths for her, but important conduits to learning and building relationships." It further stated, "[Student]'s transition process should include a post-secondary program which combines a music-focused curriculum with intensive life skills training in a supportive environment with like peers, such as the program for students with intellectual disabilities at Berkshire Hills Music Academy in South Hadley. We believe that this school is an ideal placement for [Student] to learn the independence and vocational skills she'll need as she transitions to adulthood." (S-1, P-28)
4. Parents partially rejected Student's January 28, 2019-January 27, 2020 IEP on March 22, 2019. The areas which were not accepted were extended school year services, to the extent that they did not address transition services or programming as identified in the transition plan, and the vocational community or skill/interest areas not being identified by the IEP. Parents accepted the goals, the service delivery grid, the accommodations, or the placement. (S-1, P-28, Father)
5. Debby Clarke, M.Ed., BCBA, LABA, has a Master's degree in special education and is a board certified and licensed behavior analyst. She conducted a transition assessment of Student in August 2019. (P-27, S-4) Her assessment consisted of speaking with Mother, speaking with school staff, reviewing surveys/scales completed by Parents and school staff, observing Student during a group speech activity and during ESY services, and reviewing educational records. She identified Student's strengths as: a strong, supportive family system; happy and naturally drawing people to her; being eager to please; loving to perform for social attention; having a strong interest in music (listening and performing); having great visual memory skills and auditory memory skills with music; learning well through drills and behaviorally reinforced exercises; being an eager and intuitive learner with some technologies; being highly motivated by the iPad; responding well to learning tools using the iPad; and knowing and stating preferred and non-preferred tasks/activities. She enumerated a number of barriers/challenges based on her observations and information gleaned from Parents and school personnel: being unwilling to participate in nonpreferred activities/tasks at times; limited attention span for non-preferred tasks/ activities; disparity in demonstrating skills across environments, both socially and behaviorally; processing deficits; limited danger awareness; difficulties with personal space and modulating her physical contact at times; significant executive functioning difficulties; struggles with social competence and overt social behavior; deficits in social awareness and demonstration of expected social skills in the "real world"; deficits in communicating/ advocating her own needs and desires, engaging in reciprocal conversations with others, responding to requests from others especially with unfamiliar adults/settings; difficulty with internal interference

demonstrated as distraction from task; difficulty reading and comprehending information relevant to the general public (community signs, texts, etc.); dependency on others; limited independence in decision making, community activities, travel, social skills, finances, or regarding self-care; money management skill deficits; and deficits in generalizing skills across settings. (P-27, S-4, Clarke)

Ms. Clarke recommended that the Team focus on Student's safety awareness and responses, home care, self-help skills, understanding the responsibilities of adult sexuality, and using a person-centered planning framework. She further recommended an informal assessment of what level of support Student was receiving. Ms. Clarke indicated that a data driven curriculum be used in social competency rather than the social skills groups in which Student was participating. She suggested providing more opportunities for contextual social experiences such as the Buddies program. She recommended instruction in using public transportation to get to appointments or unfamiliar locations, and giving Student some background in financial understanding. Ms. Clarke suggested providing Student with exposure to different vocational experiences. Her report concluded that Student does best with hands-on, in- the- moment learning (Clarke)

6. The Team convened in September 2019 to review Ms. Clarke's report. The Team sought to increase Student's time in the community, discussed person-centered planning, and utilizing the Assessment of Functional Living Skills (AFLS) every six months. The Team completed person-centered surveys. (Kudron)
7. Ruth Kampe has a Master's degree in education with an emphasis in intensive special needs, Ms. Kampe described Student as a wanderer, which can be a safety issue. She described Student as a happy child who loves to be around people, to perform, and go out to restaurants. She noted that Student requires direct instruction with tasks broken down into very simple steps, and further needs a great deal of repetition. Student makes very slow progress and requires a 1:1 assistant because focus is an issue for her, even in a small group. She is also a wanderer, which can pose a safety issue. Ms. Kampe would often sing songs or do chants, using music to get Student focused. She also used music for helping Student learn a list in science. She noted that music could at times also distract Student from what she was learning) (Kampe)
8. When Student was in Ms. Kampe's classroom, there were six students who ranged from ninth through twelfth grade. Student was in the lower end of the class in terms of cognitive ability. The class focused on social interactions throughout the day. Students were encouraged to look to peers to see what they were doing before asking a question. Students had sharing time where they would tell the others about something they had done and answer questions about it. Student worked on answering comprehension questions, functional math skills, money and measurement skills, life skills, social skills and safety. Ms. Kampe presented information at a very concrete level. She also found that if she wrote material specifically for Student and included the names of people Student knew and included things that interested Student she was more engaged. (Kampe)

9. Ms. Hammer<sup>1</sup>, Belchertown's autism/behavior specialist, provided social skills once per week for 45 minutes and had lunch with students. She also participated in the Buddies program with Student once per week. She believes Student made progress at that time in increasing conversational exchanges from one to two statements to three to four, with support. (Hammer)
10. Ms. Sarnacki<sup>2</sup> worked with Student for sixty minutes per week, initially at the school weight room, but moved to Planet Fitness for generalization and practice in the community. Student used an iPad with the Pictello program that had pictures of the exercise equipment. As Student made progress, Ms. Sarnacki modified her exercise program, adding machines and exercises. Ms. Sarnacki is aware of Student's love of music. While she has found that it can be a bit distracting and thus, has not played music while Student is working with her, she uses it as a reward. (Sarnacki)
11. Ms. Bourdeau<sup>3</sup>, Belchertown's speech language pathologist, has been providing speech and language services to Student since 2016. She saw Student for two 45 minute sessions, either small group or individual. In the small group session she worked on answering comprehension questions; improving sentence structure; vocabulary skills; following directions; and providing basic social responses to scenarios. Ms. Bourdeau also participated in Student's social skills group with Ms. Hammer, during which they worked on listening to what peers said and making appropriate comments or asking them questions. Ms. Bourdeau also went to Buddies, an after-school program in which typical peers and students in the Transitions 1 and Transitions 2 programs participated in social activities, once per week. There, Ms. Bourdeau facilitated peer interactions. Student was always extremely excited to be at Buddies. She also worked with Student toward a performance at the end of the year. (Bourdeau)

She described Student as delightful, friendly, and having a good sense of humor. She also noted that she is a very kind person. Ms. Bourdeau characterized Student as a slow learner requiring a great deal of prompting. She found her performance to be variable. She explained that some days she puts her head on the table and seems exhausted, and others she gets things done with high accuracy. She requires 1:1 support. She does not seem to have awareness of danger. Music can be motivating to her and helps her to connect to peers. It is a good reinforcer and a way to regain her attention to a task. Ms. Bourdeau does not see music as Student's only interest, and does not think her program should focus solely on one interest. (Bordeau)

12. During Student's junior to senior year, when she was in Ms. Kampe's class, Ms. Philpott, OTR/L, provided consultation in the community at McCarthy's Pub. She would set up

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<sup>1</sup> Johanna Hammer is a Licensed Independent Clinical Social Worker and a certified dialectical behavior therapist. She is also certified as a mindfulness educator and yoga instructor as well as a certified sexuality and health educator for people with intellectual disabilities. (Hammer)

<sup>2</sup> Ms. Sarnacki has degrees in exercise science and physical therapy. She is a licensed physical therapist. She is familiar with Student, as she has worked with her since Student's fourth grade. (Sarnacki)

<sup>3</sup> Laura Bourdeau is a speech language pathologist in Belchertown with a Master's degree in communication sciences and disorders. She is ASHA certified and has her professional license from the state of Massachusetts. (Bourdeau)

activities and facilitate Student's independence with an iPad. Student completed tasks such as clearing tables, wiping down menus, sorting utensils and other prep work that is done in the restaurant business. Student was required to report to the manager who assigned students their tasks, and the staff provided support with technology. Ms. Philpott concluded that Student made progress because staff was able to back off once routines were established and technology was supporting Student. (Philpott)

13. The Team convened in November 2019 for a progress meeting. They reviewed vocational and community outings in which Student was participating at that time. Student was going to McCarthy's Pub, Planet Fitness, Life Care, Dave's, and Christopher Heights was being added on a monthly basis. At Life Care, an elderly living facility, Student volunteered at various activities, sang carols, played games, and socialized with residents. Dave's was a pet food store where Student stocked shelves, cleaned, followed directions from managers, and worked with co-workers. Christopher Heights was an elderly living facility where the residents were very independent. Student did caroling, singing, and arts and crafts with the residents. The Team added the Christopher Heights site in response to Parents' request for a more musical vocational setting. (Aponte, S-14) The Jabish School work site was also added in response to Parents' request that Student participate in vocational sites that will assist her in meeting her goal of working in the music industry in some way. (Aponte)
14. The Team convened for a meeting on January 7, 2020. It had been scheduled as a progress meeting, but Parents wanted to talk about the person-centered survey as they had not yet been provided with the survey results. Ms. Kudron, Belchertown's Director of Student Support Services, sent the results to the Team on January 13, 2020. (S-35) The results reflected Student's greatest area of interest was music; safety was a great concern; and that Student would continue to require support with ADLs. (S-15, Kudron)
15. The Team convened on January 17, 2020 for Student's annual review. Team members noted that Student did well with repetitive, structured activities and was good at following routines. Further, she was reportedly getting much better at spontaneous conversation. Maria Philpot noted she was seeing more maturity. Ms. Aponte noted that Student had complimented a peer during cooking and spontaneously asked what he likes to eat. The Team was not able to complete the IEP at that time. (S-17, Aponte)
16. The Team re-convened on January 28, 2020 and continued working on the IEP. There was a lot of discussion regarding goals. They did not finish the IEP at that meeting. (S-18, Kudron)
17. The Team reconvened on February 24, 2020 and continued working on the IEP. They discussed music and Belchertown staff's opinion that it was distracting to Student when she was working on skills. (Aponte, S-19) They did not complete the IEP, despite the Team having met for three, two-hour meetings. (Kudron, S-19)
18. The Team was scheduled to reconvene in March. However, due to Covid-19, schools were closed. The Team reconvened in April 2020. (Kudron)

19. The Team met virtually on April 27, 2020 to complete the IEP. They reviewed each goal and agreed to change the IEP dates because the Team had begun reviewing the IEP in January. The district issued an N1 on May 19, 2020 which stated that it was re-issuing Student's IEP that had been partially rejected by Parents. The Team agreed to update goals 1, 3, 4, 6, and 7 and update the IEP dates to reflect 5/1/2020 through 4/30/21. The district also proposed a 688 referral to DDS. (S-16)
20. The IEP for the period from May 1, 2020 through April 30, 2021 contained goals in the following areas: functional reading; functional writing; functional math; functional communication; community; vocational; ADL; and physical health. Grid A contained the following services for the period from May 1, 2020 through June 19, 2020: Vision consult with the teacher of the visually impaired 60 minutes per month; assistive technology with the assistive technology specialist four hours per month; academic consult with the special education teacher/paraprofessional 60 minutes per week; autism consult with a BCBA 60 minutes per month; transitional/vocational services with the transition specialist 120 minutes per month; occupational therapy consult with the occupational therapist/COTA 3 hours per month; speech language consult with the speech language pathologist/SLPA 60 minutes per month; social skills consult with the behavior/autism specialist 30 minutes per month; and physical therapy consult with the physical therapist/PTA 30 minutes per month.

For the period from August 26, 2020 through April 30, 2021, the A Grid contained the following services: vision consult with the vision specialist; academic consult with the special education teacher/paraprofessional 60 minutes per week; assistive technology consult with the assistive technology specialist 4 hours per month; autism consult with the BCBA 60 minutes per month; transitional/vocational services with the transition specialist 120 minutes per month; occupational therapy consult with the occupational therapist/COTA 3 hours per month; speech language consult with the speech language pathologist/SLPA 60 minutes per month; social skills consult with the behavior/autism specialist 30 minutes per month and physical therapy consult with the physical therapist/PTA 30 minutes per month.

For the period from May 1, 2020 through June 19, 2020 the B Grid contained the following services: additional adult support with the special education teacher/paraprofessional 11.5 hours per week; social skills with the behavior/autism specialist 30 minutes per week; speech language therapy with the speech language pathologist/SLPA 45 minute per week; transitional/vocational services with the transition specialist 9.25 hours per week; physical therapy with the physical therapist/PTA 45 minutes per week.

For the period from August 26, 2020 through April 30, 2021, the B grid contained the following: additional adult support with the special education teacher/paraprofessional 11.5 hours per week; speech language therapy with the speech language pathologist/SLPA 45 minutes per week; social skills with the behavior/autism specialist 30 minutes per week; transitional/vocational services with the transition specialist 6.75 hours per week; and physical therapy with the physical therapist/PTA 45 minutes per week.

For the period from May 1, 2020 through June 19, 2020 the C grid contained: academic instruction with the special education teacher/paraprofessional 15 hours per week;

additional adult support with the special education teacher/paraprofessional 18.5 hours per week; social skills with the behavior specialist/autism specialist 30 minutes per week; speech language therapy with the speech language therapist/SLPA 45 minutes per week; transitional/vocational services with the transition specialist 2.5 hours per week.

For the period from July 7, 2020 through August 6, 2020 the C grid contained the following: extended school year academics with the special education teacher/paraprofessional 8.75 hours per week; extended school year additional adult support with the special education teacher/paraprofessional 10 hours per week; extended school year social skills with the behavior/autism specialist 1 x 30 minutes per week; extended school year speech language therapy with the speech language pathologist/SLPA 1 x 45 minutes per week.

For the period from August 26, 2020 through April 30, 2021, the C grid contained the following: academic instruction with the special education teacher/paraprofessional 15 hours per week; additional adult support with the special education teacher/paraprofessional 18.5 hours per week; speech language therapy with the speech language pathologist/SLPA 45 minutes per week; social skills with the behavior/autism specialist 30 minutes per week; and transitional/vocational services with the transition specialist 5 hours per week. (S-2, P-22)

21. Parents accepted the IEP, but noted that the goals did not reflect their concerns as discussed during the past six months. They accepted all services, accommodations, and the placement. (P-22, S-2, Father, Kudron)
22. In Ms. Kampe's opinion, her program was appropriate for Student. She noted that Student had been making great progress when school closed for Covid in March 2020. She had learned to follow all her classroom routines independently. She was learning not to roam within the classroom and Ms. Kampe and Ms. Aponte were planning on transferring that skill into the community. She was making progress with academic skills and with telling time. She was starting to count coins, with which had previously struggled. She was independently getting her materials ready when she came into the classroom. She was returning from community outings and telling Ms. Kampe details about the outing instead of just saying, "It was good." (Kampe)
23. When Student returned to in-person instruction on or around September 28, 2020 (S-36) she could not stay seated and could not stay focused. (Kampe, Aponte) She required physical assistance with things she had previously done without assistance,. She had forgotten how to type on her computer and how to use the calculator. She needed more breaks and more prompting (Kampe).
24. The Team met on November 23, 2020, to review the results of the AFLS. Mother stated that she believed Student had made no real progress since Debbie Clarke began using the AFLS in August 2019. Tim Welch<sup>4</sup> reviewed the results., reporting slight improvement in some areas and none in others. He explained that the graph of the October 2020 administration

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<sup>4</sup> Timothy Welch is a board certified behavior analyst with a bachelor's degree in psychology and a Master's degree in applied behavior analysis. He has worked in Belchertown since 2014 and is very familiar with Student. (Welch)

shows Student made progress on Home Skills and Community Participation. He opined that the progress shown on Student's chart is what he would expect given Student's profile, which includes an intellectual disability and developmental delay. He noted that Student's greatest area of need was Basic Living Skills. The Team determined that basic living skills and safety should be the focus of Student's program. They therefore decided that Student's instruction should shift from Ms. Kampe's more academically focused classroom to Ms. Aponte's more functionally focused classroom. There was agreement among the Team to this change.. (Aponte, Father, S-20) Because the transfer was from one substantially separate program to another, there was no new placement page issued. The Team further discussed Covid compensatory services. (Kudron)

25. The Team continued to discuss Covid compensatory services during a December 11, 2020 meeting where an agreement was reached.<sup>5</sup> (S-22, Aponte, Kudron)
26. Erika Aponte has a Master's degree in moderate special needs and has completed all of the requirements for her Transition certification, which will provide her with national certification as a Transition Specialist<sup>6</sup>. She also has an endorsement in social emotional learning. Ms. Aponte is the Transition Specialist at Belchertown High School.
27. Ms. Aponte has been Student's teacher for nearly four years. She was previously Student's 1:1 paraprofessional for three and ½ years and was her personal care attendant for a year and a half. She described Student as very sweet and one of the most hard-working people she has met. She is a bit stubborn and is socially motivated. She is very praise-driven and "super caring." The people that she cares about are her whole world. She noted Student has interests in music, her family, food, going to restaurants, going to Six Flags, Broadway musicals, Disney movies(which she can quote), travel, and parades. (Aponte)

Ms. Aponte explained that in her classroom students do a lot of person-centered planning. The students learn about jobs through job surveying. They watch videos and make decisions about whether particular jobs are appropriate for them. They work on banking and budgeting using the Unique Curriculum. At the time of the Hearing, students were learning about emergencies, specifically, what emergencies require calling 9-1-1 and which require asking somebody for assistance. They were also learning about first aid. The class cooks at least three times per week and sometimes five times. Student cooks breakfast multiple times a week in addition to the class' scheduled cooking. There are four full-time and two part time students (from the Transitions 1 program) in her class. Each student has a staff person assigned to him/her. Three of the students are on the autism spectrum, one has cerebral palsy, and one has a neurological disability. Academically, Student falls in the middle of the students in the class. Ms. Aponte testified that Student is able to learn from the students who are at a higher academic level and act like a mentor to those with lower

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<sup>5</sup> Parents had requested that Student participate in a three day per week remote program at BHMA. Student was then participating in the Transitions 2 program for four in-person days per week. Belchertown did not believe it would be appropriate for Student to attend a three-day virtual program instead of a four day in-person program, considering how difficult remote programming had been for her. Belchertown was then remote on Wednesdays, so Belchertown agreed to fund the BHMA remote program on Wednesdays. (Kudron)

<sup>6</sup> Ms. Aponte has completed all of the requirements for her certification through the University of Massachusetts Boston, but due a clerical error has not yet received her certification. (Aponte)

abilities. Student is very fond of the other students. The other female student in the class is at a lower academic level than Student, which allows Student to mentor her. They are currently being paired together for cooking. She talks with her classmates, predominantly about her own interests. She also talks about them to Ms. Aponte. She really enjoys spending time with the student who composes music. He is echolalic and mimics sounds he hears in the community which he uses to compose his music. Student loves his sounds and likes to “jam out” with him. Ms. Aponte noted that Student tends to prefer male peers and male adults. (Her favorite teacher is Mr. O. Her favorite music teacher is Mr. G. Her favorite cousin is a male.) She has a very nurturing relationship with one of her male peers. (Aponte)

Student enters the classroom from the van independently, and begins her schedule by dropping off her things. She then goes to Ms. Comstock, a preferred music teacher, to see if she has any copying to be done. When she returns, she greets the others in the class. She then either begins her copying task or her hygiene routine. The classroom has a private bathroom where Student goes through her hygiene list and brushes her hair and teeth, puts on deodorant, washes her face, uses the bathroom, and adjusts her clothes. She then reads a book about toileting. Next, she uses a weather app<sup>7</sup> to select the temperature and determine whether or not she needs a coat outside. Student then works on math using the Unique Curriculum which has packets for budgeting, time, and banking. Student is able to select which packet she wants to complete each day. The class then does a whole group activity such as a social story and then goes to their job sites. Students were able to select their job sites at the beginning of the year. Student chose helping Mr. Orszulak, a former teacher who is also a family friend. She goes to him on Monday afternoons after going to Stop & Shop in the morning. On Tuesdays she goes to the South Hadley library. On Wednesday mornings, she goes to the mall and practices purchasing food and using an ATM machine. In the afternoon, she goes to the Jabish School band room where she helps Ms. Smith, a former band teacher, with cleaning instruments, making copies, or other tasks. On Thursdays they go to Stop & Shop. On Fridays Student remains at the high school and receives many of her services. Students cook most afternoons, and also use job-focused portions of the Unique Curriculum. They do classroom chores, such as vacuuming, and wiping down tables. Student has successfully been able to water the plants, which involved remembering which plants required water and tracking which days she waters them. Student also washes dishes that they use for cooking. They do laundry, which includes the towels that they use for their daily hygiene routines and in the kitchen. Student is relatively independent doing laundry. She practices measuring when doing laundry and cooking, and has gotten good at it. They write the “Daily Buzz”, is a re-cap of their day, that they email home daily. They learn about current events using News-2-You. Student spends a lot of time emailing for her jobs. She has gotten good at checking and sending emails. She does require some assistance with staying on topic (Aponte)

Ms. Hammer began adding additional services to the Transitions 1 and Transitions 2 program when students returned to in-person learning. She started providing instruction on

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<sup>7</sup> The staff had noticed that Student did not seem to understand when she needed to wear a coat. She would want to wear one when it was warm out, but not when it was cold. (Aponte)

Friday mornings including yoga and craft time. She usually has lunch with the students on Fridays and observes them in the cafeteria and facilitates conversations. (Hammer)

Ms. Aponte has done person-centered planning with Student using Five-Fold Steps. Student has stated that she wants to live with either her parents, a particular aunt or a particular cousin. She has talked about wanting to work at Six Flags or a restaurant such as D'Angelos or McCarthy's Pub. For post education she has mentioned Holyoke Community College (hereinafter, HCC) and Berklee School of Music. When Student filled out the Transition Assessment form on January 25, 2019, without any prompting, she checked off "community college" in response to the question regarding what type of education and training she was interested in. (S-32, Aponte) She also checked off the "community college" box on the Transition Assessment form on March 4, 2021. She wants to plan trips to New York City and Disney. (S-33, Aponte).

Ms. Aponte explained that Student loves music, but it is also distracting to her. Because she loves it so much, she often stops what she is doing and loses her focus when she hears it Ms. Aponte was concerned that if Student was assigned to a musically-centered vocational site, she would not be able to focus on the tasks she needed to complete, would focus instead on the music, and would not learn the skill. Even if Student works at a music related site in the future, she will need more skills than just music skills. (Aponte)

Because all of her students love music, Ms. Aponte sometimes sings songs and does chants and clapping with the students. She uses music as an attention getter. She may sing Student's name, which she loves, to get her attention. Student practices songs with Ms. Hammer and then performs. (Aponte)

28. Ms. Bourdeau currently works with Student in Ms. Aponte's classroom. She sees her in small group between sixty and ninety minutes per week. She also works with her in Ms. Hammer's social group and at Buddies. Prior to Covid, Ms. Bourdeau accompanied Student into the community to facilitate conversations. Student is currently working on conversational skills and following directions. Ms. Bourdeau has seen Student make progress in Ms. Aponte's class. She indicated that the hands-on learning is great for Student and she is engaged. They do more role-playing and scripting and video modeling with Student now. She noted that Student showed progress in functional communication in each of her progress reports. (Bourdeau, S-12)
29. Currently, Ms. Hammer is in Ms. Aponte's classroom on Friday mornings for craft time. She is no longer providing yoga instruction because of a scheduling conflict. She has been unable to attend Buddies, but one of her interns has attended to facilitate interactions and provide support. She believes Student's peers in the Transitions 2 program are appropriate. Two are highly verbal and socially motivated and have known Student for a long time. The focus of the craft session is on maintaining attention to the activity, but there are social opportunities as well. The students chat as they work and they talk about the activity. During the Transitions 1 and Transitions 2 social group they use the Circles curriculum and talk about identifying who is an acquaintance, who is a friend, who is a stranger. (Hammer)

30. Ms. Hammer uses music to engage Student when working with her. She might sing her name to focus her attention if it wanes. She uses a “tuning-up” activity at the beginning of her social skills group. Somebody sings a note and then everybody has to match it. It is a way of facilitating shared engagement. She also uses music as a reinforcer and does a singing or dancing activity at the end of social skills group. Her students have a performance once a month, which they all enjoy. They started doing it when in-person instruction resumed. Some students were unable to return to in-person instruction, so they broadcast the performances over Zoom and shared it throughout the school community. Since the students returned to in person learning Ms. Hammer has been running craft time on Friday mornings. She tried playing music during craft time, but when the music was on, it often drew Student’s attention away from the craft. Ms. Hammer noted that Student has made gains in her ability to “engage in the rhythm and cadence of conversational exchanges.” She thought an updated goal should address the meaningfulness and relevance of Student’s conversations. (Hammer)

Maria Philpott, OTR/L, Belchertown, completed an occupational therapy evaluation on January 22, 2021. She has known Student since she was in Early Intervention, approximately 17 years ago, and currently provides Student with consultation services for at least three hours per month pursuant to her IEP. She described Student as very charismatic, requiring a great deal of repetition, review, and a multisensory approach. She does well with video modeling, stories and music to activate all of her senses. She visits Ms. Aponte’s class during a time in which Student is usually cooking. She has made recommendations for adaptive equipment for Student to use to ensure safety and to encourage independence, and modifies tasks for her. She has also accompanied the class to the grocery store, and consulted when Student began making copies for Mr. O. She made recommendations for how to introduce the task and where to fade support. (Philpott)

After evaluating Student, Ms. Philpott concluded that she had made progress toward becoming more independent, noting some growth since her previous assessment in 2018. She explained that Student’s criterion score went up in using materials, set up and cleanup, and clothing management. She was able to complete more skills independently, and utilize adaptive tools to complete functional tasks in the classroom and on job sites. (Philpott, P-16, S-7)

Ms. Philpott indicated that given Student’s visual, attentional and motor planning challenges, she would continue to require accommodations, task modifications, and adaptive equipment for school, work, and ADL activities. She added that Student requires a great deal of adult support due to safety concerns, particularly when in an unfamiliar environment or when crossing a street. (P-16, S-7)

Ms. Philpott is aware of Student’s love of music and finds that it is helpful in creating relationships and engaging Student in activities when she becomes distracted. She

sometimes sings to bring Student back to focus to attend to the task at hand. It is also a motivator. She will tell Student that she can participate in a music activity after completing a task. She noted that sometimes music can take Student's attention away from a task that she is required to complete, citing that while working at the restaurant, on more than one occasion, staff had to ask for music to be turned off because it was removing Student's attention from the task at hand. Ms. Philpott noted that she is able to grab Student's attention using means other than music. She explained that talking to Student about something they have done in the past, mentioning one of her favorite people, or receiving a food treat are also engaging. (Philpott)

In Ms. Philpott's opinion, Student's program is appropriate because she has a very supportive team that is addressing all her areas of need, including involvement in the community; supporting her with technology; training in life skills; and participating socially in her community. (Philpott)

31. Ms. Sarnacki, MSPT, currently works with Student in Ms. Aponte's classroom 45 minutes per week on strength, flexibility, stamina, and endurance. Student has participated in the after-school Fitness Club this school year. Ms. Sarnacki attends with her and Student has progressed from utilizing the iPad to follow her routine to being able to choose her own activities. There are general education peers at Fitness Club. (Sarnacki)
32. Student has participated in cross country and track and field in Belchertown. At cross country, Ms. Sarnacki modified the route for Student to run and provided Student with stretching routines. She progressed to a point that she required minimal to moderate verbal prompting depending on her level of fatigue, motivation, and attention. Ms. Sarnacki noted Student learns best with a lot of visual cues, assistive technology and adult prompting. She requires practice and repetition to master skills. She requires 1:1 assistance because she is easily distracted and tends to focus on things on her mind. Ms. Sarnacki has seen Student make progress over the years, but noted that her progress is at a slow rate. (Sarnacki)
33. Jeanne Tuthill<sup>8</sup> provides weekly consultation to Student's Team, focusing on the assistive technology Student uses throughout the day. She consults primarily with Ms. Aponte, but also answers questions for other staff. She ensures that Student's technology is working appropriately and problem solves when additional technology is needed. She observes Student in the classroom approximately thirty minutes per month and has also observed her in the community. Ms. Tuthill noted that Student requires visuals to support her learning and understanding of tasks. She has found that the use of technology is advantageous to Student. ( Student uses Pictello, G-mail app, the camera roll, Kids To Do List, and Google Slides.) After Ms. Tuthill observed Student shopping and noticed she appeared to be "in her own world", she went around the store and took pictures to provide Student with visual support with which she could locate the appropriate aisles. (Tuthill)

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<sup>8</sup> Ms. Tuthill is a speech language pathologist who has focused a great deal of professional development in the areas of assistive technology and augmentative alternative communication. She works for the Collaborative for Educational Services. (Tuthill)

34. Ms. Tuthill believes that having access to visuals is very powerful for Student. She explained that the visuals provide additional information that Student does not always take in auditorily. Coupling a visual with auditory information allows her to learn more effectively. She went on to note that he has not seen Student be successful without 1:1 support. (Tuthill)
35. Ms. Hammer similarly is of the opinion that the Transitions 2 Program is appropriate for Student. The providers know Student and her areas of interest and preference. They know when to push her a little harder. The entire mission of the program is to provide multiple job opportunities and exposure to different environments. (Hammer)
36. Mr. Welch is of the opinion that the AFLS results demonstrate that Student has been making progress. (Welch)
37. Ms. Aponte opined that Student has made progress every year that she has known her, albeit slow progress, due to her cognitive profile. As an example, she noted that Student is now successfully transitioning independently from the van to the classroom and from the classroom to the van at the end of the day. She has become independent when shopping at Stop & Shop. She is able to independently navigate the lunch line at school and request what she wants. She is able to independently approach the choir teacher for whom she makes copies, and ask her if she has any projects. She independently selects books from the school library. Ms. Aponte believes Student is making good progress and is happy. Ms. Aponte noted that Student's IEP contains many goals, and each goal has a number of benchmarks which are more like goals. (She does not believe Student will make progress on every single one<sup>9</sup>.) (Aponte)

Ms. Aponte noted that due to Student's cognitive impairment her friendships may present differently than those of students without cognitive impairment. She believes that Student views the peers in her classroom as friends. She writes about them in stories. She is excited when she sees them. Parents are friends with the parents of one of the students in her class. Student has told Ms. Aponte that she sees him outside of school, but Father testified that Student and he are not friends independently from Parents. (Aponte)

Ms. Aponte also teaches Student's ESY program, which she described as a condensed version of the Transitions 2 program. It meets three days per week for three hours per day for five weeks. Ms. Aponte noticed that Student showed some regression when she returned to school after not having attended the ESY program, having to get used to the classroom routines again. (Aponte)

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<sup>9</sup> Ms. Bourdeau and Ms. Hammer both testified that they did not follow up with working on benchmark #6 of Goal #4, for which they were jointly responsible. The objective required Student to mentor a peer at various times throughout the year. Initially, they tried to work on the objective, but Covid closures and restrictions on cohort interactions made it difficult. Once Covid restrictions were lifted, they did not resume working on the objective. (Bourdeau, Hammer) Ms. Bourdeau did not believe it was an appropriate objective. (Bourdeau)

38. Miranda Piris, Ed.S., conducted a psychological evaluation of Student on February 11 and February 23, 2021, as part of a three-year re-evaluation<sup>10</sup>. Based on the results of this evaluation, Dr. Piris concluded that Student's cognitive and academic skills were within the extremely low range. She noted relative strengths in verbal tasks, including basic reading and spelling. Student was able to communicate on a very basic and concrete level. Student's perceptual reasoning and working memory abilities were noted to be relative weaknesses. She struggled to attend both visually and auditorily. Results of adaptive behavior scales suggested that Student evidenced low adaptive skills overall, with relative strengths in communication skills. (P-15, S-5)
39. At Dr. Piris' request, Ms. Aponte, Ms. Hammer, and Ms. Dooley-Smith each completed a Teacher Report Form of the Social Skills Improvement System, Social-Emotional Learning Edition (SSIS-SEL) . Mother completed a Parent Report Form. The responses showed a similar pattern of strengths and weaknesses for Student. Social Awareness was noted as Student's greatest strength and Responsible Decision Making was her weakest area. Student was noted to have average Self-Management and Relationship Skills. Her mother noted areas of concern in Self Awareness, Social Awareness, and Responsible Decision Making. (P-15, S-6)
40. Laura Bourdeau, M.A.,CCC-SLP, conducted a speech language evaluation on January 11, 2021. She administered the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5), Expressive One-Word Picture Vocabulary Test, Fourth Edition (EOWPVT-4), and Receptive One-Word Picture Vocabulary Test, Fourth Edition (ROWPVT-4). Ms. Bourdeau found that Student's skills in receptive and expressive language and expressive vocabulary were in the severely below average range. She opined that Student continues to present with the characteristics of a receptive/expressive language disability and requires direct speech and language therapy. (P-14, S-8)
41. Kimberly Sarnacki, MSPT, conducted a physical therapy evaluation on January 11 and 22, 2021. The evaluation consisted of an observation, a record review, and the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2). She noted that Student displays functional muscle strength and balance to allow for independence with transitions, walking, and curb/stair use throughout the school environment. She stated it is important that Student receive accommodations and modifications when participating in various motor activities within the school environment, and made a number of suggestions for the Team's consideration. (P-17, S-9)
42. The Team reconvened on March 2, 2021 to review the results of Student's three-year evaluation. Ms. Piris, Ms. Bourdeau, Ms. Philpott, and Ms. Sarnacki discussed their findings. The Parents stated that they were satisfied with the assessment, with the addition of a social pragmatics test. (S-24)
43. The Team reconvened to continue reviewing the three-year evaluation on March 9, 2021. They discussed the possibility of Student participating in the MAICEI program at Holyoke

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<sup>10</sup> Dr. Piris utilized the WAIS-IV, WIAT-III, GORT-5, Vineland Adaptive Behavior Scales, Third Edition, classroom observation, and a review of records. (S-5)

Community College in addition to her continued placement in the Transitions 2 classroom. Parents did not think it was appropriate. Mother stated Student needed something that would be more intensive and provide more engagement. (S-25)

44. Andrea Hojnacki is the Program Coordinator for MAICEI, the Massachusetts Inclusive Concurrent Enrollment Initiative, at Holyoke Community College. In this capacity she advises students, helps them select and register for classes and to navigate different areas of the college. She assists students in determining what kind of help they might want or need for a class and sets them up with the needed support. She also serves as their learning specialist and provides their accommodations. Ms. Hojnacki explained that MAICEI partners with school districts and provides an inclusive college experience for students ages eighteen through twenty-two. For the past five or six years MAICEI has had between 18 and 23 students. MAICEI students have a wide variety of disabilities, but all have an intellectual disability or an autism spectrum disorder. Staff work one on one through coaching and advising students. They share information about social events, help them find ways to connect socially, provide social mentors, and facilitate informal social “hangout” times where MAICEI students are invited, along with other students on campus. There is no formal social skills training in the MAICEI program, however, sometimes during the January intercession there are workshops for MAICEI students on topics such as social skills, as well as sensory regulation or academic skills. Students can buy lunch or snacks on campus and some work on budgeting with respect to food. Students are coached on how to communicate and self-advocate. The districts provide each student with an education coach who consults with the student to determine what supports he or she will provide. Students have use of the athletic center, the library, the tutoring centers, and clubs. (Hojnacki)

The curriculum at MAICEI is not modified for the college classes. Students can choose whether to audit the class or take it for credit. The admissions process, beginning this spring, requires submitting information such as their person-centered plan. Next, students are invited to tour the campus, talk to Ms. Hojnacki and ask questions. A student may then be invited to fill out the HCC and MAICEI applications. Because of the Hearing in this matter, Ms. Hojnacki did not provide her opinion regarding Student’s appropriateness for the MAICEI program. She recalled speaking to Father and opined that if Parents were seeking an intense music program, MAICEI or HCC in general would not be a good fit. Father appeared to be very focused on music classes. (Hojnacki)

45. All classes at HCC (that do not have a prerequisite that a MAICEI student cannot meet) are available to MAICEI students. The music classes at HCC include ensemble and performance based (geared toward music majors and requiring an audition); lecture based classes such as World Music or U.S. Rock ‘n Roll; classes focused on learning to read and write music and a college chorale with four levels that students progress through sequentially. There are also many different clubs including anime, photograph and Diney. (Hojnacki)
46. Ms. Aponte is Belchertown’s liaison to the MAICEI program. In her view, MAICEI would be appropriate for Student, that Student would love it and learn a lot. It would provide

Student with an unfamiliar environment yet familiar staff, where she could work on safety skills and social skills. She envisions that Student would be able to take the local public transportation to HCC with her ed coach, would choose to take a music class, could use the fitness center and go to clubs. She has no concern about Student's ability to access the College Chorale as Student has participated in many choirs and is a great performer. Student's ed coach would most likely be her current 1:1 assistant. Ms. Aponte is in constant contact with the ed coaches and frequent contact with Andrea Hojnacki. She believes the program would allow Student to exercise her independence, that is, choose her classes, work on budgeting and deciding how much money to spend on lunch each day, and make her own food selection utilizing her knowledge of nutrition. (Aponte) Ms. Hammer continued that the MAICEI program is appropriate for Student because it will give her a chance to sample a different environment but with familiar staff. She will be able to participate in a high interest classes, practice travel training, and independence, and will have the opportunity to meet students from other districts. (Hammer) Ms. Philpott has some familiarity with the MAICEI program from other students who have attended and is of the opinion that Student would have fun there. Although the environment may be overwhelming at first, the college campus would be exciting and engaging for Student. (Philpott) Ms. Clarke was not familiar with the MAICEI program, but stated that anything that is going to offer Student the opportunity to broaden her experiential bases, as long as she is an active participant, would be appropriate. Ms. Clarke further suggested that Student try MAICEI for a semester and the Team could then objectively measure her level of engagement and interest. (Clarke)

47. The Team reconvened on March 18, 2021. They continued discussing goals and Parents stated that they did not approve the goals or Student's continued placement in the Transitions 2 classroom. They did not believe Student was making progress. Parents stated they would reject the IEP and placement. The Belchertown members of the Team all agreed that the goals were written based upon Student's current performance and were appropriate and attainable. They believed Student would make effective progress with the proposed IEP. (S-26, Aponte) The family and advocate stated that they had lost trust in the district and did not believe Belchertown could meet Student's needs. Ms. Kudron asked all of the service providers if they could deliver the IEP services as written, and they all replied they could. Ms. Kudron asked Parents if there were any other programs that they would like the Team to consider. They suggested BHMA. Ms. Kudron told them that BHMA was not DESE-approved, but that the Team would consider DESE-approved schools. (Kudron)
48. At Parents request, Jessica Bean Jaworski, Ph.D, conducted a neuropsychological evaluation of Student on April 16, 2021<sup>11</sup>. Prior to that date, on March 22, 2021, she conducted a virtual mental status exam during which she spoke to Student and her mother. She noted that Student was aware of the examiner and was more interested in and focused on her

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<sup>11</sup> Dr. Bean Jaworski utilized the following instruments: Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV); Delis-Kaplan Executive Function System (D-KEFS); Behavior Rating of Executive Function, Adult Version (BRIEF-A) completed by her mother; Peabody Picture Vocabulary Test, Fifth Edition (PPVT-5); Expressive Vocabulary Test, Third Edition (EVT-3); Wechsler Memory Scale, Fourth Edition (WMS-IV); Wechsler Memory Scale, Third Edition (WMS-III); California Verbal Learning Test, Third Edition (CVLT-3); Beery-Buktenica Developmental Test of Visual Motor Integration, Sixth Edition (VMI-6); NEPSY, Second Edition (NEPSY-III); Behavioral Assessment System for Children, Third Edition (BASC-3) Parent; Wechsler individual Achievement test, Third Edition (WIAT-III); Adaptive Behavior Assessment System, Third Edition (ABAS-3) Parent. (P-11)

mother and topics of interest than on information relevant to the interview. Student maintained a pleasant disposition and was able to answer some questions about her previous experiences. Dr. Bean Jaworski noted that Student was having significant difficulty understanding her direct questions, so Mother attempted to rephrase some questions with continued evidence of limited comprehension. Most of Student's answers consisted of repeating phrases from questions or unrelated information. Student's judgment and reasoning were assessed as limited, consistent with her overall developmental level. (P-11) Dr. Bean Jaworski did not speak to anybody from Belchertown as part of her assessment. She did not observe Student in her current educational program. (Bean Jaworski)

Dr. Bean Jaworski conducted the evaluation using a "modified in-person assessment session<sup>12</sup>." She noted that Student was easily distracted even in the standardized testing setting. Student needed assistance with tracking her place while working and orienting herself to the correct information. She often needed directions to be presented in a step-by-step manner. Her comprehension was limited for both conversation and directions. (P-11, Bean Jaworski)

Dr. Bean Jaworski noted that given skill and developmental trajectory to date, Student will require ongoing support, supervision, and intensive intervention to maintain her current skills and promote developmental progress. (P-11) Dr. Bean Jaworski explained that given Student's level of intellectual disability, "it would be reasonable to assume that her skill acquisition across domains would be slow". (Bean Jaworski) She made a series of recommendations for Student's educational programming. First, that Student "requires an educational setting that can provide a one-to-one ratio of adult support" due to her level of distractibility even within the highly-controlled testing setting and her need for step-by-step prompting and redirection." She noted that Student is likely approaching the upper limit of her academic skill acquisition (estimated at a second-grade level), and as such a continued focus on traditional academics is expected to be of very limited benefit to Student. She strongly recommended that Student's services focus on promoting activities of daily living and safety training. She further noted that Student requires a program that can organize the skills she is learning and allow for activities of interest (such as music) to hold her attention and give her the best possible basis from which to learn new skills. She posited that utilizing activities of interest could benefit her attention capacity and result in more successful skill development. (P-11) Dr. Bean Jaworski explained that she made that recommendation after Mother showed her a video of Student singing an entire song in which she had memorized all the lyrics. Dr. Bean Jaworski was not aware that Belchertown staff reported that music can be a distraction for Student. (Bean Jaworski) Dr. Bean Jaworski explained that "for any individual, your level of attention to information and your level of interest in information increases, you know, the information that's available to you that you're trying to remember." (Bean Jaworski) She recommended that Student's program provide social opportunities with ability-matched peers as they would have "potentially similar interests, but then also, ... to maintain her safety." Finally, Dr. Bean Jaworski recommended

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<sup>12</sup> Student and her mother sat in a room adjacent to the examiner. Student wore headphones and the examiner used video conferencing, including remote presentation of test instructions/stimuli and remote observation of performance via video conferencing to interact with Student. Student was able to remove her mask, to allow for adequate observation of communication abilities and increase the clarity of her responses. (P-11)

continued speech language therapy. (P-11) Dr. Bean Jaworski concluded that a program that is focused on adaptive skill development and safety training would be more beneficial and meaningful to Student than a program focused on traditional academics. (P-11, Bean Jaworski)

49. The Team reconvened on May 14, 2021. They discussed using behavioral supports to get Student to attend track; drafting a toileting plan; training for paraprofessionals on toileting plan by September 2021; and purchasing a book upon family approval. (S-27)
50. On May 28, 2021, Belchertown issued an N1. The district proposed a hybrid program for Student utilizing the Transitions 2 program at Belchertown High School and the MAICEI program at HCC. The district rejected Parents' proposal that Student attend Berkshire Hills Music Academy (hereinafter, BHMA) because it is not DESE-approved and because its proposed program can meet Student's needs. The family rejected the MAICEI program because they did not believe it was intensive enough for Student to make effective progress as it is not cohesive, structured, or sequential. (S-23)
51. In Ms. Kudron's opinion, Student's goals need to be re-worked, as she thought that some providers had felt pressure to write goals for a certain degree of mastery that may have been a stretch for Student to reach. (Kudron)
52. Ms. Kudron is of the opinion that Student's current program is appropriate for her. She has been working with Student since she was in fifth grade. From her fifth through tenth or eleventh grades, Parents pushed for her to be included with typical peers. Ms. Kudron indicated that Student's current program provides her with specially designed instruction in her areas of greatest need, while providing access to typical peers. She has access to music and vocational opportunities, access to her community, opportunities for generalization because she is visiting stores and restaurants with her class and likely going there with family and friends as well. Ms. Kudron also believes it is important that Student's program work on activities of daily living on a daily basis, as the Transitions 2 classroom does. In her view, Student has made progress in the district's program, noting, in particular, an increase in Student's ability to converse with her over the years. (Kudron)
53. Student's proposed IEP for the period March 2, 2021 through March 1, 2022 contained goals in the following areas: functional academics; functional communication; community; vocational; ADLs; and physical health. For the period from March 2, 2021 through March 1, 2022 and August 25, 2021 through March 1, 2022 the A Grid contained: occupational therapy consult with the occupational therapist or COTA for three hours per month; academic consult with a special education teacher 60 minutes per week; assistive technology consult with an assistive technology specialist 4 hours per month; vision consult with a teacher of the visually impaired 60 minutes per month; autism consult with a BCBA 60 minutes per month; speech language consult with a speech language pathologist or assistant 60 minutes per month; social skills consult with a behavior/autism specialist 30 minutes per month; and physical therapy consult with a physical therapist or assistant 30 minutes per month. For the period from March 2, 2021 through June 14, 2021 the B grid contained transitional/vocational services with a special education teacher or paraprofessional 578

minutes per week; additional adult support with a special education teacher or paraprofessional 1272 minutes per week; social skills with a behavior/autism specialist 30 minutes per week; speech language therapy with a speech language pathologist or assistant 45 minutes per week and physical therapy with a physical therapist or assistant 45 minutes per week. For the period from August 25, 2021 through March 1, 2022 the B Grid contained: academic support with the special education teacher or paraprofessional; transitional/vocational services with the transition specialist 330 minutes per week; additional adult support with a special education teacher or paraprofessional 800 minutes per week; speech language therapy with a speech language pathologist or assistant 45 minutes per week; social skills with a behavior/autism specialist 30 minutes per week and physical therapy with a physical therapist or assistant 45 minutes per week.

The C grid contained the following for the period from March 2, 2021 through June 14, 2021: transitional/vocational services with the transitional specialist 578 minutes per week; additional adult support 653 minutes per week; social skills with a behavior/autism specialist 30 minutes per week; and speech language therapy with a speech language pathologist or assistant 45 minutes per week. The C grid contained the following extended school year services for the period from July 6, 2021 through August 5, 2021: academics with a special education teacher or paraprofessional 6.25 hours per week; additional adult support for 7.5 hours per week; social skills with a behavior/autism specialist 30 minutes per week; and speech language therapy with a speech language pathologist or assistant 45 minutes per week. For the period from August 25, 2021 through March 1, 2022 the C grid contained: transitional/vocational services with a transition specialist 330 minutes per week; additional adult support with a special education teacher/paraprofessional 405 minute per week; speech language therapy with a speech language pathologist 45 minutes per week; and social skills with a behavior/autism specialist 30 minutes per week. (P-1, S-3)

The Post-Secondary Vision on Student's Transition Planning Form states that Parents envision [Student] being fully integrated into the learning and residential community at Berkshire Hills Music Academy where she will be part of their professional music troupe, participating daily in intensive life-skills and vocational learning, and happily engaged in a community of peers who share her interests and skills in music. The vision states that Student would like to work in music, something with band, singing, or dancing. She has also expressed interest in working in a restaurant. Given a list of options read to her for post-secondary education, [Student] expressed an interest in attending a community college or having on the job training. She wants to work part time with support and continue to live with family or in a house/condo. (S-3, P-1)

54. Belchertown developed an Intimate Care Plan for Student which was signed by Parent on May 19, 2021 and by Ms. Kudron on May 20, 2021. It stated that staff who accompanied Student to the ladies' room would provide verbal assistance/prompting to Student as needed. It stated that staff should contact the school nurse if Student was not able to adequately clean herself. If the nurse was not available Parents were to be contacted. The plan stated that staff were not to physically assist Student. (S-31) Staff received training regarding Student's Intimate Care Plan. (Kudron)

55. Parents rejected the IEP and placement on April 2, 2021, writing, “See Parent concerns, page 4.” (S-3) Although the record is unclear as to what if any subsequent changes were made to the IEP, it was apparently reissued on May 28, 2021. Parents rejected the IEP and placement on June 1, 2021. They wrote, “See parent concerns, p.4; See Vision statement, p. 18; The proposed placement is inappropriate and inadequate given [Student]’s need for intensive and highly structured programming in the area of interest (music) with a cohort of peers of matched ability.” (P-1, S-3, S-23)
56. Ms. Kudron is aware that Student’s most recently proposed IEP did not propose home-based services. She recalls discussing said services at a meeting while Student was in high school, but at the time Belchertown staff believed Student had not yet mastered tasks sufficiently to the point where it made sense to try to generalize them to other settings. She also noted that Ms. Clarke’s report stated that Student was working so hard during the day that after school she was too tired for additional services. She does not recall Parents ever requesting a home assessment. (Kudron)
57. Laurel Peltier, Ed.D<sup>13</sup>, conducted an Individual Program Review at Belchertown’s request and wrote a report dated January 27, 2022. (P-2, S-12) She met Student, but did not evaluate her as part of her program review. As part of her review she visited Belchertown’s Transitions 2 program, but was not able to visit Berkshire Hills Music Academy or Holyoke Community College. She had visited the latter schools in the past. Upon reviewing records and interviewing people who have worked with Student, she concluded that Student’s greatest areas of strength “had to do with social learning and accountability, and interest and ability related to music theater, media, and technology; and some of the skills Student demonstrates in community outings, shopping, traveling and leisure activities.” She identified Student’s areas of needs to be focused around safety, independence, self-determination, communication, motivation and initiation. She noted that Student’s ability to focus impacts her participation. (Peltier)

Dr. Peltier recommended a number of elements that would be most salient to include in Student’s educational program. She noted that Student’s areas of high interest, music, art, dance, theater, and hands-on learning were very motivating for Student. Student requires instruction to be upbeat and engaging to keep her focused. She opined that Student should have opportunities to learn with others, to keep her present and available for learning. She also noted it would be desirable for Student to be less dependent on others and be able to own her own choices. (Peltier)

Dr. Peltier cited difficulty in assessing progress when the Team has been utilizing goals from the May 2020 IEP, and further, that the AFLS is a difficult tool with which to monitor progress as it is more appropriately used within a discrete trials program. (Peltier)

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<sup>13</sup> Dr. Peltier has a doctorate and certificate of advanced graduate study in special education leadership and is a licenseprofessional special education administrator. She is currently a curriculum and instructional specialist at the Collaborative for Educational Services in Northampton. (Peltier)

Dr. Peltier observed the Transitions 2 program on January 24, 2022. (S-11, P-2) She accompanied the class to Stop & Shop where each student had an individual shopping list that was on an iPad. Dr. Peltier noted that the waiting outside was difficult for Student. She saw more staffing than she expected and a lot of attention and care to Student due to safety concerns around Student's awareness of traffic and other people. Once Student entered the store and had her cart, she knew how to navigate the store and staff remained at a distance and observed her. After Student selected her items her teacher and direct support person met with her and reviewed her list and the items in her cart. They assisted her in returning some incorrect items to the shelf and choosing the correct items. Student was allowed to choose a snack or drink when she finished. (Peltier)

Dr. Peltier accompanied Student to a "vocational learning opportunity" at the Chestnut Hill School. Student did photocopying for a favorite former teacher and family friend, Mr. O. Dr. Peltier noted that Student's direct support person used a very systematic approach to teaching. Once the task was modeled for her, Student was very persistent, and her direct support person very patient in allowing Student to figure it out. Dr. Peltier was very impressed by Student's persistence and the opportunity for her to do elements of the task independently. She noted that the one to one assistant working with Student used a very impressive instructional approach which she described as "I-do, we-do, you do." She noted that the level of expertise demonstrated by the direct support person was very impressive and that it was clear that she knew Student very well and knew how to teach. (Peltier)

Dr. Peltier observed a cooking activity in which Student worked with a peer. She noted Student's ability to observe the peer and change the way she was completing the task based on what the peer was doing. Student observed and engaged with the people in her classroom and in the community. She further noted an emphasis on utilizing a "structured/upbeatkeep it moving/social/peer-assisted learning environment." (Peltier)

Dr. Peltier concluded that the Transitions 2 program utilized community-based education and experiential learning and also provided systematic and direct instructional approaches. She noted that the program had "a knowledge and an understanding of how to do education for transition age students with cognitive differences in community-based settings. She found the use of technology to be impressive, as well as the direct instructional approach, with quick fading. She observed a desire to see students take responsibility in the classroom and on community sites and a lot of positive reinforcement and praise. (Peltier)

Dr. Peltier stated that the Team knows Student very well, with many members having worked with her since she was in Early Intervention. She observed the Team members to be are very invested in her success and very knowledgeable about her profile as a learner. (Peltier)

Dr. Peltier identified progress monitoring s a major problem for the Team. She was not sure that the goals and data identified in goals have allowed the Team to monitor progress. She opined that the goals and the data need to be "cleaned up" and that progress monitoring is "almost impossible" given the way the goals are written and data collected. Dr. Peltier

concluded that any of the options, to wit: the Transitions 2 program, MAICEI, or BHMA, would be an appropriate placement for Student. (Peltier)

58. Ms. Bourdeau opined that Student's current program is appropriate for her, and does not think that a program that does not provide speech language therapy would be appropriate, as having speech integrated into her day is crucial. It helps her to generalize and maintain the skills she works on in speech sessions. The ability for staff to consult with a speech/language pathologist is crucial for Student's carry of skills across settings. (Bourdeau)
59. Ms. Hammer testified that there were 30 minutes of her services noted in the B grid and she was not certain of what the Team had intended for her to provide in that setting. Ms. Kudron testified that Ms. Hammer's B grid services were intended to be provided at a vocational site. She was unaware that they had not been provided until Ms. Hammer's hearing testimony. She stated that any missed services would be made up. (Kudron, Hammer)
60. Father described Student as a very happy and social child who has an extreme amount of love and fondness for the important people in her life. When she is involved with music or performance she demonstrates poise, confidence, engagement, and happiness. He described an end-of-the-year show during which Student sang an entire song while the music teacher played the guitar. It was the first time Student had been able to demonstrate what she was capable of at school. Parents were disappointed that there have not been other similar opportunities for Student. Father did not believe Student made appropriate progress during the 2019-2020 school year. He noted that Covid-19 impacted Student's programing, as school was closed for several weeks and then was virtual. Student did not do well with virtual instruction. It was difficult for her to engage. He does not believe that Student made effective progress during the 2020-2021 school year. He characterized her progress as stagnant by all measures. (Father)

Father noted that during the spring of 2021 Student became more withdrawn and had a harder time focusing and attending. Parents noticed her engaging in perseverative behaviors he had not seen since she had returned to school. She did not seem to have energy or interest in engaging in things she had previously been interested in. (Father)

Father testified that in addition to Student's lack of progress during the 2019-20 and 2020-2021 school years, she has not made effective progress during the current school year. He stated that her scores were largely stagnant in her areas of highest need. He did not think that Belchertown's three-year evaluation reports showed that Student had made effective progress, and further stated that this was evidenced by several instances in which Student had not achieved the objective on her IEPs after a number of quarters. (Father)

When Parents raised the possibility of Student attending BHMA, Father recalled that Ms. Kudron said she would talk to people at BHMA about what level of independence would be required. She also stated that the school was not "DOE approved" and thus, Belchertown could not fund it. (Father)

Father spoke to Andrea Hojnacki, the MAICEI Program Coordinator at HCC to get a better understanding of the program. Based upon his conversation, it was his understanding that the MACEI program could not provide the coordinated, cohesive programming that Dr. Bean Jaworski recommended for Student. He did not believe it would be an appropriate program for Student. He stated that Student does not understand the concept of community college and has never expressed an interest in attending one or having a college life experience. He further stated that Parents have a lack of faith in Belchertown's ability to modify the academic curriculum and facilitate inclusive social interactions for Student. He was concerned that Student would be segregated in the MAICEI program and that the extent to which she would have to rely on the ed coach would naturally keep peers at arm's length. He noted that Student did not make any friends at Belchertown High School. She has friends that she made through Special Olympics and the Whole Children's Joyful Chorus and Theater Program. (Father)

Father testified that Parents asked Belchertown to fund Student's placement at BHMA because they believe it has all of the elements that were recommended by Dr. Bean Jaworski. It is the only program of which they know where student could learn life skills and gain work experience in a curriculum that is driven through music, Student's highest area of interest and greatest area of skill. There could also be an opportunity for Student to attend a long-term residential program at BHMA<sup>14</sup>. (Father)

61. Teresa Dooley-Smith is a speech language pathologist who has provided private services to Student at Parents' request since 2007, with a few gaps in time. She has bachelor's and Master's degrees in communication disorders and a license with the state of Massachusetts. She is also ASHA certified. She operates a private practice, called TDS Center for Communication & Social Learning (hereinafter, TDS) which provides adult "day hab" services, consultation and direct services to many school districts, and home-based consultation through DDS and Early Intervention. She also runs a number of social skills groups. Student has participated in social skills groups with TDS, some of which included community-based learning components. Recently Student participated in girl-based groups which included peer mentors, ability-matched students and students with similar profiles to Student. The groups emphasized the importance of supporting one another, in addition to safety and sexuality. They worked on maintaining social connections and initiating and continuing conversations. (Dooley-Smith)

Ms. Dooley-Smith described Student's high interest in music and stated that they use it as a motivator for Student at TDS. She is required to complete a set amount of work to earn two minutes of music, for example. If it is time to clear a table, Student is permitted to listen to music so long as she remains engaged in the task. She noted that people are drawn to Student socially and that she is able to draw shy students out of their shell. She described her as a very diligent, hard-working student who responds positively to her peers. She also noted that attention is a big issue for her. She is highly distracted, which coupled with her visual

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<sup>14</sup> Rachel Ingraham, a transition coordinator at the Department of Developmental Services, wrote a letter, dated September 1, 2021, stating that BHMA is a vendor that contracts with DDS to provide day and residential services to DDS eligible individuals after they turn 22. Thus, if Student was placed at BHMA by Belchertown, it would be possible to continue her services there after she turns 22, provided DDS has funding available. (P-7)

issues, can cause her difficulty in organizing and starting a task. She also can be perseverative. She noted that Student requires a great deal of repetition to learn a skill. (Dooley-Smith)

Last summer Student participated in a summer program with TDS that included life skills and cooking. The program comprised activities in the community that included shopping, safety, and learning about social proximity. The cooking and laundry portion were done virtually. Student also received direct speech and language therapy. (Dooley-Smith)

Student has stated that she is going to be a singer when she is an adult. In one of the social groups the students started a singing telegram business. Student was able to share her extensive knowledge of songs to help the other students think of appropriate songs for occasions. She took a leadership role in that aspect of the business. (Dooley-Smith)

Ms. Dooley-Smith has not observed Student at the Transitions 2 program. She reviewed IEPs of Student's classroom peers and was struck by the fact that her peers were all boys. She also noted that given their different intellectual and social presentations, it might be challenging to work on social skills. She testified that one of the four peers was strongly ability-matched to Student, but that the others were not. (Dooley-Smith)

Ms. Dooley-Smith stated that she is familiar with the MAICEI program, as she has had students from several districts transition to the ICE program, its former name. She has seen some students succeed and others have difficulty. The ones who had difficulty were students who do not respond well in an unstructured environment. She does not think the program would be appropriate for Student as it does not provide the structure she requires. In her experience, other students who have profiles similar to Student's, have been isolated at the program, because they cannot access social situations without tremendous support. She thinks Student would require 1:1 pre-teaching and instruction and does not see how she would access classes. (Dooley-Smith)

Ms. Dooley-Smith is familiar with BHMA because she has had students transition to that program over the past five to six years. In her opinion, BHMA would provide an appropriate program for Student's transition, speech-language, and social skills and pragmatics goals, because the entire environment is based on an interest in music and performance. She noticed that Student shows leadership and connection and her best social engagement when engaged in music. (Dooley-Smith)

Ms. Dooley-Smith acknowledged that she and Parents are friends. (Dooley-Smith) Parents listed Ms. Dooley-Smith as an emergency contact on Student's application to BHMA and noted that she is a close family friend. (S-40) She does not think her friendship with Parents has impacted the fidelity of her work with Student. Additionally, when she began to develop a friendship with Parents, she stopped working directly with Student and other people in her practice began providing Student's services. (Dooley-Smith)

Ms. Dooley-Smith agreed with Dr. Bean Jaworski's recommendations, including her conclusion that Student requires a 1:1 ratio of staff for her programming. She agreed that

Student often requires maximum to moderate support and makes slow progress. She confirmed that during cooking activities Student required cuing and hand over hand assistance from her peer mentor. (Dooley-Smith)

62. Jacqueline Deiana, Vice-President of Admissions and Marketing, at BHMA, testified that BHMA is not an approved special education program. Its teachers are not for the most part licensed as special educators or educators. She explained that BHMA typically does not provide students a 1:1 assistant on a long term basis. (In the past they have provided one as needed on a short-term basis, but it is not the typical situation.) She stated that the group size is small enough so that the instruction they provide in the small group setting allows students to receive a fair amount of individualized attention without the need for a single person to help them interact, communicate or engage. Ms. Deiana testified that they operate more as an adult service program versus a school. The classes in the afternoon could be attended by adults in their 30s. Vocational opportunities and cooking are provided once per week currently. BHMA does not have an occupational therapist, physical therapist, speech language therapist, assistive technology specialist or teacher of the visually impaired on staff. Their emotional well-being class is taught by a BCBA who has “clinical training.” Their smaller classes have a ratio of 1:3, adults per student. Larger music classes could have a ratio of 3:25 or 4:30. There is a combined lunch/break period daily which lasts for one hour and fifteen minutes. It is an informal time to hang out and take a device break. Many students watch YouTube or text their friends. The staffing ratio at that time is approximately 1:6. (Deiana)
63. Student attended a three-day admissions visit at BHMA. (Father) Teachers submitted comments regarding Student’s participation. The comments included the following: [Student] seemed very tired and nodded off repeatedly; when verbally cued, she engaged; [Student] will participate in class/general conversation when prompted, but did not initiate on her own. In class it sometimes appears she is zoning out, but when asked a question she would give a relevant response; she is more alert during physical/music classes than life skills; [Student] was able to answer all direct questions, but otherwise didn’t seem as engaged in the class; bit nails and muttered to self for majority of class; seemed pleasant when spoken to directly; easily redirected but did not maintain activity participation; sweet disposition; needed redirecting several times in Zumba; assistance from Rosa was necessary; sat on the couch, stretched out with her pants partially down through the class; when suggested that she might want to pull her pants up, she did not do so. Staff who had seen her earlier said this was typical of the day [Student] was the most withdrawn of the group; responded with direct and specific questions; needed many task reminders; [Student] kept trying to leave out the door; several prompts needed to get her to return inside; each time the door would open she would go out.; [Student] was mostly quiet, but when asked direct questions and given time to respond, she did.; not as visibly engaged as other participants; seemed slightly confused about some questions, for example where she is from. (S-41)
64. In a letter dated July 8, 2020<sup>15</sup>, Student was offered admissions to BHMA beginning in the fall 2021. (P-21)

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<sup>15</sup> Ms. Deiana testified that the date was a typographical error and the letter was sent on July 8, 2021. (Deiana)

65. The proposed BHMA schedule for Student consisted of days which begin at 9:15 a.m. and end at 2:45 p.m. The first daily class ran from 9:15-11:15 and varied between money management, cooking, vocational exploration, social skills and games; and community independence/self-advocacy. Lunch was from 11:15-11:55, followed by a break from 11:55-12:30. From 12:30 - 1:15 classes varied between music group; rock & roll appreciation; music production; emotional well-being; and friendship group. From 1:15-2:00 classes included musical theater; voice lesson; music appreciation; social hour; and social skills & games. From 2:00-2:45 class offerings were social hour; women's health; chorus; exercise/walk; and variety hour. (S-50)
66. Student's service providers from Belchertown opined regarding the appropriateness of BHMA for Student. Miss Phipott indicated that if attended a program that did not include occupational therapy services or consult, she would be concerned about whether Student would have adaptive equipment to adapt activities. (Philpott)
67. Ms. Clarke stated that she thought BHMA "could be a good place" for Student given her strong interest in music. However, she also thought that going to college could be a good thing. (Clarke)
68. Ms. Aponte's concerns about BHMA include the lack of 1:1 support Student requires for both safety and engagement reasons. She noted a number of instances during Student's trial at BHMA when she was not engaged, and further, Ms. Aponte from a safety perspective, about Student's getting up and leaving a class if she is not appropriately supervised. She did not believe the ratios used for cooking and music classes would provide safety for Student. She did not think that having cooking class once per week would be sufficient for Student. She also did not think having vocational exploration only once per week was sufficient. MS. Aponte was concerned about the length of the unstructured time at BHMA (11:15 to 12:30) each day, noting her fear that Student would wander. Further, she testified that Student requires supervision during lunch to ensure that she does not eat other people's food or drink their drinks. (Aponte)

### **FINDINGS AND CONCLUSION:**

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)<sup>16</sup> and the state special education statute.<sup>17</sup> As such she is entitled to a free appropriate public education (FAPE). Neither her status nor her entitlement is in dispute.

The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education, employment and independent living."<sup>18</sup> FAPE must be provided in the least restrictive environment. Least

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<sup>16</sup> 20 USC 1400 *et seq.*

<sup>17</sup> MGL c. 71B.

<sup>18</sup> 20 USC 1400(d)(1)(A). See also 20 USC 1412(a)(1)(A); *Mr. I ex. Rel. L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1 (1st Cir. 2007)

restrictive environment means that, “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>19</sup>

Student’s right to a FAPE is assured through the development and implementation of an individualized education program (“IEP”).<sup>20</sup> An IEP must be custom-tailored to address a student’s “unique” educational needs in a way reasonably calculated to enable him to receive educational benefits.<sup>21</sup> For an IEP to provide a FAPE, it must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>22</sup> A student is not entitled to the maximum educational benefit possible.<sup>23</sup> Similarly, 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.”<sup>24</sup> The IDEA further requires that special education and related services be designed to result in progress that is “effective.”<sup>25</sup> Further, a student’s level of progress must be judged with respect to the educational potential of the child.<sup>26</sup>

Massachusetts special education regulations provide that specially designed instruction and related services described within the IEP must be sufficient to “enable the student to progress effectively in the content areas of the general curriculum.”<sup>27</sup> Massachusetts also requires that the special education services be designed to develop a student’s educational potential.<sup>28</sup>

An IEP is a snapshot; therefore, the 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.<sup>29</sup> An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was promulgated.<sup>30</sup> The critical inquiry is whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.<sup>31</sup>

The IDEA requires that “to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when

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<sup>19</sup> 20 USC 1412(a)(5). See also 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

<sup>20</sup> 20 USC 1414(d)(1)(A)(i)(I)-(III); *Honig v. Doe*, 484 U.S. 305 (1988); *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982)

<sup>21</sup> *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir.1993)

<sup>22</sup> *Andrew F. v. Douglas County. Sch. Dist.*, 580 U.S. \_\_\_ (2017)

<sup>23</sup> *Rowley*, 458 U.S. at 197

<sup>24</sup> *G.D. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991)

<sup>25</sup> 20 USC 1400(d)(4); *North Reading School Committee v. Bureau of Special Education Appeals*, 480 F. Supp.2d 479 (D. Mass. 2007)(the educational program must be reasonably calculated to provide effective results and demonstrable improvement in the various educational and personal skills identified as “special needs”)

<sup>26</sup> *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (1st Cir. 2008)

<sup>27</sup> 603 CMR 28.05(4)(b)

<sup>28</sup> MGL c.71B; 603 CMR 28.01(3)

<sup>29</sup> *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983 (1st Cir. 1990)

<sup>30</sup> *Id.*

<sup>31</sup> *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083 (1st Cir. 1993)

the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. See 20 USC 1412(a)(5); 20 USC 1400(d)(1)(A); 20 USC 1412(a)(1)(A); MGL c. 71B; 34 CFR 300.114(a)(2)(i); 603 CMR 28.06(2)(c)

The burden of persuasion in an administrative hearing challenging an IEP is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 534, 537 (2005) In this case, Parents are the party seeking relief, and as such bear the burden of persuasion

With the foregoing legal framework in mind, I turn to the issues before me.

There is no significant dispute with respect to Student's areas of need and profile, generally. The primary area of disagreement is whether Student's program in the Transitions I and Transitions II classroom at Belchertown High School was/is reasonably calculated to provide her with a free appropriate public education and whether it can meet Student's transition needs.

*ISSUE I Whether the IEPs and placement proposed for the 2019-2020 school year were reasonably calculated to provide Student with a free appropriate public education in which she could make effective progress in the least restrictive environment.*

The IEPs for this time period ran from January 28, 2019 through January 27, 2020. (S-1, P-28) Part of this time period falls outside the statute of limitations, as the Parents' Hearing Request was filed on June 30, 2021. Therefore, this Decision does not address events prior to June 30, 2019. Additionally, Parents accepted the IEP in large part, rejecting only 1) that ESY services did not include transition services or address goals 6 (self-determination) & 7 (transition); and 2) that there were no vocational, community, or identified career skill/interest (music) programming included. (See ¶ 5 above) "Hearing Officers are precluded from revisiting/re-opening accepted IEPs that have expired where parents have participated in the development of the IEP; parents have received notice of their options for rejection of an IEP and proceeding to a due process hearing; parents have chosen to accept the IEP; and parents have never rejected the IEP during its term." *In Re: Mary*, BSEA #01-0982 (Oliver, 2007) and cases cited; *Quabbin Regional School District*, 44 IDELR 56 (MA SEA 2005); *In Re: Sharon Public Schools*, 8 MSER 51, 67 (MA SEA 2002); *In Re: Carver Public Schools*, 7 MSER 167, 179 (MA SEA 2001). For this reason, I will not address the appropriateness of the accepted services, goals, accommodations and placement for this time period.

With respect to Parents' objection that the IEPs did not include vocational, community, or identified career skill/interest (music) programming the evidence shows that Student received said services, even though they were not specifically listed on the IEPs. As Father conceded on cross-examination, Student went on community outings with Ms. Aponte prior to the Covid school closure. (Father) She was going to McCarthy's Pub, Planet Fitness, Life Care, Dave's Pet Food, and Christopher Heights, which was specifically added to Student's program to provide her an opportunity to perform music. (Aponte) With respect to the objection to the IEP not including ESY services to address self-determination or transition, there was no evidence that Student required services in these areas to prevent substantial regression.

*ISSUE II Whether the IEPs and placement proposed for the 2020-2021 school year were reasonably calculated to provide the Student with a free appropriate public education in which she could make effective progress in the least restrictive environment.*

The IEPs for this time period ran from May 1, 2020 through April 30, 2021. Parents accepted the services, accommodations, and placement in the IEPs, noting concerns with the goals.

Student began this IEP period in Ms. Kampe's Transitions 1 classroom. In this program she had 1:1 support to address her attentional and safety needs, and a small peer group with whom she practiced social interactions throughout the day. She also worked on life skills, and safety. Ms. Kampe used individualized interventions to capture Student's attention as described in ¶ 8 above. Ms. Kampe credibly testified that during this year Student made progress in academic skills; telling time; following classroom routines; independently getting her materials ready, and providing Ms. Kampe details about her community outings. (Kampe)

Within the context of this program, Student also received social skills services, physical therapy, speech and language and vocational and community experiences. Ms. Hammer, who provided social skills services attested to Student's progress in increasing conversational exchanges. Ms. Sarnacki, who provided her physical therapy services in the community (at Planet Fitness) testified that she showed progress by adding exercises and equipment to her routines. (Sarnacki) Ms. Bourdeau provided direct speech and language services, attended weekly Buddies meetings to facilitate communication and attended social skills groups along with Ms. Hammer. Student participated in vocational experiences and community outings which were supported by staff such as Ms. Philpott. Belchertown included community and vocational sites which would provide Student opportunities to perform music or be in a musical environment. (Aponte)

All Belchertown staff who worked with Student testified that she made progress, and all Belchertown witnesses characterized it as slow and incremental. Nevertheless, they found Student's progress to be meaningful, given her profile. There was neither testimony nor documentary evidence in the record that indicated that Student would have been expected to make more progress than she did. Parents' own witness, private neuropsychologist, Dr. Bean Jawaroski, noted that it would be likely that Student's skill acquisition across domains would be slow. (See above.) Whether educational benefit is "meaningful" must be determined in the context of a student's potential to learn. *Bd. Of Education of the Hendrick Hudson Central School District v. Rowley*, 458 US 176, 202 (1982); *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F3d 18, 29 (1<sup>st</sup> Cir. 2008); *D.B. v. Esposito*, 675 F.3d 26, 34 (1<sup>st</sup> Cir. 2014). It must be appropriately ambitious in light of the child's circumstances. *See Andrew F. v. Douglas County School District RE—1*, 69 IDELR 174 (March 22, 2018).

Parents also sought to show that the term of the IEP (dated of the May 1, 2020 – April 30, 2021) constituted a procedural violation. The evidence shows that the Team met continuously to discuss and revise the IEP. The Team convened for its annual review on January 17, 2020, prior to its expiration on January 27, 2020. The Team did not complete the IEP, and re-convened on January 28, and February 24, 2020. It still did not complete the IEP, and scheduled a meeting on March 2020. The Covid-19 pandemic led to school closure and the Team re-convened virtually on April 20, 2020. It agreed to revise the IEP dates to modify the start and end dates to

reflect the date on which they completed drafting the IEP. The N1 confirms that the Parties agreed to modify the IEP dates. (S-16) There was no testimony or evidence to suggest that Parents objected to changing the IEP dates or that Student did not continue to receive the services in her accepted IEP. Although it would have been a better practice for the Team to document Parents' consent to the change, Student was not denied FAPE due to the change in dates. If in fact, the changing of the dates constituted a procedural violation, it was *de minimis* and did not result in any harm to Student or Parents. Thus, there is no remedy. Furthermore, Parents accepted the IEP and made no mention of the modification of the IEP dates.

Student remained in Ms. Kampe's classroom until late November 2020, when the Team agreed that Student should receive her services in Ms. Aponte's Transitions 2 classroom. Ms. Aponte, who presented as very enthusiastic when describing Student and the Transitions 2 classroom, is uniquely qualified to teach Student. She has met all of the requirements to be a certified transition specialist, has a Master's degree in moderate disabilities, and has an endorsement in social emotional learning. Ms. Aponte's classroom consisted of some students who were at a higher level cognitively than Student, and some who were at a lower level. Ms. Aponte credibly testified that these peers were a good match for Student and that she frequently engaged with them. Parents raised the issue of the peers being inappropriate for Student because there was only one other girl and she was grouped with Student part-time. However, neither Belchertown staff nor outside consultants opined that it would be contraindicated for Student to be grouped predominantly with males. Although Ms. Dooley-Smith testified that she was struck by the fact that Student was the only female in her classroom, she did not indicate that that would make the placement inappropriate.<sup>32</sup> In fact, she never observed Student in the Transitions 2 classroom, and thus, was not able to provide an opinion about its appropriateness for Student. Further, Ms. Aponte noted that Student appeared to prefer males to females, noting that most of her favorite people are males.

Ms. Aponte's Transitions 2 classroom provided Student with instruction in the areas that have been identified as areas of high need. She was provided opportunities to practice ADLs (including hygiene, laundry, chores, and cooking), opportunities to explore vocational opportunities and community outings, and to select her own job site (Jabish School), and to practice skills such as photocopying and following directions.

Student goes to the library and selects books of her choosing. She goes to the mall and practices using an ATM card. She engages in person centered planning. She completes packets in budgeting, time, and banking. (Aponte) Dr. Peltier highlighted Student's 1:1 aide's ability to break down tasks and know when to fade support. Student goes to Stop & Shop where she follows a list and is given the opportunity to shop independently with staff observing nearby.

Student is further supported by related service providers in Ms. Aponte's class. She receives social skills instruction with Ms. Bourdeau and Ms. Hammer, and has opportunities to practice. She has had craft time and yoga instruction with Ms. Hammer. Ms. Hammer has instituted a monthly performance, during which Student has been able to showcase her musical talent.

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<sup>32</sup> Although Ms. Dooley-Smith's testimony showed that Student appeared to enjoy the private services Parents provided to Student through TDS, especially, the "girl groups", there is nothing in the record to suggest that Student requires said groups to receive a FAPE. Further, Parents have not requested reimbursement for the private TDS services.

(Hammer, Bourdeau) She is supported by Ms. Philpott, who consults and makes recommendations for adaptive equipment for Student to enhance safety and independence. (Philpott) Student continues to participate in Buddies and afterschool sports. (Philpott) Ms. Sarnacki supports Student's participation in Fitness Club and has supported her participation on the cross country and track teams. (Sarnacki)

Dr. Peltier opined that the Transitions 2 program was appropriate for Student. She provided a great deal of praise for the program. Notably she stated the program had a "knowledge and an understanding of how to do education for transition age students with cognitive differences in community-based settings." She found that the program used community based education and experiential learning and provided systematic and direct instructional approaches. She viewed the use of technology to be impressive. She also noted the use of a direct instructional approach, with quick fading. In Dr. Peltier's opinion, the Team knew Student and her learning profile very well, and were very invested in her success. (Peltier)

As discussed above, Student's teachers and service providers all testified that Student made progress in Ms. Apote's program, and provided specific examples of such. By contrast, there was no definitive testimony from anybody with clinical or educational expertise to the effect that Student had not made progress<sup>33</sup>. Dr. Peltier did not believe that the AFLS was an appropriate tool for monitoring progress. Although Ms. Dooley-Smith criticized some elements of Ms. Bourdeau's speech language evaluation, she never observed the Transitions 2 program and was not able to provide an opinion about the program in general or the speech language services. Dr. Bean Jaworski did not observe the Transitions 2 program, speak to any Belchertown staff, or observe Student in any educational setting and therefore, did not reach a conclusion regarding the appropriateness of Belchertown's program or opine as to whether Student had made progress.

The only testimony that Student had not been making effective progress in Belchertown was Father's. And, while Parents indisputably know Student better than anyone else, their expertise is as Student's parents and not as educators. Father does not have an educational or clinical background. Ms. Peltier thought that either Belchertown or BHMA would provide Student with an appropriate program. Ms. Clarke did not recommend a program for Student, but she also did not state that Belchertown's program was not appropriate. Her focus was on recommending what elements should be included in Student's transition program.

For the foregoing reasons, I find that the IEPs and placement proposed for the 2020-2021 school year were reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment.

*ISSUE III Whether the IEPs and placement proposed for the 2021-2022 school year were reasonably calculated to provide the Student with a free and appropriate public education in which she could make effective progress in the least restrictive environment toward her transition needs and goals.*

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<sup>33</sup> Dr. Peltier stated, "I don't think that there is data in the progress reports that is the best data for progress monitoring. So based on the data in the progress reports, progress did not happen but I think that the data that's in these goals and referenced in the goals is not focused enough on the kind of data that can reasonably be collected to monitor progress in a transition program." (Peltier)

The IEPs for this time period ran from March 2, 2021 through March 1, 2022. Parents rejected the IEPs and placement in full. Student remained in Ms. Aponte's classroom during this time period.

The IEPs proposed a hybrid program consisting of part-time attendance in Ms. Aponte's Transitions 2 program and attendance at the MAICEI program at HCC for part of the time. (Aponte, Kudron, P-13) My analysis of the appropriateness of Ms. Aponte's classroom for the prior IEP period remains the same for this current IEP period.

Parents contend that MAICEI would not be appropriate. However, the evidence demonstrates that the MAICEI program could be individualized so as to be an appropriate component of Student's program. Although evidence was presented that Student would not be able to access the academic classes at MAICEI (and further that they could not be appropriately modified), there was never an expectation that Student would participate in MAICEI academic classes. (Aponte) Rather, Student would have the opportunity to participate in a music class, such as College Chorale, which would provide music performance instruction of the very sort Parents have been requesting. The only testimony, other than Father's, that suggested that the program would not be appropriate for Student came from witnesses who were either unfamiliar with the MAICEI program or who understood that it was a strictly academic program that Student would be unable to access.

Ms. Aponte was persuasive as to some of the potential benefits of the MAICEI program. She testified that with the assistance of the ed coach, who would most likely be the same person who is Student's current 1:1 assistant, Student would be able to practice taking public transportation and navigating a new environment. She would benefit from the opportunity to choose a class of interest to her, such as College Chorale, where she would have the opportunity to learn music and perform as part of a choir.

I was, however, less persuaded that Student would be able to access the social opportunities provided by the various clubs offered on campus. Given how reliant Student is on her one-to-one assistant, it is unlikely that she would be able to make meaningful social connections in a less structured setting such as a club meeting. It is also unlikely that she would be able to connect with peers to make plans to eat together or go to the fitness center as suggested. Additionally, attending MAICEI would mean that Student would spend less time in Ms. Aponte's classroom practicing ADLs, social skills with like-peers, and attending community outings and vocational sites. There would also be less time for Student to receive related services.

Although I do not here find that the MAICEI program could not be modified to be appropriate for Student, its appropriateness would depend to a great extent on whether there would be sufficient time remaining for all of her other necessary services after attending her MAICEI classes. Student's current and proposed IEPs contain robust service delivery grids. It is unclear what days Student's MAICEI class/classes would meet and how many days Student would be available to attend the Transitions 2 program. It is also unclear whether Student would be accepted into the program, as Parents did not consent to Belchertown sending an application.

Although I find that the MAICEI program could provide an appropriate setting for Student to practice transitional skills such as self-determination, travel-training, and independence, there are too many variables to make a determination as to whether it would work for Student. If Parents provide consent for an application to be submitted on Student's behalf, the Team will have a better idea of whether the program is a feasible option for Student.

I find that the Transitions 2 program provides Student with a free appropriate public education in the least restrictive setting, even without the addition of the MAICEI program. While the MAICEI program has the potential to provide Student with additional opportunities to practice transition-related skills, and could provide her opportunities to participate in music instruction, the addition of the MAICEI program is not necessary for Student to receive FAPE.

The Parents have argued that Belchertown must provide Student with a program that is infused with Student's highest area of interest, music. The obligation to provide transition planning and services to eligible students who require them is rooted in the IDEA's requirement to prepare students with disabilities for "further education, employment and independent living." 20 USC 1400(d)(1)(A); *Mr. I v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007). The IDEA defines transition at 20 USC §1401(34) as follows: The term "transition services" means a coordinated set of activities for a child with a disability that-

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate...movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, **taking into account**...strengths, preferences and interests; (emphasis added) and

C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and...acquisition of daily living skills and functional vocational evaluation.

The Massachusetts Department of Elementary and Secondary Education (DESE) has issued several Technical Assistance Advisory memoranda to guide school districts, parents, and the public on implementation of the transition services mandate. The most recent such Advisory, SPED-2017-1: *Characteristics of High Quality Secondary Transition Services*, was issued in July 2016. It states, for students aged 18 to 22, districts should have the capacity to teach skills necessary for the following post-school activities: postsecondary education and/or training, seeking, obtaining and maintaining employment, independent living, accessing community services, and self-managing medical and personal needs." *Id.*

The Advisory goes on to state that "coordinated" transition services as described in the IDEA and federal regulations are those which proceed "in a well-thought-out-, stepwise, developmental progression," and that progress be tracked from year to year. Additionally, services should be individualized, encompassing a variety of experiences that reflect an individual student's unique needs, strengths, preferences, interests, and goals. Districts are encouraged to create and

customize programming to adapt to individual needs. Finally, in ensuring that services are “results-oriented,” districts should seek to encourage student independence, support generalization of skills, and promote the principle of least restrictive environment (LRE). Id.

The entirety of Student’s program in the Transitions 2 classroom addresses her transition needs. As previously discussed, the program addresses ADLs, self-determination, vocational skills, and social skills. Although Student continues to require 1:1 assistance for most tasks, there is a focus on increasing her independence. Dr. Peltier testified about Student being shadowed from a distance at Stop & Shop to allow her to be more independent. She further testified that the 1:1 did an excellent job of fading support as Student became more comfortable with a skill. There is carry-over between the classroom component and the community and between some of the vocational placements. And, as discussed above, although both parties pointed to progress reports which they asserted showed Student made progress or failed to make progress (P-2, P-18, S-11, S-12), there was no testimony from any witness, nor report from any source, that Student did not make progress in accordance with her profile.

Belchertown has appropriately made efforts to include opportunities for performance in Student’s programming and should continue to do so. Student was a member of the choir. She had opportunities for musical performances in Buddies. Belchertown provided vocational opportunities for performance such as Christopher Heights. Although Parents would prefer that more of Student’s programming be geared toward music, an area of high interest and skill, there is no requirement that Student’s entire transition program be designed around any one interest. The IDEA requires that Belchertown take into account Student’s preferences, interests, and strengths. Districts are not required to tailor all programming toward a single interest of a student. In the case of *Nashoba and LABBB Collaborative*, 119 LRP 20357 (Berman, 2019) the student had a talent and interest in baking and intended to pursue a career in culinary arts. She was placed in Nashoba’s post high school transition program where she received a combination of classroom instruction and community-based work experiences, including work in a cafeteria. Parents argued that she required a more specialized vocational program with LABBB on site at Minuteman Regional Vocational High School. Parents argued that Nashoba’s program lacked the “equipment, staff expertise, or comprehensive, sequential instruction and practice in large-scale food preparation and baking that would enable Student to practice or advance her cooking and baking skills.” Parents objected to what they viewed as a lack of “focused, progressive opportunities for Student to progress towards her desired occupation”. Nashoba argued that it was not required to teach Student a trade, but to help her acquire and generalize skills that are applicable in any job setting. The Hearing Officer found, “Under ideal circumstances, Student would have had more opportunities for instruction and experience in cooking and baking. The law does not require Nashoba to provide the ideal experience, however.” Similarly, in the instant case, I find that Belchertown has taken Student’s interests and strengths “into account” as required by the IDEA. It is not required to focus Student’s entire program on music.

In addition I note that, the testimony of most Belchertown direct service providers is that music can at times distract Student from focusing and learning skills.

*ISSUE IV If the answer to number 3 is no, then whether there are changes to the Student’s IEP such as supplementary accommodations and/or services that could be*

*added to the Student's IEP that would result in the provision of a free and appropriate public education in which she could make effective progress toward her transition needs and goals in the least restrictive environment.*

Although I have not found deficiencies in Student's IEPs that would rise to the level of a denial of FAPE, I find that there should be an assessment of Student's needs with respect to home services. Although there was not a recommendation for a home assessment, there was testimony that Parents had not been offered such an evaluation and there was no evidence with respect to carry-over between home and school.<sup>34</sup> Belchertown shall offer Parents a home assessment to determine whether Student currently requires home services to provide carry-over between home and school in areas such as ADLs.

During the testimony of Ms. Bourdeau and Ms. Hammer, it became apparent that there were some B Grid social skills services that were not provided to Student. During Ms. Kudron's testimony, she stated that any missed services would be made up. Belchertown will determine what services Student has missed and provide Parents with a proposal for making up the services.

There was also testimony that benchmark/objective # 6 of Goal #4 of Student' IEP for the period from May 1, 2020 through April 30, 2021 was not addressed. The same benchmark/objective was #7 in Goal # 2 in the IEP for the period from March 2, 2021 through March 1, 2022. The testimony reflected that in addition to the objective not being addressed by Belchertown, some of the staff responsible for delivering it did not believe it to be an appropriate objective. Although I do not find that the failure to provide Student an opportunity to address this benchmark/objective deprived her of FAPE, I note that the Team should not continue to propose the benchmark/objective in the IEP if it does not believe it is appropriate.

Although there was a great deal of testimony regarding the level of Student's independence with toileting upon returning to school after the Covid closure, it is not necessary to further address it here. The Parties addressed the issue at meetings and resolved their differences by drafting the document with the heading "Intimate Care Plan" and providing training to staff working with Student. (See ¶ 54 above.)

Finally, although I have found that the IEPs and placement are reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment, there was testimony that progress monitoring has been an issue for this Team. Dr. Peltier testified that the goals and data collected "need to be cleaned up." Belchertown should consider working with a consultant, such as Dr. Peltier, to draft goals from which Student's progress can be better monitored.

*ISSUE V If the answer to number 4 is no, then whether the Student requires a day placement at the Berkshire Hills Music Academy in order to receive a free and appropriate public education in the least restrictive environment in order to make effective progress toward her transition needs and goals.*

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<sup>34</sup> I note Ms. Clarke's opinion in 2019 that "[Student] expends a large amount of energy navigating through her day at school, leaving little motivation for learning activities when she returns home in the area of home maintenance, food preparation, etc".

Since I have found that Student's placement in the Transitions 2 classroom in Belchertown provides her with a free appropriate public education in the least restrictive environment, it is not necessary to reach the question of the appropriateness of BHMA. However, I note that the evidence shows that BHMA could not provide Student with the intensity of services she requires. The overwhelming evidence supports the finding that Student requires a 1:1 assistant to ensure her focus and safety. BHMA does not provide such support beyond a short transitional period. (Deiana) BHMA does not provide related services. Student receives (and requires) extensive related services and consultation services. BHMA's proposed schedule provided for Student to be included in vocational exploration once per week and community independence/self-advocacy once per week. Student requires more intensive services in both of these areas. Finally, the program is not DESE-approved, which means Belchertown would only be able to consider it as a placement after making a determination that there were no approved programs that were appropriate for Student.

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### **Ruling on Belchertown's Motion to Strike a Portion of the Parent's Closing Argument**

On April 22, 2022, Belchertown filed a Motion to Strike, asking the Hearing Officer to strike portions of the Parents' Closing Arguments that discuss claims for the 2022-2023 school year or allegations that there is no IEP since March 1, 2022. It argues that there was no testimony or evidence in the record about a subsequent IEP or an alleged failure to produce a new IEP after March 2, 2022. Parents filed an opposition to Belchertown's Motion on April 25, 2022, arguing that the evidence and claims referenced in Parents' Closing Arguments fall squarely within those issues identified within Parents' Hearing Request, as the IEP for the period from March 2, 2021 to March 1, 2022 was admitted into evidence and was properly before the Hearing Officer, inclusive of its end date. They argue that because the last-proposed IEP period was active during the Hearing, Parents would have had no way of knowing that Belchertown would "forego entirely its requirements under the law to provide [Student] with a newly proposed IEP to be implemented no later than March 2, 2022." They further argue that Parents were not provided an opportunity to amend their Request for Hearing prior to the first day of hearing on February 15, 2022 and resting their case on February 16, 2022. Finally, Parents argue that Parents were prejudiced by Belchertown's failure to timely propose a new IEP, given that they could not provide direct evidence (or even request the ability to do so) during the Hearing. They argue that in the interest of judicial economy, Parents included the 2022-2023 school year in its closing argument.

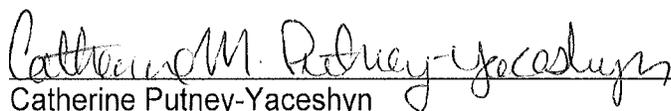
Belchertown's Motion to Strike is ALLOWED. The record contains no evidence regarding whether or not Belchertown proposed an IEP on or before March 1, 2022. Parents' argument that they were not able to provide direct evidence or request the ability to do so lacks merit. Although Parents rested their case on February 16, 2022, the last day of the Hearing was on March 23, 2022. Parents did not request permission to re-open their case and did not inform the Hearing Officer that there was an additional issue that they wished to raise. It is not permissible or appropriate to raise an issue for the first time in a closing argument. Therefore, Belchertown's

Motion to Strike is ALLOWED and this Decision makes no determination with respect to Parents' allegations regarding the 2022-2023 school year.

### ORDER

1. Based upon the foregoing, I find that the IEP and placement proposed for the 2019-2020 school year were reasonably calculated to provide Student with a free appropriate public education in which she could make effective progress in the least restrictive environment.
2. I find the IEPs and placement proposed for the 2020-2021 school year were reasonably calculated to provide Student with a free appropriate public education in which she could make effective progress in the least restrictive environment.
3. I find that the IEPs and placement proposed for the 2021-2022 school year were reasonably calculated to provide Student with a free and appropriate public education in which she could make effective progress toward her transition needs and goals in the least restrictive environment.
4. Because I have found that Belchertown has proposed an appropriate placement and IEP for the period from 2021-2022 and have found that Berkshire Hills Music Academy would not provide Student with a free appropriate public education in the least restrictive environment, I find that Student does not require placement at Berkshire Hills Music Academy in order to receive a free and appropriate public education in the least restrictive environment.
5. I Order Belchertown to propose a home assessment to determine whether Student requires home services to provide carry-over from her school program to the home environment. Additionally, Belchertown shall determine the amount of social skills services Student missed and provide a proposal for providing the missed services.

So ordered by the Hearing Officer,

  
Catherine Putney-Yacashyn

Dated: May 31, 2022

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 (1<sup>st</sup> 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.