

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF

OSPI CAUSE NO. 2022-SE-0033

OAH DOCKET NO. 03-2022-OSPI-01544

TACOMA SCHOOL DISTRICT

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND FINAL ORDER**

A due process hearing in this matter was held by videoconference before Administrative Law Judge (ALJ) Pamela Meotti on June 28, 29, 30, and July 6, 7, and 21, 2022. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Charlotte Cassady, attorney at law.<sup>2</sup> The Tacoma School District (District) was represented by Susan Winkelman, attorney at law. Also present were District Director of Student Services, Megan Nelson, and District in-house counsel, Malik Gbenro and Katie Hilén.<sup>3</sup>

#### PROCEDURAL HISTORY

The Parents filed a due process hearing request on March 21, 2022, and the matter was assigned to ALJ Pamela Meotti. The District filed a response on March 31, 2022. ALJ Meotti issued prehearing orders on May 5, May 23, June 14, June 17, June 28, July 1, and July 11, 2022.

The deadline for a written decision in this case was extended at the Parents' request to thirty (30) days after the record of the hearing closes. See Prehearing Order dated May 5, 2022. The hearing ended on July 21, 2022, and the record closed on August 29, 2022, when the parties timely filed post-hearing briefs. The due date for a written decision is September 28, 2022.

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<sup>1</sup> To ensure confidentiality, names of parents and students are not used.

<sup>2</sup> The Mother was present throughout the hearing, except for when the Father testified. The Father was present for a brief period during the first day of the hearing.

<sup>3</sup> Ms. Nelson, Mr. Gbenro, and Ms. Hilén each served as District representative at various times during the hearing.

## EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J1.

Parent Exhibits: P1; P1A; P3-P10; P12-P13; P15-P18; P20; P22-P25; P26 pp. 1-5; P27-P31; P35; P38; P40-P60; P62-P64; P66; P68; P70-P80; P82; P84-87; P89-P101; P105; P110 pp. 1-5; P111; P113 p.2; P114; P115 pp. 1, 2, 4; P116, pp. 1-6, 29-31; P118-P126; P128; P130; P131.

District Exhibits: D1-D7; D9-D14; D18-21.<sup>4</sup>

The following witnesses testified under oath. They are listed in order of initial appearance:

The Father

The Mother

Todd Corelli, PhD

Linda Lou Miller-Bever, Catholic Community Services

Christine Austin, Executive Clinical Director, CALO

Kristin Kajer-Cline, Educational Consultant

Fotu Soliai, MSW, LCSW, Red Cliff Ascent

Abby Mayer, Academic Director, CALO

Arthur Becker-Weidman, PhD

Thomas Kelly, District Special Education Teacher (former)

Arick Branen, District School Psychologist

Megan Nelson, District Director of Student Services

Lucy Carillo, District Teacher on Special Assignment.

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<sup>4</sup> The following exhibits were withdrawn: P2; P14; P19; P21; P33; P36; P37; P39; P65; P67; P69; P81; P83; P88; P103; P104; P108; P112; P117; P127; P129; D8; D15. Exhibits P61, P106, and P107 were listed as "blank" and were not admitted.

## ISSUES

The issues for the due process hearing are:<sup>5</sup>

a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) as follows:

1. Whether the District has failed to offer appropriate educational programming and placement to the Student since ~~March~~ September 2020, and to the extent it has offered appropriate educational programming and placement, whether the District has failed to implement those offers as follows:

a. Failing to implement the March 2020 Individualized Education Program (IEP) during the 2020-2021 school year by not providing the specially designed instruction (SDI), related services and general education as described;

b. Failing to amend the February 2020 IEP and the March 2020 IEP Amendment ~~prior to May 2020 and February 2021~~ between the beginning of the September 2020-2021 school year and the February 2021 IEP despite notice the Student could not access online instruction, was unable to make academic or functional progress with the SDI, related services and accommodations described in the IEP and actually being provided, and required a Behavior Intervention Plan (BIP) or behavioral programming and support at home and in school.

~~c. The Parents were significantly excluded from the educational process because they were not present when the May 10, 2020, Continuous Learning Plan (CLP) was generated, the CLP was not designed by an IEP team, and the CLP was not generated in compliance with the procedural requirements of the IDEA;~~

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<sup>5</sup> The third prehearing order stated the issues for hearing as set forth in the Parents' Amended Complaint. During the hearing, the Parents withdrew issues 1.c; 1.d; 3; 4.c; 4.e; and 4.g, and they were STRICKEN. See Third Prehearing Order dated June 14, 2022; Revised Issue Statement dated June 28, 2022, and Order Setting Additional Hearing Day dated July 11, 2022. Additions to the original issue statement are in red and underlined; deletions are stricken.

~~d. The CLP was not reasonably calculated to provide educational benefit because 60 minutes per week did not constitute appropriate programming and placement, the District knew the Student could not access remote or online instruction, and the CLP did not provide behavioral programming and support at home and in school;~~

e. The February 2021 IEP was not reasonably calculated to provide educational benefit because:

i. the Student could not learn using the SDI delivery system or methodology of online instruction in or out of the classroom and the IEP did not specify another SDI delivery system or methodology;

ii. the IEP did not provide a BIP and behavioral programming and support at home and in school;

iii. the IEP did not provide sufficient and appropriate goals and objectives; and

iv. the Present Levels of Performance (PLP) did not provide a full statement of the Student's present levels of academic and functional performance;

f. The February 2022 IEP was not reasonably calculated to provide educational benefit because:

i. the PLP did not provide a full statement of Student's present levels of academic and functional performance;

ii. the IEP did not provide sufficient goals and objectives;

iii. the IEP did not provide appropriate levels and types of SDI;

iv. the IEP did not provide highly integrated clinical, academic, behavioral programming and support, and clinical/mental health support across the home, school, and community environments;

v. the IEP did not provide room and board outside the family home so that the needed SDI and related services could be effectively provided to the Student;

vi. the IEP did not provide a sufficiently structured and self-contained environment for the Student to be reasonably calculated to enable the Student to make academic and functional gains; and

vii. the IEP did not offer a placement where these services could be delivered, namely therapeutic residential placement;

2. Whether the District's February 2021 and February 2022 evaluations of the Student were inappropriate because they:

- a. did not use a variety of assessment tools and strategies to gather information about the Student;
- b. were not sufficiently comprehensive to identify all of the student's special education and related service needs;
- c. did not use assessment tools and strategies that would provide relevant information to directly assist in determining the Student's educational needs;
- d. did not include an appropriate Functional Behavioral Analysis (FBA);
- e. failed to recommend special education services, and any related services the evaluation group determined the student needed in order to benefit from special education services; and
- f. failed to provide other information, as determined through the evaluation process and parental input, needed to develop an IEP.

~~3. Whether the District failed to follow the IDEA regulations governing long term suspension of students in long term suspending the student from school in June of 2021 for bringing a [REDACTED] to school, as provided in WAC 392-172A-05146 and WAC 392-172A-05147;~~

4. Whether the District significantly excluded the Parents from the educational process by:

- a. failing to consider input from the Parents and the Parents' third-party professionals, concerning student needs, including for specific educational placement, and programming;
- b. failing to provide progress reports;
- c. ~~failing to provide timely Prior Written Notices;~~
- d. refusing to communicate with Kristin Kajer-Cline concerning Student needs and appropriate programming;
- e. ~~failing to accurately document de facto disciplinary suspensions when the Student was asked to leave the school environment;~~
- f. failing to provide timely notice to the Parents that the District considered the Student a non-resident after enrollment at Red Cliff Ascent; and
- g. ~~failing to consistently provide due process procedural safeguards as required by the IDEA.~~

5. Whether the Student has lost educational opportunity as a result of District's failures as set forth in paragraph 1 a through e of the issue statement and is owed compensatory education to make up for lost educational opportunity;

6. Whether the Student needs residential placement and whether the Parents' requested placement, CALO, is appropriate;<sup>6</sup>

- b. And, whether the Parents are entitled to their requested remedies:
  - 1. An order that the District violated the IDEA and denied the Student a FAPE;
  - 2. An order that the Student shall be placed in the residential school CALO prospectively on an IEP;

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<sup>6</sup> The amended Complaint also alleges violations of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Washington Law Against Discrimination. Because the ALJ does not have jurisdiction to decide these issues, they are not included in the issue statement.

3. An order that the Parents shall be reimbursed for the costs associated with the evaluations by Kristin Kajer-Cline and Todd Corelli.
4. An order that the Parents shall be reimbursed for tuition paid to CALO and all related expenses;
5. Or other equitable remedies, as appropriate.

### FINDINGS OF FACT

In making these findings of fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a finding of fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

Some of the evidence presented was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so "would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence." RCW 34.05.461(4). To the extent any findings of fact are based on hearsay, it is determined that such findings did not unduly abridge the parties' opportunity to confront witnesses and rebut evidence.

### Background

1. The Student, who is currently [REDACTED] years old, [REDACTED]

[REDACTED] . P116p2; D1p4; P1App1-2.<sup>7</sup>

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<sup>7</sup> Citations to the exhibits of record are by the party ("S" for Parent; "D" for District) and exhibit and page numbers. For example, a citation to S20p1 is to the Student's Exhibit 20 at page 1.

2. The Student first qualified for special education services in the area of developmental delays in 2012, when he was in preschool in the [REDACTED]. D6p5; P1Ap9. He received specially designed instruction (SDI) in social/emotional/behavioral skills. When the Student was reevaluated in 2015, his eligibility category was changed to health impairment because the Student had been diagnosed with attention deficit hyperactivity disorder (ADHD) and anxiety. D6p5. The Student continued to receive SDI in social/emotional/ behavioral skills following the 2015 reevaluation and a reevaluation in 2018. D6p5.

3. Starting at a young age, the Student received therapeutic services from private providers. He also received services from the State of Washington, referred to as Wraparound with Intensive Services (WISe), which included therapy, emergency on-call intervention, and assistance for the Parents in addressing the Student's behaviors. P1App9-10.

4. The Student's family moved to the Tacoma School District (District) and the Student attended fifth grade at Whitman Elementary School in the District for the 2018-2019 school year. T152; P1App9, 11; P3; D10p5.<sup>8</sup> Following the move, the Student received WISE services through Catholic Community Services (WISE/CCS). P1Ap10; T212.

### **2019 Functional Behavioral Assessment and Behavior Intervention Plan**

5. In February 2019, the District conducted a Functional Behavioral Assessment (FBA) of the Student, who demonstrated extreme impulsivity, executive functioning deficits, behavioral outbursts, and difficulty with emotional control and social skills. D1p4.

6. At that time, the Student was [REDACTED]. D1p4; D14p3. He had been emergency expelled for a total of 17 days. The FBA pointed to the Student's history [REDACTED] as factors that contributed to Student's behaviors. D1p4. The Student's IEP team adopted a Behavior Intervention Plan (BIP), which was implemented on February 22, 2019. D2p10.

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<sup>8</sup> Citations to the hearing transcript are to T followed by the page number(s) on which the testimony appears. For example, a citation to T661 is a citation to page 661 of the transcript.

## Sixth Grade (2019-2020 school year)

7. During the 2019-2020 school year, the Student attended sixth grade at Jason Lee Middle School in the District, now known as Hilltop Heritage Middle School (Hilltop). D3p3, T200. The Student was placed in a self-contained classroom that focused on social and behavioral needs, with Thomas Kelley as his special education teacher.<sup>9</sup> D3pp 3, 5.

8. Between September 23, 2019, and November 21, 2019, the Student was disciplined for [REDACTED]

[REDACTED] He received a short-term suspension for one incident of disruptive conduct. D14p4; P18. Additionally, on January 27, 2020, Lorisa Marks, a paraeducator at Hilltop, sent an email to Michael Knuckles, Vice Principal, because the Student had been talking about [REDACTED]

[REDACTED]. P31.

## February 2020 IEP

9. On February 20, 2020, the Student's IEP team met to develop an annual IEP. D3p1. The IEP noted that although the Student's behavior impeded his daily learning and that of others, the Student was showing significant growth in the areas of behavior/social/emotional because he was engaging in his special education class, making a strong effort, interacting with peers positively, and completing most of his work, although he was easily distracted and made careless mistakes. D3pp4-5. The IEP team developed three social/emotional/behavioral goals for the Student, focused on self-regulation, non-confrontational peer interactions, and improving self-confidence and self-image. D3pp5-6. Accommodations included access to computers for academics and rewards only, and that the Student's computer screen would be visible at all times. D3p7.

10. The February 20, 2020 IEP provided the following specially designed instruction (SDI) and related services:

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<sup>9</sup> Mr. Kelley has a bachelor's degree from Washington State University and obtained his teaching certification from St. Martin's University. Mr. Kelley has a special education endorsement and approximately twenty-two years of teaching experience. He started working for the District as a general education teacher in 2000, then worked as a District special education teacher between 2005 and 2021. Mr. Kelley currently works for another school district. T1005-06.

**Services 02/20/2020 - 02/19/2021**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Special Education</b>							
No	Social Emotional /Behavioral	Special Education Teacher	Special Education Teacher	20 Minutes / 5 Times Weekly	Special Education	02/20/2020	02/19/2021
No	Social Emotional /Behavioral	Special Education Staff	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	02/20/2020	02/19/2021

**Total minutes per week student spends in school:** 1900 minutes per week  
**Total minutes per week student is served in a special education setting:** 350 minutes per week  
**Percent of time in general education setting:** 81.58% in General Education Setting

D3p10. The IEP team placed the Student in a self-contained classroom that focused on social and behavioral needs to receive his SDI. D3pp10-11, 13. The IEP provided that the District would report the Student’s progress toward his IEP goals through written progress reports issued each semester. D3p5.

**March 2020 IEP Amendment<sup>10</sup>**

11. The District held an IEP amendment meeting on March 10, 2020, to consider the Student’s progress and to make any necessary changes to the IEP. D4pp1, 13. The District issued a prior written notice (PWN) after the amendment meeting indicating the IEP had been changed, but the PWN does not identify the changes and it does not appear that the amendment changed the Student’s SDI, goals, or placement. Compare D4 with D3.

**March 2020 through June 2020**

12. In March 2020, District schools closed pursuant to an order of Washington Governor Jay Inslee to prevent the spread of COVID-19. D15p2. When District schools reopened in mid-March, students engaged in distance learning through the end of the school year. D15pp2-4, 8. The District developed a continuous learning plan for the Student, which provided that his SDI would be delivered remotely. D5p3.

13. During the hearing, the Mother explained that without the structure and predictability of attending school and activities, the Student became frustrated and started engaging in aggressive behaviors at home. For example, he would [REDACTED]

<sup>10</sup> Events that occurred prior to March 21, 2020, are not at issue in this case and were considered for purposes of background and context only.



participant, with other students participating remotely.<sup>11</sup> T1009; D18p23-24. The Student participated in his general education classes online via Teams from Mr. Kelley's classroom. T1008; D18p22.<sup>12</sup> During the remaining days of the week, the Student was at home and his instruction was delivered online via Teams. T1009.

### **Behaviors from September 2020 through January 2021**

19. The Mother recalled the Student logging in to his classes during the first two weeks of school in September 2020. At some point, however, she started noticing the Student had a "split screen," meaning his classroom was open, but he also had another website, such as a gaming site, open on his screen. Eventually, the Mother noticed that the Student's entire screen was open to YouTube or gaming websites. T223. During this progression, which took place between September 2020 and January 2021, the Student [REDACTED] when the Parents tried to prevent the Student from visiting these websites. T224-25.

20. During the hearing, the Mother gave multiple examples of the Student's aggressive behaviors: [REDACTED]

[REDACTED]. T226-27. There is no evidence in the record that the Parents provided examples or details about the Student's behaviors to the District between September 2020 and January 2021.

21. The Mother asked Mr. Kelley if the school could block access to inappropriate websites on the school laptop but he said the school was unable to do so. It is unclear when this conversation occurred. T225; 836.

22. In mid-October, the Student sent an email to his art teacher saying he did not feel comfortable sharing information with the class. P47. In late October, he sent an email to his science teacher indicating he was not going to turn on his camera and did not feel comfortable sharing things with the class. P48.

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<sup>11</sup> During the hearing, the Mother acknowledged that she could not testify to the extent of the Student's participation in Mr. Kelley's class. T838, T973-75.

<sup>12</sup> The Mother's Declaration indicated that the Student returned to school in-person in January 2021. P1Ap34. During the hearing, however, the Mother did not dispute testimony and documents indicating the Student returned to school in person in October 2020. T218.

23. In late October, the Student continually asked one of his teachers for a link to join her classroom. When the teacher contacted Mr. Kelley to say she had sent multiple links and wondered if he might not understand his schedule, Mr. Kelley replied that the Student “tries to manipulate and pretend he’s lost. Super bright, [I’ll] handle it.” He noted that this had been a concern for the Parents. P49.

24. In mid-November 2020, after the Student submitted artwork that was not his own, his art teacher refused to accept digital art from him going forward. P50.

25. On January 7, 2021, the Student’s art teacher sent an email to the Father and the Student regarding a project that was due and voicing concern “because I am not generally hearing from you in class either asking questions or as I confirm understanding, and you are not turning in work.” P51.

26. Esther Zhang, a District psychologist, contacted the Parents by email on January 7, 2021, regarding a triennial reevaluation of the Student. D18p25. The Mother told Ms. Zhang that she was concerned about whether the school would be able to conduct an appropriate reevaluation of the Student because he had been at home, had not been interacting with peers, and had not had direct engagement with teachers. T839, 975-77. The Mother also told Ms. Zhang that the Parents had had difficulty keeping the Student engaged in his education at home and offered for Ms. Zhang to visit the home and observe the Student on a typical school day. T839. Ultimately, the Parents provided consent for a reevaluation of the Student consisting of a review of existing data, general education teacher report, and assessments in reading, math, medical-physical, and social/emotional/behavioral.<sup>13</sup> D6pp3-4.

27. On January 12, 2021, the Student’s History teacher notified the Mother that the Student was not passing Washington State History because he had not turned in an assignment due in December. P52p2. The teacher indicated the Student’s attendance decreased following winter break and he did not turn in any work, despite encouragement to come to office hours. P54p1.

28. On or about January 14, 2021, the Student and two other students in Mr. Kelley’s class started attending school in person four days per week. D18p27. Although the Student and his two classmates were physically present in Mr. Kelley’s class, they

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<sup>13</sup> On January 8, 2021, the Mother asked Ms. Zhang how to return the consent forms. Ms. Zhang responded that they could be signed electronically when the reevaluation team met to share the results. D18p25.

participated in their classes remotely from Mr. Kelley's class because most of their classmates were participating remotely from home. T218; T1033.

29. The Student was home on Wednesdays and was expected to use his computer to complete assignments and other work. The Parents did not allow him to use his computer, however, because he was not using it for school purposes and they were unable to keep him from using the computer for gaming or to visit websites unrelated to school. T217, 219.

30. On January 25, 2021, Ms. Zhang sent an email to the Student's teachers asking for input regarding the Student's academic performance and behavior. The Student's English Language Arts (ELA) teacher responded that he did not consistently attend class and she could not get him to communicate about his needs in class. P53. The Student's science teacher responded that the Student had done no work "for quite a while even with all the extra support I have been offering to students. I can't evaluate his ability because he does no work to evaluate." P57. Similarly, the Student's social studies teacher responded that there was no work to evaluate and that his attendance had declined because the Student "just logs in and then disappears." P58. The Student's art teacher responded that the Student had a positive attitude in class but had turned in no work and attended sporadically or rarely. When he did attend, the Student merely checked in and was unresponsive the remainder of the period. P59. At this time, the art teacher also notified Mr. Kelley that the Student was frequently absent and even when he was logged on, he was unresponsive and seemed distracted. P55p1.

31. Also on January 25, 2021, Mr. Kelley sent an email to the Student's general education teachers informing them that the Student would be in person every day with Mr. Kelley, who would

"do my best to monitor his activity when I am not fully teaching myself. He appears from what I can tell to have your classroom team open but he also has either YouTube or some game opened as well. I will often walk by and tell him to close it but I am sure he simply opens it back once I walk back to teach again. I would suggest informing parents of his current level of participation – which I am sure they are aware of anyway. We know he academically is more than capable he is simply easily distracted like the majority of our students."

D18p29; P56. Based on Mr. Kelley's email, the general education teacher responses to Ms. Zhang's email, and the Mother's testimony, I find that by January 25, 2021, the

District was aware that the Student's attendance and participation in his general education classes had declined; that he was not turning in work in three of his classes; that, when the Student logged on to his general education classes, either from home or from Mr. Kelley's classroom, he was accessing websites that were not related to school; and when the Student was attending school remotely from home, the Mother was unable to keep the Student from visiting these websites. T836; P1Ap37.

32. Based on the Mother's testimony and the testimony of Mr. Kelley, I further find that at this point, the Parents had not provided any information to the District about the nature and seriousness of the Student's behaviors at home when the Parents tried to limit the Student's computer access.

### **February 2021 Reevaluation**

33. On February 4, 2021, the Student's reevaluation team met to discuss the assessments conducted as part of the reevaluation. The meeting was held online and was attended by the Mother; Ms. Zhang; Mr. Knuckles; Mr. Kelly; and a general education teacher. D6p8. As part of the reevaluation, the team developed a reevaluation report. D6.

34. As discussed in the reevaluation report, a school nurse conducted a medical-physical assessment of the Student. The nurse contacted the Mother, who relayed concerns that the Student was not doing well in his classes, became distracted easily due to access to non-school websites, and had difficulties with social relationships and behaving appropriately. The Mother also reported the Student had been diagnosed with [REDACTED], along with ADHD and anxiety. D6p9.

35. Ms. Zhang included the comments she had received from the Student's ELA, Art, Science, and Social Studies teachers in the general education section of the report. As discussed above, the comments indicated the Student had not attended any of these classes consistently and had not turned in any work in three of his classes. Two teachers noted the Student would log in to class but was unresponsive or "disappeared" for the remainder of the class. D6pp9-10.

36. With respect to reading and math, Ms. Zhang reviewed the Student's "2019-2020 Diagnostic Performance Summary (Grade 6)." D6p11. The reevaluation did not include any math or reading assessments conducted after January 2020. Additionally, the reevaluation report contained no information to explain what the 2019-2020 Diagnostic Performance Summary measured, and provided no context for interpreting

the Student's scores. D6pp11-12. Neither party presented any testimony regarding the math and reading assessments.

37. Ms. Zhang used the Behavioral Assessment System for Children – Third Edition – Teacher Rating Scales (BASC-III TRS) and Self-Rating Scale (SRS) to assess the Student's social/emotional/behavioral skills. Mr. Kelly, as the Student's special education teacher, completed the teacher rating scales, which indicated the following:

*Clinical and Adaptive Scale Narratives:* The Student's scores fell within the average range for Externalizing Problems, Internalizing Problems, and Adaptive Skills. Scores fell within the at-risk range for School Problems and Behavioral Symptoms Index. D6p13. Within these composite areas, the Student's T scores on Conduct Problems, Attention Problems, Atypicality, and Adaptability placed him in the at-risk category. Scores in this category indicate "follow-up may be necessary." D6pp13-14, 17. Mr. Kelly reported the Student sometimes engaged in rule-breaking behavior, had difficulty maintaining necessary levels of attention at school, sometimes engaged in behaviors considered odd or strange, and had difficulty adapting to new situations and recovering from difficult situations. D6pp13-14.

*Content Scale Narratives:* The Student's T score on Developmental Social Disorders placed him in the at-risk category. Mr. Kelly indicated the Student had problems concerning social skills and communication. D6p14.

*Executive Functioning Index Narratives:* The Student's score on the Attentional Control Index fell within the Elevated classification. Scores for Overall Executive Functioning Index, Problem Solving Index, Behavioral Control Index, and Emotional Control Index, were not in the Elevated range. Mr. Kelly reported the Student sometimes had trouble concentrating, following directions, and a tendency to make careless mistakes. D6pp15, 17.

The Student's self-rating scores indicated the following:

*Clinical and Adaptive Scale Narratives:* The Student's scores fell within the average range for all composite areas except for his scores in internalizing problems, which placed him in the at-risk category. D6p15. Within these composites, the Student's T scores fell within the clinically significant range with respect to Sensation Seeking, Atypicality, Depression, and Relations with Parents. A score in the clinically significant range "usually warrants follow up." D6p16. The Student's scores placed him in the at-risk category for Locus of

Control. D6pp13-14, 17. The Student reported a strong preference for engaging in behaviors others would consider risky, having a number of unusual thoughts and perceptions, feeling like he had little control over events occurring in his life, feeling sad and misunderstood, and having a poor relationship with his parents, with little trust in them. D6p16.

*Content Scale Narratives:* The Student's T score on Anger Control placed him in the clinically significant classification. The Student's scores on Mania and Ego Strength placed him in the at-risk classification. The Student reported that he became irritable quickly and had difficulty maintaining self-control in the face of adversity. He reported extended periods of heightened arousal and difficulty relaxing. He also reported dissatisfaction with himself and his abilities. D6p17.

38. As discussed in the reevaluation report, the team recommended that the Student continue to receive SDI in social/emotional/behavioral to improve behavior regulation, emotional control, executive function and positive social interaction. The report further indicated the Student no longer required a self-contained environment, and that a less restrictive environment such as the Learning Resource Program with staff support could meet his needs. D6p18. Additionally, the report noted the Student would benefit from school guidance counseling support as necessary and recommended establishing a routine to establish a connection and to provide him with a safe place to process frustration. D6p18. No team members dissented from the report or requested additional information or areas of assessment. D6p8; T848; 977; 983-84.

39. During the reevaluation meeting, the Parents discussed that they were "really struggling with the Student in the home environment, which was the school environment." T1102. The Parents shared that "it was more than your normal computer struggles." The Parents did not, however, provide specific details about his behaviors and were not asked any questions about those behaviors. T1105.

### **February 2021 Incident**

40. On February 9, 2021, the Mother [REDACTED] P113; T936-37. Subsequently, the Mother told Mr. Kelley that the Student was participating in a diversion program but she did not tell him why and there is no evidence that he asked for additional information. T960.

## Developing an IEP After the February 2021 Reevaluation

41. The District developed a new IEP for the Student following the February 2021 reevaluation but there was conflicting evidence as to when this occurred. A PWN issued by the District during this timeframe does not help to determine when the IEP was developed because it was dated February 2, 2021, and stated the IEP would be implemented on February 4, 2021. D7p13. I find both of these dates inaccurate because the IEP was not developed until after the reevaluation meeting, which took place on February 4, 2022. Exhibit D7p13. I find the IEP meeting invitation to be inaccurate as well because it contains a meeting date of February 4, 2021, but indicates the invitation was sent to participants on March 3, 2021. D7p1.

42. In mid-February 2021, Mr. Kelley contacted the Mother to ask when she was available for the IEP team meeting. The Mother did not provide a date or time. She did, however, ask whether Mr. Kelley could keep the Student's laptop at school during the week and on weekends. D18pp31-32. The Mother mentioned that the laptop "is creating lots of problems for us at home, we are constantly finding [the Student] on it or trying to access it or arguing about it." D18p32; P62p2. Additionally, the Mother stated that it would be okay for the laptop to come home Tuesday nights to ensure the Student had the option to participate in school on Wednesdays, although she indicated that he did not usually do so and instead was on YouTube. D18p32. Mr. Kelley responded that the Student could leave the laptop at school. D18p32.

43. On or about February 18, 2021, Mr. Kelley told the Student and his classmates to shut their laptops because they were playing games and not listening. P63. By email, the Student responded "THIS is A WARNING NOTE. STAY AWAY FROM HIM LAST CHANCE." (Emphasis in original) P63; P64.

44. In March 2021, the Mother and Mr. Kelley continued to exchange emails in an attempt to schedule the IEP meeting but could not settle on a date. During the hearing, the Mother acknowledged that a meeting was initially set then rescheduled at her request so that the Student's general education teachers could attend. T850. Emails between the Mother and Mr. Kelley indicate a meeting was scheduled for March 11, 2021, but the Mother was unable to attend and asked to reschedule for March 12, 2021. P68-1. Because a number of teachers were unable to attend on March 12, the Mother asked to reschedule for a different date. P68p2. Mr. Kelley agreed to reschedule but asked the Mother for permission to "submit" the IEP and then amend anything she wanted to change. P68pp3, 5. The Mother agreed, noting "I know I stalled us to this late date with my lack of response." P68p3; T851. Mr. Kelley notified the Mother that all of the Student's teachers except for one were available to meet on

March 15, 2021, but the Parents were not available. P68p5. Accordingly, Mr. Kelly stated he would submit the IEP as they had agreed and asked the Mother to provide a meeting date that worked for her. P68p5. After it became clear that the Student's teachers were available to meet on March 15, 2021, but the Parents were not, Mr. Kelley sent the following email to the Student's general education teachers and the Mother:

Parent has stated they are unable to attend, but gave permission to lock the IEP without having a meeting and will be requesting another date to meet and do an IEP amendment to make sure [the Student's] needs are being addressed.

P68p6. Mr. Kelley did not believe the IEP meeting "that should have taken place in the spring of last year" actually occurred. T1010. Based on the email correspondence between Mr. Kelley and the Mother, and Mr. Kelley's testimony, I find that an IEP was developed on or around March 11, 2021 (February 2021 IEP), without the IEP team actually conducting an IEP meeting.<sup>14</sup> D7p3.

### **February 2021 IEP**

45. With respect to the Student's present levels of performance, the February 2021 IEP stated the Student could become "consumed by technology and other off task work," making it important to minimize distractions, such as by working with the laptop closed as much as possible. D7p5. The present levels section of the IEP noted that the Student was actively engaged in Mr. Kelley's class, but did not mention the Student's refusal to participate in his general education classes or to turn in work. It did not mention that he visited other websites or played games when he was supposed to be participating in class. Nor did it mention that he received failing grades in four general education classes for the first semester of seventh grade. D7p5; P84p1.

46. The IEP team set two social/emotional/behavioral goals. The first sought to improve the Student's ability to use appropriate self-regulation and self-monitoring skills from 4 out of 6 class periods per day, to 6 out of 6 class periods per day. The second sought to improve the Student's ability to complete assignments on time from 35% over four consecutive weeks to 75% over four consecutive weeks. D7p5.

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<sup>14</sup> Although the IEP was developed in March 2021, this order refers to it as the February 2021 IEP to be consistent with hearing testimony and exhibits.

47. In Mr. Kelley’s opinion, the Student was not exhibiting behaviors at the time the IEP was developed to warrant conducting an FBA or BIP. T1013.

48. The IEP continued to provide accommodations to ensure that the Student’s computer screen was visible at all times and that he would have access to computers for academics and rewards only. D7p7.

49. The IEP provided the following SDI and related services;

**Services 02/04/2021 - 02/03/2022**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Special Education</b>							
No	Social Emotional /Behavioral	Special Education Teacher	Special Education Teacher	45 Minutes / 1 Times Weekly	Special Education	02/04/2021	02/03/2022
No	Social Emotional /Behavioral	Special Education Teacher	Special Education Teacher	75 Minutes / 2 Times Weekly	Special Education	02/04/2021	02/03/2022

**Total minutes per week student spends in school:** 1900 minutes per week  
**Total minutes per week student is served in a special education setting:** 195 minutes per week  
**Percent of time in general education setting:** 89.74% in General Education Setting

D7p10. The IEP also provided that the District would report the Student’s progress toward his IEP goals through written progress reports issued each semester. D7p5.

**March through June 2021**

50. The Mother believed the Student’s computer use remained unchanged after the February 2021 IEP was developed. The Student continued to visit non-school websites when he was supposed to be in class and his grades did not improve. T866.

51. On March 12, 2021, the Mother sent Mr. Kelley an email thanking him for his efforts to keep the Student’s computer at school. She advised that the computer had come home recently, however, and the Parents found the laptop open next to the Student, who was asleep, in the middle of the night. The Mother asked Mr. Kelley to ensure the laptop stayed at school. D18p36. Mr. Kelley responded the next day that he was aware the Student had brought the laptop home, noting it was because the Student had work to do and they didn’t want him to fall behind. D18p35. Mr. Kelly asked for a date and time for “an amendment meeting and [to] go over the IEP.” D18p35; P70.

52. On March 17, 2021, the Student turned on the computer without the Mother’s permission and [REDACTED] the Mother when she turned it off. P111. The Parents did not notify the District of this incident. T963.

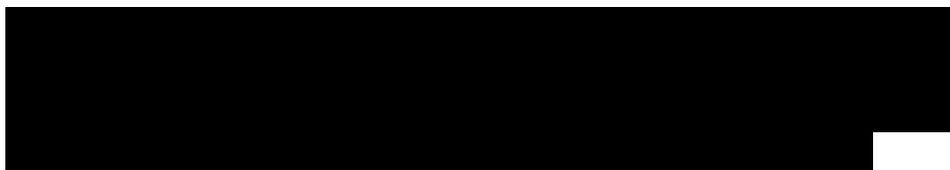
53. Effective March 22, 2021, students in the seventh grade returned to in-person learning two half-days per week in cohorts. D18p33; T1013. The Student, as a member of the self-contained behavior program, was eligible to attend school every day except Wednesday, and did so. T221. Even when the Student was present at school, however, he was participating in his classes online because some students were still attending class remotely. P1Ap35; T221-22.

54. In March 2021, the Parents contacted an educational consultant, Kristen Kajer-Cline of Educational Consultants.<sup>15</sup> The Parents were exploring options that might help the Student. P87.

55. On April 2, 2021, the Mother asked Mr. Kelley if the Student's computer could stay at school over spring break because it "creates huge problems and conflict . . ." D18p35; P70p1. She did not respond to a request from Mr. Kelley for a date to hold an IEP meeting. D18p35.

56. On April 12, 2021, the Mother called WISE/CCS for crisis assistance. The Student was threatening to cut the Father with a broken bottle and the Parents were afraid the Student would harm them. P71; T630. The Parents did not notify the District of this incident. T952.

57. On April 15, 2021, the Student became angry that he could not go to a friend's house after school. He sent the Parents an email from school that stated, in part:



P75 (Emphasis in original); T622, 624.

58. On April 17, 2021, the Mother informed Mr. Kelley that the Student had brought the laptop home. Going forward, she asked if the school could confirm that the laptop was still at school before the Student left the classroom for the bus. Additionally, the

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<sup>15</sup> Kristen Kajer-Cline has a master's degree in education from the University of Washington with a focus on at-risk youth. She started working for Educational Connections in Portland, Oregon, in 2005 and subsequently opened an office in Bellevue, Washington. P120; T418; 422.

Mother advised Mr. Kelley that the Student had spent approximately \$500.00 online, in increments of \$10-\$20, while in school. The Student used credit card information he had copied from the Parents. The Mother was concerned that no one was monitoring his screen for the significant amount of time it must have taken to visit the inappropriate websites and make the purchases. She asked if they could discuss the issue “in the IEP [meeting] that I haven’t followed up in making with you.” However, she still did not provide dates when she was available to meet. D18p38.

59. Mr. Kelley responded to the Mother’s concerns by “monitoring the Student more closely.” T1019. He moved the Student’s seat to the front of the classroom so that Ms. Marks could pay closer attention, limited his computer time so that he could only use it for instruction, and asked his other teachers to “do your best when you do have students on their laptops to simply pop by and see what he has open [stet] he is good at hiding it.” D18pp37-38; T1018-1019; P72; P73. Mr. Kelley advised the Mother of these actions but also noted the difficulties involved because “we have other students and classes we have to observe and teach so monitoring [the Student] the entire time he is here is impossible.” D18p38; T1042. Mr. Kelley agreed to have the Student leave his laptop at school. He offered to notify the Parents if they discovered the Student had not left the laptop at school. He also suggested that if the computer made it home, the Parents could ask to see his bag and remove it. P73.

60. On April 19, 2021, the Student sent an email to the Mother from school that repeated the following phrase sixteen times:

[REDACTED]

P74pp1-2; P1App44-45; T622-23.

61. On April 26, 2021, the Student’s math teacher advised Mr. Kelley about a chat the Student had sent saying, [REDACTED] Mr. Kelley responded “we were having to constantly close other websites but yes I will check on it. [Ms. Marks] is supposed to be watching over him while I teach the class I am in but you know . . . “ P77.

#### **April 30, 2021 Incident**

62. On April 30, 2021, Mr. Kelley emailed the Mother because he had “extreme concerns” about the Student who was:

[REDACTED]. Since then we created a plan where he would only use [the laptop] with supervision and he could not even follow that direction so now he uses paper and pencil work instead.

Today however is all [REDACTED]  
[REDACTED], just like his parents do at home. He is currently laying on floor and disrupting the others who are working and refusing to do any of his own work. . . .

P79; T1047; 1066. The Student was denied access to his laptop for two to three weeks until he “earned back” the privilege of using it. T1066-67. While the Student’s laptop use was restricted, he started interacting with other students more. T1068.

63. On May 6, 2021, the Mother advised Mr. Kelley the Student had somehow managed to bypass the password login on the Father’s computer and had stated he also used that method to access Mr. Kelley’s computer. Mr. Kelley agreed to monitor the Student. D18p44; P80.

64. On May 14, 2021, Mr. Kelley sent the Mother an email because he was not certain whether the Student had left the laptop at school and wanted to notify her. D18p45.

65. On June 8, 2021, the Student became angry at the Mother when she asked him to turn the television off. The Mother called WISE/CCS because the Student became verbally and physically aggressive; [REDACTED]  
[REDACTED]. A youth peer from WISE/CCS went to the Student’s home and was able to deescalate him and [REDACTED] from his possession. P82; T631. The Parents did not notify the District of this incident. T955-56.

### Long Term Suspension

66. On June 10, 2021, the Student was suspended for seven days, effective June 11, 2021, because he brought a [REDACTED] to school. D13p1; D14p4. The Student’s disciplinary records indicated that the Student’s last incident requiring disciplinary action had occurred November 21, 2019. D14p4. During the hearing, the Mother testified that Mr. Knuckles had called at the time of the incident and told her the

Student had [REDACTED] around in the middle of class, and that typically the Student would have been emergency expelled for 10 days or more but the school year was about to end. T240-41; P1Ap59. Mr. Kelley could not recall any details related to the incident and the Parents did not provide testimony from Mr. Knuckles or anyone who was present at the time of the incident. I find that the record does not contain sufficient evidence to determine whether the Student was, in fact, [REDACTED] around in class.

### **Intake Meeting with Educational Consultant**

67. In June 2021, the Parents attended a three-hour intake meeting with Ms. Kajer-Cline of Educational Consultants. T432. Ms. Kajer-Cline has never met the Student. T461. During the meeting, Ms. Kajer-Cline asked the Parents questions about the Student and developed a comprehensive history. T424. In addition to interviewing the Parents, Ms. Kajer-Cline and her associate, Michelle Weber, also spoke with extended family member and individuals from WISE/CCS, including a peer counselor, and the program manager for a community program in which the Student participated. T423; T434; P119.

68. As an educational consultant, Ms. Kajer-Cline visits and evaluates schools and programs throughout the country. T420. She does not consider or recommend public school placements. T455. If parents are interested in obtaining recommendations for residential placement options for their student after the initial intake meeting with Ms. Kajer-Cline, they sign a one-year contract with her. T424. In this case, the Parents “officially signed on” with Ms. Kajer-Cline in September 2020. T457. Approximately one-half of the individuals who contact Ms. Kajer-Cline do not actually enter into a contract with her. Of the clients who do enter into a contract, Ms. Kajer-Cline recommends residential placements for the majority of the students. T454.

69. On June 16, 2021, the Mother provided a release of information to Mr. Kelley and Mr. Knuckles and asked them to speak to Ms. Kajer-Cline. The Mother hoped they could provide observations and insight about the Student and identify others who might offer information and feedback. P85p2; P87. Ultimately, however, Mr. Kelley and Mr. Knuckles declined to provide any information about the Student in response to requests from the Mother, Ms. Weber, or Ms. Kajer-Cline. P85; P86; P87; P94; T434-35.

## The Student's Progress During Sixth and Seventh Grade

70. The District issued progress reports for the Student's sixth and seventh grade years that contained academic grades and grades for personal progress. Personal progress grades ranged from "N" for needs improvement, to "S" for satisfactory, and "O" for outstanding, and measured progress in five categories:

- 1= Takes responsibility for own actions
- 2= Respects rights and property of others
- 3= Displays a positive attitude
- 4= Has materials in class
- 5= Makes good use of time.<sup>16</sup>

D20; P84.

71. The Student received the following marks for personal progress during sixth and seventh grade:

Personal Progress	6 <sup>th</sup> grade S1	6 <sup>th</sup> grade S2	7 <sup>th</sup> grade S1	7 <sup>th</sup> grade S2
Study Skills	S (all)	S (all)	NSSSN-	OSSOS
Science	SNSSN	S (all)	NSSSN	SSSSN
Social Studies	Not provided	Not provided		N (all)
WA State History			N—SSN	
ELA	O (all)	S (all)	S (all)	S (all)
Math Individualized	O (all)	S (all)		
Math 6	NSNSN	S (all)		
Math 7 accelerated			S (all)	S (all)
Visual Arts			NSSNN	NSOSN

D20pp1-2; P84pp1-2.

<sup>16</sup> Grades are shown for each of the five categories. For example, "SSSSN" means the Student received grades of S in categories 1 through 4, and N in category 5. "S (all)" means the Student received grades of S in every category. If a grade was not provided, it is indicated by "—."

72. The Student received the following grades in his academic classes in sixth and seventh grade:<sup>17</sup>

Grades in Academic Classes	6 <sup>th</sup> grade S1	6 <sup>th</sup> grade S2	7 <sup>th</sup> grade S1	7 <sup>th</sup> grade S2
Study Skills	A	A	C-	A
Science	C-	C	E	D
Social Studies	A	B		E
WA State History			E	
ELA	P	A-	E	E
Math Individualized	B+	A		
Math 6	C-	C		
Math 7 accelerated			D	C
Visual Arts			E	E

D20pp1-2; P84pp1-2.

73. The District also issued reports on the Student’s progress toward his IEP goals. Mr. Kelley testified during the hearing that these progress reports were attached to report cards and sent home by the office at the end of each semester. T1051-52. The Mother recalled receiving progress reports for the Student’s sixth grade year but could not remember receiving progress reports for the Student’s seventh grade year. T913.

74. The progress report for the end of sixth grade contained markings of “NI,” indicating instruction was not being provided toward the goals. In a comment, Mr. Kelly stated he was not able to provide instruction toward the IEP goals due to the pandemic and the “inability to contact the student or family.” D12pp1-2; P110pp1-2.

75. The progress report for the end of the first semester of seventh grade, on January 29, 2021, indicated the Student was making sufficient progress toward all three of his IEP goals. D12pp1-2. Mr. Kelly commented that because the Student had been engaging in remote learning

and [we] just now introduced in-person learning [the Student] has not been faced with these goals. However, while learning on-line remotely, [the Student] has been doing fantastic and has shown tremendous

<sup>17</sup> “E” indicates a failing grade. D20.

growth as it pertains to this area of focus, [stet] the true growth will be measured upon physical return to campus and interactions with peers.

D12pp1-2.

76. At the end of the Student's seventh grade year, the District reported that by June 14, 2021, the Student was making sufficient progress toward both of his IEP goals. With respect to the self-regulation goal, Mr. Kelly commented that the Student had shown "tremendous growth over the last 2 years of middle school." D12p3. Regarding the task-completion goal, Mr. Kelly commented that the Student still required redirection to focus on his daily work, but once he was engaged in content he enjoyed, he was a full participant. The Student avoided deadlines and timed assignments, but this was typical of peers, and he eventually completed his work. Mr. Kelly saw increased focus as compared to the prior year, when the Student "would constantly avoid work by reading books or being on a computer. He still does that but it is in limited capacity as long as supervision is provided." D12p4. Little weight is given to these comments because the progress reports do not indicate whether the Student actually made any measurable progress toward improving his appropriate use of self-regulation from 4 out of 6 class periods to 6 out of 6 class periods per day, or improving work completion from 35% of the time to 75% of the time. D12pp3-4. As discussed in a subsequent finding of fact, when the District developed an IEP in February 2022, the present levels indicated the Student was still using appropriate self-regulation in only 4 out of 6 class periods per day, and was completing work only 30% of the time. Based on this information, and the fact that Mr. Kelley did not mention any improvement in the Student's baseline levels in the June 14, 2021 report, I find that the Student made no meaningful progress toward his IEP goals between March 2021 and June 14, 2021, or during September 2021.

77. During the hearing, Mr. Kelley opined that the Student made academic and social progress during the 2020-2021 school year because he was exhibiting fewer behaviors than in fifth and sixth grade, he started to develop more friends in the classroom, and he received positive comments from general education teachers on his report cards. T1014-15. He believed these positive comments showed that the Student was making progress in the area of social/emotional/behavioral, which was of greater concern to Mr. Kelley because the Student received SDI in that area, and not academics. T1027-28; D6p10; D20. I give limited weight to Mr. Kelley's opinion on this issue for several reasons. First, the Student's grades for the 2020-2021 school year clearly indicated he was failing his general education classes, in contrast to the 2019-2020 school year when his grades ranged from A to C. Second, positive comments from the Student's teachers were accompanied by negative comments. The

Student's ELA and Art teachers, who made the positive comment that he was "a pleasure to have in class," also indicated he "failed to make up missing assignments," "needs to pay attention in class," "needs to improve participation in classroom discussions and/or activities" and "has incomplete assignments." P84p1; P84p2.

### **Behaviors At Home and In the Community During Seventh Grade**

78. The Student participated in several community programs through WISE/CCS. Ms. Kajer-Cline and Ms. Weber interviewed individuals in these programs and prepared case interview forms. P119. In one program, the Student's lack of social skills irritated other participants and his social immaturity left him vulnerable to bad influence. In another, the program director had multiple concerns about the Student's unpredictable and aggressive behaviors. P1App60-63; P119. The Parents did not provide the case interview forms to the District. T995.

79. On several occasions, the Mother videotaped the Student [REDACTED] behavior at home as a means of providing the WISE/CCS team with information that could help them to develop interventions the Parents could use in addressing the Student's behaviors. P1App52-53; P114; P128. In one incident, the Student [REDACTED]. P114, parts 2 and 3. In another incident, the Student [REDACTED]. P128. The incidents occurred when the Student was in seventh grade but it is unclear when. T644; T964. The Parents did not provide these videos to the District when they were taken. T963-64.

80. At one point during the Student's seventh grade year, when the Student was [REDACTED] P1p66; T246. The record does not indicate when this incident occurred.

81. The Mother believed she told Mr. Kelley that they had a safe at home where they [REDACTED], but Mr. Kelley could not recall such a conversation. T1103; 1050. She also recalled trying to explain that the request to keep the computer home "wasn't just an inconvenience, that he got really aggressive when we tried to take it away from him." T238. It is unclear, however, when these discussions took place.

82. According to the Mother:

“We tried to explain that [the computer] caused major problems at home. We explained that [the Student]—just as we had been saying before, he wasn’t using it for school purposes. And so there was really, you know – this argument that he needed it to complete his assignments was sort of a moot point because he wasn’t using it for that purpose. But it – it just kept coming home.”

T235. The Parents also explained to Mr. Kelley that when the computer came home, the Student would hide it, and they would find him “asleep with it late at night,” leading him to be tired in school the following day. T235-36. The Parents provided no evidence, however, that they provided details about the Student’s behaviors at home or that they conveyed the severity of the Student’s behaviors to District staff at any point during the Student’s seventh grade year.

83. Mr. Kelley did not believe it was necessary to do an FBA of the Student during sixth grade or seventh grade because an FBA is conducted only if “you have a recurring consistent disruption to the learning environment of other students or for that particular plan for that kid.” He felt that the interventions they were using in the classroom were working. T1074.

#### **Eighth Grade–2021-2022 School Year**

84. The Student started his eight-grade year at Hilltop on September 8, 2021. D21p3; P1Ap71. He was in a self-contained behavior classroom with Mr. Kelley as his special education teacher. P1Ap71. Although the Mother and Mr. Kelley had planned to hold a meeting to amend the February 2021 IEP, a meeting was never held. The Mother expected Mr. Kelley to initiate the meeting but she did not respond to his emails seeking her availability and she did she contact him. T851; 864; 986; 1075.

85. On September 13, 2021, when the Mother tried to take the laptop from the Student, he snatched the Mother’s phone from her hand and refused to return it. T653. Since it was unlocked, he was able to order an [REDACTED] T929.; P111p3. A peer mentor from WISE/CCS texted the Student, who responded that he would not return the phone because his Mother would not let him have screen time. P111p3. The Mother was able to cancel the [REDACTED]. P90.

86. On September 14, 2021, the Parents contacted WISE/CCS after the Student [REDACTED]. P91; T956. The Parents did not notify the District of this incident. T956-57.

87. On September 14, 2021, the Mother told Mr. Kelley “we’re struggling again with [the Student’s] access and use of computers at home. We’ll need for him to leave his computer at school for the safety of everyone at home.” P92p2. Mr. Kelley responded, “Ok. We will track and keep you post[ed].” P92p1. There is no evidence in the record that Mr. Kelley inquired about the Mother’s safety concerns.

88. On September 20, 2021, the Mother sent an email to Mr. Kelley reminding him to please keep the Student’s laptop at school. Mr. Kelley responded that this would need to be discussed with administration because “[t]his year everything runs [through] Schoology so he would need to have access to a laptop . . . .” D19p1; T651. Schoology is an online platform District teachers use to deliver instruction. T1017-1018.

89. On September 21, 2021, Mr. Kelley sent an email to the Parents indicating the Student had stated he would not be in school all week, and asking them to confirm. The Parents replied that the Student was not telling the truth and would be in school all week. P93p1.

90. On September 23, 2021, the Mother advised Mr. Kelley the laptop had come home again and asked who she could speak with regarding the request and whether she needed to request an accommodation in the IEP. Mr. Kelley responded that the sixth period teacher had agreed to hold the laptop at the end of the day and make it available on Monday morning. He said the discussion about whether to add this to the IEP had been started. D19p3.

91. On September 29, 2021, Ms. Marks contacted the Mother because she had tried to keep the Student’s laptop at school but he denied having it and refused to open his backpack. She had done everything she could to get the laptop but “it didn’t work.” P111p4. The Parents rushed home to try to prevent the Student from hiding the laptop somewhere in the house. P111p5. They arrived home first and locked all of the doors. After “about an hour standoff outside the house” the Student hid the laptop somewhere in the back yard. P111p6.

### **Red Cliff Ascent**

92. On or about October 2, 2021, the Student left the District to attend Red Cliff Ascent (Red Cliff), which is a therapeutic wilderness program recommended by Ms. Kajer-Cline. P96p1 T868; T439-40. The Mother acknowledged during the hearing that even if Mr. Kelley had spoken with Ms. Kajer-Cline and had disagreed with sending the

Student to a wilderness program, the Parents probably would have sent him to Red Cliff anyway. T994.

93. The Parents did not view Red Cliff as a school; rather, they understood it to be a therapeutic program that would help the Student with mental health issues. P1Ap82. The Parents did not notify the District before they sent the Student to Red Cliff. T993.

94. On October 4, 2021, the Mother informed Mr. Kelley via email that the Student was “away receiving intensive support for some of his struggles.” In Mr. Kelley’s opinion, the Student was “fantastic” during the first month of eighth grade. T1021. Even with the Student having been suspended at the end of seventh grade, District staff believed the Student had shown significant growth and was moving in the direction of not requiring support in a self-contained classroom once he reached high school. T1021.

95. On October 27, 2021, the Parents sent a reimbursement notification to the District discussing that:

- a. The Student had continually struggled with [REDACTED] in school, all of which had persisted despite multiple IEPs and placement in a self-contained classroom;
- b. The District did not adequately support the Student’s social-emotional needs to enable him to access his education;
- c. The Student is bright but performs below his academic ability due to the District’s failure to meet his social-emotional needs;
- d. The Parents had sent the Student to a wilderness therapy program and intended to place him in a therapeutic residential school afterwards because they believed such a placement was necessary for him to access his education;
- e. The Parents intended to seek reimbursement from the District for the Student’s residential placement and related expenses.

P97; D9p3. When they sent the notification, the Parents had not yet made a final decision regarding residential placement; they were waiting to see how the Student did at Red Cliff and also wanted to meet with the District. T660. During the hearing, the Parents clarified that they are not seeking reimbursement for the Student’s time at Red Cliff. T922.

96. Megan Nelson, District Director of Student Services, responded to the notification the following day, asking for dates and times for an IEP meeting.<sup>18</sup> D19p7; P98. T1185-86.

### **November 16, 2021 Meeting**

97. The District held a meeting on November 16, 2021, attended by the Parents; the Parents' counsel; Ms. Nelson; the District's counsel; Christine Brandt, Principal of Hilltop; and Anna Kang, Assistant Principal of Hilltop. D9p3. The Parents discussed that the Student had been in the District since fifth grade and had not improved in the area of social/emotional/behavioral, which interfered with his learning. The Parents' attorney discussed discipline that had occurred during the 2019-2020 and 2020-2021 school years, along with a pattern of behaviors at school and at home, which included physically [REDACTED]. She discussed that the Student had received outside services through WISE for years and required 24/7 care. She further mentioned that the Student was addicted to screens. D9p3; T872-73. The Parents also disclosed that the Student had purchased an [REDACTED] [REDACTED] during September 2021. T961-62. I find that this is the first time the Parents disclosed to the District the nature and seriousness of the Student's aggressive and unsafe behaviors at home.

98. The District discussed conducting a new reevaluation of the Student using existing records and information related to the Student's placement at Red Cliff. T1169. The District explained it could not do its own assessments as part of the reevaluation because the Student was not in the state of Washington. Specific protocols must be followed in assessing a student, and the District did not have anyone onsite at Red Cliff who was trained to set up an assessment and to ensure that all protocols were followed. T1175. The Parents asked the District to use an evaluation conducted by Todd Corelli, PhD, as part of the District's reevaluation, to which the District agreed.<sup>19</sup> D10p17; T999.

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<sup>18</sup> Ms. Nelson has a bachelor's degree in special education and elementary education. She has a master's degree in educational leadership and an administration credential. T1167. Ms. Nelson is in her third year serving as the District's Director of Student Services. Prior to her employment with the District, she worked as a teacher and as an assistant director of student services for another district. T1167.

<sup>19</sup> Dr. Corelli has a PhD from Brigham Young University with emphasis in Clinical Child Psychology. Since 2002, he has been in private practice as a licensed clinical psychologist, which includes providing therapy to children, adolescents and families and conducting psychological testing. P130p21.

99. Following the meeting, the District issued a PWN proposing to reevaluate the Student. D9p3. The District did not state, during the meeting or in the PWN, that it was unable to reevaluate the Student because he was no longer a District resident. T873.

100. After the Student started attending Red Cliff, Ms. Kajer-Cline attended weekly phone calls with the Parents and Fotu Opalaau Soliai, the Student's primary therapist at Red Cliff.<sup>20</sup> T443; T486. Mr. Soliai updated the Parents regarding the Student's progress at Red Cliff. T443.

101. Mr. Soliai specializes in working with middle-school aged children who have experienced trauma. T488. He provided at least one hour per week of individual therapy and 1.5 hours of group therapy to the Student during his time at Red Cliff. T525. When the Student arrived at Red Cliff, it was difficult for him to form any attachment with adults and his interactions with adults were superficial and transactional. T501-503. In Mr. Soliai's opinion, the Student fit the profile of a student who had experienced [REDACTED]. T511. Mr. Soliai and others never saw the Student's behaviors escalated at Red Cliff because they were able to address issues proactively. T512. Additionally, Mr. Soliai did not believe the Student posed a risk for [REDACTED]. T516. The Student did not act aggressively toward staff or peers at Red Cliff, aside from swearing and passive-aggressive actions such as refusing to go on a hike. T531. In Mr. Soliai's opinion, the Student's dysregulation and ability to form relationships with adults and peers improved during his time at Red Cliff. T532.

102. Effective November 16, 2021, the Parents provided consent for the District to reevaluate the Student in the areas of: review of existing data; general education teacher report; reading; math; medical-physical; classroom observation; academic; writing; and social/emotional/behavioral. D10pp3-4; P102p2.

103. In mid-December 2021, Ms. Nelson spoke with Mr. Soliai, who discussed the type of students Red Cliff serves and that the Student was doing well there. T486; T523; T1177; D19p8; D19p11; P99. The conversation was brief because the purpose of the call was to obtain educational information and Red Cliff is a hiking and wilderness program that does not provide any academic instruction and does not have an educational setting. T552; T1170-71, 1177-78.

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<sup>20</sup> Mr. Soliai has a master's degree in social work and is a licensed clinical social worker in Utah. P131

## Evaluation By Dr. Corelli

104. Dr. Corelli evaluated the Student on December 15, 2021, and issued a report on January 13, 2022. P130p1. As part of the evaluation, Dr. Corelli interviewed the Student and Mr. Soliai and considered Parent history forms. T276, T290.

105. Dr. Corelli's report included detailed historical information about the Student, including his developmental, medical and mental health history, psychological treatment history, social development and peer history, strengths and weaknesses, family relations, family psychiatric history, [REDACTED]

[REDACTED]. The report also discussed the Student's [REDACTED] the Parents' concerns that the Student would struggle with [REDACTED]

[REDACTED]. P130pp1-8.

106. Dr. Corelli's report also discussed the Student's educational history. He did not, however, interview or obtain input from the Student's teachers or staff from the District. P130p1; T308, T309. Additionally, he is not familiar with programs and supports offered by the District. Dr. Corelli reviewed an IEP and report cards that the Mother provided, but could not recall which IEP or report cards. T308-09. Accordingly, I give less weight to this section of the report than to other sections of the report.

107. Dr. Corelli administered multiple assessments as part of the evaluation. To measure the Student's intellectual functioning, Dr. Corelli used the Wechsler Intelligence Scale for Children – Fifth Edition (WISC V). The Student's Full Scale IQ (FISQ) score of 108 indicated that his overall intellectual ability fell within the high end of the average range of intellectual functioning. P130pp8-10, 18; T277. The WISC-V measures five specific areas of cognitive functioning, in which the Student obtained the following scores:

Verbal Comprehension Index: 106 / 66<sup>th</sup> percentile / average range  
Visual Spatial Index: 89 / 23<sup>rd</sup> percentile / low average range  
Fluid Reasoning Index: 106 / 66<sup>th</sup> percentile / average range  
Working Memory Index: 132 / 98<sup>th</sup> percentile / very superior range  
Processing Speed Index: 95 / 37<sup>th</sup> percentile / average range.

P130pp8-10.

108. Dr. Corelli also assessed the Student's Achievement Functioning in reading, math, and writing using the Wechsler Individual Achievement Test – III (WIAT-III). The Student's achievement scores, like his intellectual scores, were in the average range.

T280; P130pp11-12. His subtest scores in these areas ranged from low average to high average, with one score in the superior range (spelling – 93<sup>rd</sup> percentile) and one score in the very low average range (math fluency – addition – 8<sup>th</sup> percentile). P130p13. Dr. Corelli concluded that the Student’s test results “do not give evidence for specific learning disabilities in reading, mathematics, or written language.” P130pp13, 18.

109. Based on the Student’s poor handwriting skills, and the WISC-V, Dr. Corelli concluded the Student “appears to have Dysgraphia.” P130p18.

110. Dr. Corelli also administered the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF2), using both the Parent report and the Student’s self-report, to measure the Student’s executive functioning skills. P130pp1, 13-14. The test results were clinically elevated in the following areas: Inhibit (inhibitory control and impulsivity); Shift (ability to make transitions, tolerate change, change attention or focus); Emotional Control (ability to control emotional responses); Plan/Organize (manage current and future-oriented task demands); Organization of Materials (orderliness of work, living, storage spaces); Self-Monitor (awareness of impact of behavior on others); and Task Monitor (task-oriented monitoring and work checking habits). P130pp13-15. Based on the Student’s scores, Dr. Corelli concluded that the Student had deficits with executive functioning and required instructions and guidelines to help him develop compensatory skills to overcome problems in the areas of planning and organization, adjusting to changes in routine or task demands, and to avoid becoming overwhelmed when confronted with complex task demands. P130p8; T282.

111. Dr. Corelli also assessed the Student for Autism Spectrum Disorder (ASD) using the Childhood Autism Rating Scale, Second Edition (CARS-2) and the Social Responsiveness Scale – Version 2 (SRS-2). The CARS-2 was administered to the Student and the Parents whereas the SRS-2 was administered to the Parents only. P130p15. On the CARS-2, the Student exhibited many features in common with those who have been diagnosed with ASD, leading Dr. Corelli to opine that the Student met the criteria for a diagnosis of ASD. P130p15; T283. With respect to the SRS-2, the results, as reported by the Parents, indicated “rather severe deficits in all areas” except social cognition. The Student’s scores for social awareness, social communication, social motivation, and restricted interests were extremely elevated and consistent with a diagnosis of ASD. P130p15. Dr. Corelli also considered the Student’s history, which indicated a longstanding struggle in understanding social cues and basics of peer relationships. Based on the Student’s test results and history, Dr. Corelli concluded that a diagnosis of ASD was appropriate. P130pp16, 18.

112. Dr. Corelli also assessed the Student's psychological and emotional functioning. He administered the Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A) and the Millon Adolescent Clinical Inventory – II (MACI-II), both of which examine a wide range of social and emotional issues. He also administered the Beck Depression Inventory (BDI-II), a self-reported measure of depression, and the TeenAge Sentence Completion Test (TASC), which asked the Student to complete a series of sentences. P130p16.

113. The results of the MMPI-A indicated that the Student was emotionally guarded and internalized his problems, which often led to somatic symptoms. T287. The MACI-II results indicated that the Student viewed the world as an uncaring and unforgiving place, which led adolescents with similar profiles to mistrust others and to take steps to avoid being emotionally harmed. The Student's results also indicated that he was more likely than peers to engage in rebellious acts or social noncompliance and that he displayed a pervasively rebellious attitude that could lead to conflict with parents and school or legal authorities. These test findings were consistent with a diagnosis of Oppositional Defiant Disorder. P130pp17-18.

114. The Student obtained a raw score of 6 on the BDI-II, which indicated he was within the minimal range of impairment. P130p17. Dr. Corelli's report included the sentences that the Student completed as part of the TASC. In Dr. Corelli's opinion, these responses indicated emotional difficulties, problems related to being in treatment at Red Cliff, and issues related to his family. P130pp17-18.

115. Dr. Corelli concluded that the Student struggled with significant issues including [REDACTED], and social difficulties associated with ASD. P130p19. He diagnosed the Student with ASD, attachment disorder, oppositional defiant disorder, ADHD, executive functioning deficits, and developmental coordination disorder (dysgraphia). T130p20. In Dr. Corelli's opinion, the Student met criteria for special education services with the classification of Emotional Disturbance, noting that the Student's "emotions are what is driving all of the behaviors." T296; T298.

116. In Dr. Corelli's opinion, the Student's [REDACTED] were "at the root of his emotional difficulties." P130p19. These [REDACTED] were driving the Student's behavioral issues, making appropriate treatment of the Student's underlying emotional difficulties essential. P130p19. T294. Dr. Corelli explained that treating the Student for a

behavioral disorder would not be appropriate because “this is not really a behavior disorder as much as it is an [REDACTED].” T295.

117. Dr. Corelli recommended that the Student required “long-term placement in a residential treatment center, and without such, will not be able to access his education.” P130p19. In his opinion, the Student required an academic program in a small, therapeutic, residential school setting that was very structured and predictable and that was attended by students facing similar issues. T299-300. He believed the Student’s academic program “must be residential in order to provide him with the degree of structure, predictability, and continuity of care that he needs.” T130p9. In Dr. Corelli’s opinion, the Student required round the clock staff to intervene as issues arose so that the Student could acquire, practice, and internalize necessary social skills and how to develop and maintain healthy relationships. T299-300. He thought it would not be effective for the Student to live at home and take a social skills class or similar because his social and emotional deficits were severe enough he required intervention in the moment, as problems occurred, in order for him to be able to generalize what he learned to real life situations. T302-303.

118. Dr. Corelli’s testimony and recommendations are given significant weight because he conducted a detailed and thorough evaluation of the Student. Moreover, as discussed below, the District relied on Dr. Corelli’s evaluation in conducting its own reevaluation of the Student and the school psychologist who conducted the District’s reevaluation did not disagree with anything in Dr. Corelli’s report. Moreover, at the hearing, the District offered no evidence to rebut Dr. Corelli’s testimony or recommendations.

119. On January 18, 2022, the Parents provided the District with a copy of Dr. Corelli’s report. D19p18. The Parents sought to expedite the reevaluation and IEP process and raised the idea of consolidating the reevaluation and IEP meetings. D19p19; P102.

120. Arick Branen, a District School Psychologist, conducted the reevaluation of the Student.<sup>21</sup> The reevaluation largely consisted of reviewing Dr. Corelli’s report and preparing a reevaluation report that included information from Dr. Corelli’s report. T1132-33.

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<sup>21</sup> Mr. Branen has a bachelor’s degree in psychology and has been certified as a school psychologist in Washington State since 2005. He has been employed as a school psychologist for fourteen years, including five years in the District. T1129-30.

121. Mr. Branen also reviewed existing data about the Student, including past evaluations and the FBA from 2019. T1132. The reevaluation report contained little information about the Student's seventh grade year, noting only that he was in a self-contained behavioral program,<sup>22</sup> that most of his instruction had been provided remotely, that he had started attending school in person due to lack of engagement with remote learning, and that test scores "placed his ability within grade level expectations for both math and reading." D10p5. Mr. Branen did not include any of the teacher comments that had been included in the February 2021 reevaluation report regarding the Student's inconsistent attendance and lack of participation in his general education classes and his failure to turn in work. D10p5. The report did not mention the Student's failing grades in seventh grade because "there were no academic concerns." T1136.

122. With respect to the Student's eighth grade year, the reevaluation report discussed that the Student was then living at Red Cliff and had been evaluated by Dr. Corelli. D10p6. In preparing the reevaluation report, Mr. Branen incorporated Dr. Corelli's diagnoses of the Student and the Student's test scores, and included some of the historical information Dr. Corelli had detailed in his report. T1139-42. The report noted that the Student had engaged in [REDACTED] on occasion. In discussing the Student's educational history, the report reflected that the student "did not learn much during remote learning as he rarely logged in to classes and would 'watch YouTube or other inappropriate materials all day.'" D10p15. The report further noted that after the Student returned to in-person learning, he still accessed non-school websites and would "'become occasionally volatile' when they attempted to redirect him." D10p15. The report did not make specific reference to the Student's [REDACTED] in the classroom on April 30, 2021, which occurred when his teachers sought to limit his computer use and access to inappropriate websites.

123. During the hearing, Mr. Branen indicated that he did not disagree with anything in Dr. Corelli's report. T1159. He did not, however, incorporate any of Dr. Corelli's recommendations. In particular, the reevaluation report did not discuss Dr. Corelli's recommendation for residential placement. T1154. During the hearing, Mr. Branen testified that he did not include this information because he believed IEP teams make decisions regarding placement and it is not an evaluation team's function to recommend an appropriate placement. T1155.

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<sup>22</sup> The Student's self-contained behavioral program was sometimes referred to as the RISE program. D10p5; T1158; T1206.

## February 2022 Reevaluation and IEP meeting

124. On February 3, 2022, the District held a meeting to discuss the Student's reevaluation followed immediately by a meeting to develop an IEP. D10p1; D11p1; T1204. Attendance sheets indicate both meetings were attended by the Parents and their counsel; counsel for the District; Mr. Branen; Lucy Carillo, a teacher on special assignment (TOSA); a general education teacher; a special education teacher; Ms. Kang; and Ms. Brandt. D10p8; D11p3. Elise-Friedrich-Nielsen, District Director of Special Education, also attended the IEP meeting. D11p3.

125. The reevaluation team recommended that the Student would continue to benefit from SDI in the area of social/emotional/behavioral under the Health Impairment eligibility category. D10pp6-7, 17.

126. The reevaluation team did not add SDI based on the Student's recent diagnosis of Developmental Coordination Disorder (Dysgraphia) because teachers had not reported academic concerns in any areas, including writing, and the Student had only attended school in the District for one month during the 2021-2022 school year. D10p17.

127. During the reevaluation meeting, none of the team members expressed disagreement with the reevaluation or asked for consideration of additional information. Neither the Parents nor any other team members requested an FBA of the Student. T1134.

128. The record does not establish how much time the team devoted to the reevaluation meeting or to discussing the reevaluation report. As soon as the reevaluation meeting ended, the IEP team meeting commenced.

## February 2022 IEP

129. Ms. Carillo, in her role as TOSA, drafted the Student's February 2022 IEP and facilitated the IEP meeting because Mr. Kelley no longer worked for the District and the special education teacher in his position was newly hired.<sup>23</sup> T1193. Ms. Carillo had a copy of Dr. Corelli's report. T1193.

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<sup>23</sup> Ms. Carillo has a master's degree in education with emphasis on special education. She also has an administrative certification for program, building, and principal administration. As a TOSA, she provides support for special education programming, which involves working with school and special education staff, and providing professional development, on-the-job support, and coaching. She runs IEP meetings, helps facilitate parent meetings, and sometimes drafts IEPs. T1191-92.

130. The present levels of performance section of the IEP indicated the Student had been placed in an outside facility for most of his eighth-grade year and had been evaluated by Dr. Corelli in December 2021. It did not contain any information from Dr. Corelli's report. With respect to the Student's seventh grade year, the present levels section did not include any comments from general education teachers regarding inconsistent attendance, lack of participation, or failure to turn in work, and did not mention his failing grades in his general education classes. It reflected the Parents' concerns that the Student did not participate in remote instruction and that he continued to access inappropriate websites even after he returned to in-person learning. It also reflected that the Student "became occasionally volatile" when teachers attempted to direct him and that he had been suspended for bringing a [REDACTED] to school on June 10, 2021. The present levels section did not mention the extreme behaviors the Student exhibited at home when the Parents tried to limit his use or access to the school laptop, which the Parents had discussed during the November 16, 2021 meeting. D11p7.

131. The present levels section of the IEP reported that the Student was using appropriate self-regulation strategies when frustrated or stressed in 4 out of 6 class opportunities, and that in February 2021, he was completing assigned work on schedule 35% of the time. D11p7.

132. The IEP team set two annual goals in the area of social/emotional/behavior. These goals were essentially identical to the goals in the Student's February 2021 IEP, with minor wording changes. Compare D11p8 with D7p5. The team believed these goals were appropriate and meaningful because the Student had not yet mastered them. D11p15. As discussed earlier in this order, I found that the Student had made no meaningful progress toward these IEP goals from the time they were developed in March 2021 through the end of the 2020-2021 school year or during September 2021. Compare D11p7; D7p5, D12pp3-4.

133. During the meeting, the Parents requested goals outside of the school setting. Ms. Carillo explained that the function of an IEP is to address educational needs within the context of the school day, making it inappropriate to write goals to address needs outside the context of the school day. T1195.

134. The IEP contained the same accommodations and modifications as the February 2021 IEP. Compare D11pp9-10 with D7pp7-8.

135. The Student had been in a self-contained behavioral program throughout middle school. Students in that program usually have an FBA and a BIP to address behavioral concerns. Ms. Carillo could not recall whether there was any discussion at the IEP meeting regarding the need for an FBA or BIP for the Student. She opined that if the Student had been present in the District, “we would have completed those processes.” T1206. I give no weight to the assertion an FBA and BIP would have been completed if the Student had been in the District in February 2022, because even when the Student was in the self-contained behavioral program when the District conducted a reevaluation in 2021, the District did not complete an FBA or BIP.

136. The IEP team provided the Student with the following SDI and related services:

**Services 02/03/2022 - 02/02/2023**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Special Education</b>							
No	Social Emotional /Behavioral	Special Education Teacher	Special Education Teacher	20 Minutes / 1 Times Weekly	Special Education	02/03/2022	02/02/2023
No	Social Emotional /Behavioral	Special Education Teacher	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	02/03/2022	02/02/2023

**Total minutes per week student spends in school:** 1740 minutes per week  
**Total minutes per week student is served in a special education setting:** 270 minutes per week  
**Percent of time in general education setting:** 84.48% in General Education Setting

137. According to Ms. Carillo, the amount of SDI a student receives is based on student needs, which is largely based on historical data. The team discussed that the Student had “demonstrated lots of growth,” and that the IEP team had been giving him more opportunities to participate in general education classes. T1196.

138. The IEP team did not discuss Dr. Corelli’s recommendations regarding placement and did not discuss whether the Student required a placement in a residential setting. T1197, 1207; D11p13. Ms. Carillo could not recall any discussion regarding the Student’s placement. T1207. During the hearing, she testified that “This IEP was written with the assumption that he would return to Hilltop . . .” T1207, 1210. The Parents believed the entire purpose of the meeting was to discuss a residential placement. Accordingly, they did not raise the issue themselves. T1082.

139. The team discussed the Parents’ view that behavioral challenges were more extreme than the IEP reflected. T1198. District team members disagreed with this assessment, however, and felt that “the few disruptions he demonstrated were easily remedied within the context of what was going on at Hilltop . . .” T1199, 1201.

140. The team also discussed the Parents' concerns about the Student using computers to access inappropriate materials and bringing the school laptop home. With respect to materials the Student was accessing, the school team felt that the Student was engaging in typical middle school behavior. With respect to the Parents' concerns about the computer coming home with the Student, the team felt that the processes that were in place were effective. T1209; D11p15.

141. On February 3, 2022, the District issued a PWN proposing to initiate an IEP that provided SDI in the area of social/emotional/behavioral and continued to use the goals from the Student's previous IEP. The PWN reflected that "While [the] District team stated overall progress [was] being made with self-regulation, goals have not been met." D11p15. District members of the team also concluded that the Student could receive a free, appropriate public education (FAPE) in a comprehensive school setting. The PWN stated that the team "met at parent request to consider whether the Student requires educational services in a residential setting; district team proposed to continue student's educational services in the comprehensive school setting." D11p15; T1207. As found above, the IEP team did not, in fact, discuss the Student's placement and whether he required a residential placement.

## CALO

142. Following the February 3, 2022 IEP meeting, the Parents felt that the District was not offering the Student an IEP that would make the Student's school experience any different than it had been in the past. P1Ap89. Accordingly, the Parents enrolled the Student in CALO, a residential school in Missouri that specializes in working with students with special needs, [REDACTED]. P1Ap89-90; T338, T556.

143. CALO is an approved nonpublic agency in the State of Washington.<sup>24</sup> T545. At the time of the hearing, 114 students were enrolled at CALO. The Student is in the "teen boy" program, which served 42 teen boys. T394. Students typically stay at CALO between 12 and 15 months. T395. School attendance is year-round, with the summer term focused on credit recovery and enrichment. T552. At the time of the hearing, another District student had been placed at CALO. T541.

144. Ms. Kajer-Cline recommended CALO because it offered the residential level of care she believed the Student required, along with therapeutic,

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<sup>24</sup> An NPA is a private school approved by OSPI to deliver a student's special education services. T449.

social/emotional/behavioral, and family supports. In her opinion, CALO has “a very strong school program that has a pretty traditional kind of school experience.” T445-46. In addition, all staff are trained to respond to students in a consistent manner and to provide consistent feedback, which is critical for children who have attachment issues. T447. I give significant weight to Ms. Kajer-Kline’s opinion as to the components of CALO’s programming because she devotes significant time to investigating and evaluating such programs.

145. Mr. Soliai transported the Student directly from Red Cliff, which is in Utah, to CALO, which is in Missouri. P115p4; T527.

146. Christine Austin, Executive Clinical Director at CALO, is a member of CALO’s admission team.<sup>25</sup> T336. Ms. Austin reviewed a psychosocial assessment of the Student and believed he would be a good fit for the CALO program based on his history of [REDACTED] and desire to develop relationships. T337, 340-41.

147. Abby Mayer, Academic Director at CALO, also participated in the admissions review process for the Student and believed he was a good fit for the program.<sup>26</sup> T56-68. Ms. Mayer oversees academic programming at CALO, which includes supervising and monitoring CALO’s teaching staff. T543-44. Academics are one of the foundations of CALO’s program, and a “huge part” of its programming. T546. Teachers at CALO are credentialed by the state of Missouri in their subject areas. T552. In addition to Ms. Mayer and Ms. Austin, both of whom are certificated special education teachers, CALO has other certificated special education teachers on staff, including two teachers who worked with the Student. T544; T591. CALO uses the McGraw Hill Common Core Curriculum. T567.

148. CALO uses a treatment framework called CASA, which stands for commitment, acceptance, security and attunement. T349; P105p13. CASA is based on dyadic

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<sup>25</sup> Ms. Austin has a bachelor’s degree in elementary/special education and a master’s degree in counseling psychology. She is a licensed professional counselor and a lifetime certified teacher in the state of Missouri. P125p2. Ms. Austin has been employed by CALO since 2014, starting as a therapist, then becoming clinical director, and executive clinical director. Prior to her employment with CALO, Ms. Austin was in private practice as a therapist (1989-2014), served as a school counselor (1986-1989), and taught special education (1979-1986). P125p2.

<sup>26</sup> Ms. Mayer has a master’s degree in education. Her teaching credentials include special education grades K-12, elementary education grades 1-6, and social studies grades 9 to 12. T544; P125p1. Ms. Mayer has been employed by CALO for 14 years. T545; P125p1.

developmental psychology (DDP), which involves working on relationships between two or more individuals. T349.

149. Additionally, CALO uses a “milieu” therapy model. P105p12. “Milieu” refers to the treatment environment, meaning where the students live, eat, recreate, and attend school. T346-47. All staff, in all of these environments, undergo 40 hours of in-person training focused on developmental trauma, safety, bullying, sexual harassment, restraint processes, and CPR. Staff also participate in annual training. T551. Because all staff are trained in CALO’s treatment framework, they all use the same processes and approach students in the same manner, which creates consistency and builds trust. T347.

150. On or about March 10, 2022, the Student’s therapist at CALO developed a master treatment plan for the Student.<sup>27</sup> P123p1; T382. The master treatment plan included goals for the Student focused on [REDACTED]. It contained two goals for the Parents that focused on parenting using the CASA framework. P123pp1-4. The Student’s treatment team, which included his therapist, the Director of Health Services, a family liaison, a psychiatrist, Ms. Mayer, and Ms. Austin, reviewed the master treatment plan and discussed the Student during two team meetings each month. During these meetings, the team focused on the Student’s progress toward his goals and developed priorities and a plan for working towards goals during the upcoming two weeks. T384-86, 396, 548-49. The Master treatment plan is a “fluid document” that changes based on the Student’s progress. T600. The treatment team reviewed the master treatment plan on March 16, April 6, April 20, May 4, May 18, and June 1, 2022. P124.

151. The Student participates in individual, group, and family therapy at CALO. T377-379. He also receives social/emotional instruction designed by the Student’s clinical team, which included Ms. Austin, the Student’s individual therapist, and other therapists. T586.

152. At the time of the hearing, the Student sometimes antagonized other Students in the classroom and became very angry when a book was taken from him so that he could focus on a task. T598, 600. When the Student had a book, he isolated and “could care less what is going on around him.” T598. Accordingly, his social/emotional/behavioral instruction focused on helping him recognize “you can

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<sup>27</sup>Because the Student was placed at CALO by his Parents, CALO developed a master treatment plan for the Student instead of an IEP. T546-47.

read for one hour a day, versus you can read 18 hours a day. But those are replacement behaviors because he would be on a computer 18 hours a day or attempt to be. . . . “ T598. The Student’s social/emotional instruction, which was delivered by his teachers, therapists, and residential coaches, provided supervision, redirection and coaching on using appropriate language, interactions with others, impulsivity, and managing frustration. T586, 598-600. The Student also received instruction in executive functioning, which focused on building organizational skills, impulse control, completing assignments appropriately, and turning them in. T595-96. At the time of the hearing, CALO did not give the Student access to any technology.<sup>28</sup> T583.

153. Academically, the Student has done well at CALO since he started there in February 2022. T566; T917. The Student received the following grades for the 2022 Spring semester at CALO: A (ELA); B+ (science); B- (history and math). P121p2. The Student received the following grades for the 2022 summer period at CALO: A- (cartoons and animation; math) B+ (ceramics); B (health); C+ (rock and roll history). P121p2. At the time of the due process hearing, both Ms. Austin and Ms. Mayer believed the Student was making progress at CALO. T389; 570-71. He was receptive to building relationships and was starting to reach out to connect with people. T389-90; P124p7. He had made a friend and was starting to engage with his therapist and connect with residential staff. T390, 400. He was also more receptive to coaching and feedback, although this was still an area of struggle. T571-72; P124p7.

154. In Dr. Corelli’s opinion, CALO has the type of program he is recommending for the Student. T304. Dr. Corelli has visited CALO two times and has spoken with CALO staff about their program. T304, T306-307.

### **Evaluation by Dr. Becker-Weidman**

155. The Parents hired Arthur Becker-Weidman, PhD, to evaluate the Student.<sup>29</sup> Dr. Becker-Weidman completed his evaluation and prepared a report dated June 17, 2022. T776; P126p1. In conducting the evaluation, Dr. Becker-Weidman interviewed

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<sup>28</sup> CALO gives some students access to Chromebooks and uses software that monitors all internet activity. CALO does not use computers in the classroom but provides access to word processors for writing papers. T573.

<sup>29</sup> Dr. Becker-Weidman has a master’s degree in social work and a PhD in Human Development from the University of Maryland Institute for Child Study. P118p1. He is a licensed clinical social worker in six states. T775. Dr. Becker-Weidman has served as the Director of the Center for Family Development since 2019. He specializes in trauma, adoption, complex trauma, and the effects of prenatal exposure to toxins. P118; T727. He has consulted with school districts with respect to students who have attachment issues and has provided assessment and treatment in that capacity. T775-76.

the Parents and reviewed IEPs and evaluations provided by the Parents. P126p7. He also met with the Student virtually for approximately 60 to 90 minutes, at which time he administered the House-Tree-Person test, the Attachment Story Completion test, and the Heart Drawing test. T788; P126p7. For these tests, the Student completed a drawing or story that was reviewed by Dr. Becker-Weidman based on his knowledge, training, and experience. T788-790. Because these tests are not standardized, they are afforded little weight. T755-56, T790.

156. As part of the evaluation, the Student completed seven assessments; the Parents completed eight assessments; and teachers at CALO completed three assessments. P126p7. The Student's scores on the Beck Depression Inventory-II and the Beck Anxiety Inventory were in the "minimal" range. The results of the Alcohol Use Disorders Test and the Drug Abuse Screening Test indicated the Student had no difficulties with drug or alcohol use. P126p9. The report did not discuss the Student's scores on the Youth Self-Report or Trauma Checklist for Children.

157. Both the Student and the Parents completed the Adverse Childhood Experience Questionnaire, which asks questions such as "were you ever living in a home in where a family member was in prison?" T797. The Student scored nine out of ten, which falls in the highly significant range. P126p2.

158. Dr. Becker-Weidman's report did not include the scores for the three assessments completed by the Student's teachers. P126pp7-11; T798. Additionally, it did not include the scores for six of the eight assessments completed by the Parents. T796-97; P126. This limits the weight afforded to his testimony.

159. Dr. Becker-Weidman's report stated:

[REDACTED]

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P126p6. Dr. Becker-Weidman concluded that the Student “does not have ASD,” noting that Dr. Corelli’s diagnoses of ASD was not based on the Autism Diagnostic Observation Scales (ADOS). P126pp1-2. Although Dr. Becker-Weidman disagreed with Dr. Corelli’s diagnosis of ASD, this did not undermine his agreement with Dr. Corelli’s recommendations as to educational programming and placement. T754, T811.

160. Dr. Becker-Weidman recommended “a highly structured classroom with a low student-teacher ratio in a residential treatment program that uses a relationship-based/attachment model of treatment. He should be placed in the least restrictive environment that has ample supports to help manage his emotional difficulties.” P126p3. In Dr. Becker-Weidman’s opinion, the Student’s academic environment “should embed both a relational intervention plan and social skills into his day.” *Id.* He also believed the Student should receive counseling through his school setting. In Dr. Becker-Weidman’s opinion, the Student’s disabilities made it difficult for him to learn social skills, meaning he would not learn or internalize them unless they were “taught repeatedly as they come up in his academic environment,” noting that lots of repetition and consistent instruction across all environments was necessary for the Student to learn and internalize these skills. *Id.*; T767-768.

161. Dr. Becker-Weidman believes residential placement is necessary for the Student to receive an educational benefit and is the Student’s least restrictive environment because “he requires very intensive repetitive treatment using a relationship-based model.” T784, T773. Treatment using a relationship-based model is available on an outpatient basis, but it is less intensive than in a residential setting. T830.

## Expenses

162. At the time of the hearing, the Parents had paid a total of \$96,620 for the Student’s placement at CALO from February 11, 2022 through June 30, 2022.<sup>31</sup> P115p1. The Parents also paid \$4,800.00 for a company to transport the Student from Red Cliff to Calo, and \$2,100.00 for Mr. Soliai to accompany the Student during his transportation to CALO. P115pp2, 4; T923-24. In total, the costs amount to \$103,520.00. The Parents did not provide evidence regarding any other costs.

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[REDACTED] . T735.

<sup>31</sup> The Mother testified that the tuition was paid through June 1, 2022, but the invoice indicates the payment made on June 1, 2022 covered the period from June 1 through June 30, 2022. T921; P115p1.

## CONCLUSIONS OF LAW

### Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The Parents are seeking relief and bear the burden of proof in this case. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

### The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent's right to be involved in the development of their child's educational

plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

6. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs. *Id.* The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 1000. Additionally, the student’s “educational program must be appropriately ambitious in light of his circumstances . . . .” *Id.*

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 999 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

8. As set forth in *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007), only material failures to implement an IEP violate the IDEA. Minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

### Claims Not Raised in the Complaint

9. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). “Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S.

Dist. LEXIS 77834 \*34-35 (W.D. Wash. May 8, 2019) (upholding ALJ’s refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing). This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. An exception to this rule is when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 \*15-16 (E.D. Cal. Mar. 7, 2019), aff’d 810 Fed. Appx. 588 (9th Cir. 2020); see also *Issaquah Sch. Dist.*, at \*37 (holding that parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: “[b]oth sides in *Antelope Valley* ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”). In this case, the Parents’ brief asserts numerous claims that were not raised in the issue statement. They have not shown that an exception applies. The issues to be addressed remain those identified in the prehearing order and starting at page 3, above.

**Issues 1.a and 1.b: The Parents Have Not Shown that the District Denied the Student FAPE by Failing to Provide Appropriate Educational Programming and Placement or by Failing to Implement or Amend the Student’s March 2020 IEP Amendment during the 2020-2021 School Year**

10. The Parents first claim that the District failed to offer the Student appropriate educational programming and placement since September 2020 by failing to implement the March 2020 IEP Amendment during the 2020-2021 school year.<sup>32</sup> They argue that during remote learning, the Student was visiting inappropriate websites when he was supposed to be participating in class and behaved aggressively in response to attempts to limit access to those sites or computer usage. They also claim that the District was aware of these issues but failed to amend the Student’s IEP. Finally, they contend that the Student was in a far more restrictive environment than his IEP called for because he was working primarily at home until January 2021, and online during seventh grade.

11. It is undisputed that the District was ordered to stop all in-person educational programs on March 13, 2020, by proclamation from the Governor of Washington State.

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<sup>32</sup> The Parents’ issue statement alleges that the District failed to implement the Student’s “SDI, related services and general education . . . “ Under WAC 392-172A-05080(1), parents or school districts may request a due process hearing related to the identification, evaluation or educational placement or provision of FAPE to a student. The Parents have not articulated how the provision of general education falls within the purview of this provision. Accordingly, this claim is not addressed.

Governor Proclamation 20-08, 20-09. At the start of the 2020-2021 school year, the District was still providing educational services online. The U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS) offered guidance that addressed the role of online learning during the pandemic. OSERS, *Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, (March 21, 2020). This guidance stated in relevant part:

To be clear: ensuring compliance with [the IDEA] . . . should not prevent any school from offering educational programs through distance instruction.

School districts must provide [a FAPE] consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. . . . However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

*Id.* at 1-2. (Emphasis in original.) This guidance makes clear that the District was not prohibited from using online learning in meeting its obligation to provide the Student with FAPE. The question is whether online learning was appropriate for the Student.

12. From September 2020 through January 2021, the District provided the Student with most of his special education services online via Teams. During this period, the Student received his SDI through a study skills class taught by Mr. Kelley and through an advisory class. The Student started the year in the advisory class taught by Mr. Barrera, who noted in October 2020 that the Student was one of the “more attentive students” in the class and an active participant. The Student then transitioned to Mr. Kelley’s advisory class. Mr. Kelley’s testimony establishes that the Student attended his study skills class and his advisory class, and was an active participant in both. During the hearing, the Mother conceded that she did not know whether the Student was attending his special education classes. Additionally, while the Parents testified about the difficulties of keeping the Student from accessing inappropriate websites when he was supposed to be in class, they did not introduce any evidence to establish that the Student was not participating in his study skills class or his advisory class, which is where his SDI was delivered. The Parents introduced evidence regarding the Student’s lack of participation in his general education classes, but the Student’s SDI was not delivered in those classes. Moreover, poor attendance in general education

classes does not establish that the District was not providing the SDI required by the Student's IEP.

13. The Parents also point to the Student's lack of progress toward his IEP goals as evidence that the District was not implementing the Student's IEP. During the hearing, Mr. Kelley explained that he was working with the Student and other students in the class to help them understand their own brains and the reasons for their behaviors. He tried to integrate this learning into all of the students' IEP goals. With respect to the Student, Mr. Kelley was trying to get him to talk with other students during his online classes. When Mr. Kelley reported on the Student's progress toward his IEP goals on January 29, 2021, he commented that the Student had been "doing fantastic and has shown tremendous growth as it pertains to this area of focus." He acknowledged, however, that because the Student had not been in school with peers, he had not "been faced with these goals," and his true growth would be measured upon return to school. This evidence demonstrates that the Student was working on his IEP goals and making some progress toward them, even if he was not working on them in the same manner as if he had been attending school in person with peers who were also attending in person.

14. In order to meet their burden of proof, the Parents must demonstrate a material failure to implement the IEP. The Parents have not made such a showing here because the evidence establishes that the Student was receiving the SDI set out in his IEP and was making some progress toward his IEP goals, even if that progress was not the same as if he had been working toward those goals with peers present. Considering the evidence as a whole, the Parents have not met their burden to establish a material failure to implement the Student's IEP between September 2020 and January 2021.

15. The Parents also claim that the District should have amended the Student's IEP between September 2020 and January 2021 to address the Student's computer misuse and poor participation.

16. Under WAC 392-172A-03110, which governs the development, review, and revision of IEPs, school districts must ensure that a student's IEP team reviews the student's IEP at least once annually to determine whether the student is achieving their annual goals, and must revise the IEP, as appropriate, to address:

- (i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;
- (ii) The results of any reevaluations;

- (iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;
- (iv) The student's anticipated needs; or
- (v) Other matters.

WAC 392-172A-03110(3)(b).

17. In reviewing an IEP for a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports to address behavior. WAC 392-172A-03110(2)(a)(i) and (4).

18. The evidence demonstrates that the Student's behavior became progressively worse between September 2020 and January 2021. The Student was logging on and participating in his classes at the start of the 2020-2021 school year. However, starting in mid-October 2020, he was reluctant to turn on his camera and participate in art class. In late October, the Student was trying to avoid attending one of his classes by "pretending he was lost." In November 2020, he was submitting artwork that was not his own. Throughout January 2021, it became clear that the Student's attendance and participation in his general education classes had declined and he was not turning in work. By the end of January 2021, Mr. Kelley was aware the Student often had "YouTube or some other game opened" when he was supposed to be participating in his general education classes. Therefore, by the end of January 2021, it was clear that the Student's behaviors were impacting his progress in the general education curriculum, making it necessary for his IEP team to review and revise his IEP. WAC 392-172A-03090 (1)(b). The District was required to act at this point and did so. By the end of January 2021, the Student's triennial reevaluation was already underway. The District held a reevaluation meeting on February 4, 2021 and developed an annual IEP on March 11, 2021, which was within a reasonable period of time. Accordingly, the Parents have not met their burden to show that the District violated the IDEA by failing to amend the Student's IEP between September 2020 and January 2021.

19. The Parents also contend that the delivery of the Student's special education services primarily via Teams from September 2020 through January 2021 constituted a change to a more restrictive placement.

20. The Washington Office of Superintendent of Public Instruction (OSPI) issued guidance regarding IEPs and least restrictive environment requirements, noting that:

In situations where all students in a school district are participating in a distance learning model, the student's home is the setting from which all students are accessing their instruction. Therefore, generally, *the student's home is considered the general education setting.*

Special Education Reopening Guidance: Least Restrictive Environment (LRE) Case Studies (September 2020) at 1 (*italics added*). It is clear from this guidance that the Student's home, which was considered a general education setting, was not a more restrictive placement than his placement in a self-contained classroom.

21. Moreover, the Parents have not shown that the Student's change from in-person learning to remote learning actually constituted a change in placement under the facts of this case. The IDEA does not define the term "educational placement." WAC 392-172A-02060, which pertains to placements, provides in part:

(1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

22. The Ninth Circuit has examined the terms "educational placement" and "change in educational placement" and has concluded that "educational placement means the general educational program of the student." *N.D. v. State Dep't of Educ.*, 600 F.3d 1104, 1116 (9<sup>th</sup> Cir. 2010). In *N.D.*, the Court concluded that a "change in educational placement" occurs when a student is moved from one type of program to another type, and can also result when there is a significant change in the student's program even if the student remains in the same setting. *Id.* The court held that Hawaii's reduction in the length of the school year via furlough days did not constitute

a change of placement for a student receiving special education services because the furloughs affected all students alike and did not single out disabled students. *Id.*

23. A change in the location in which a student's special education services are provided does not necessarily constitute a change of placement. *R.M. v. Gilbert Unified Sch. Dist.*, 768 Fed. Appx. 720 (9<sup>th</sup> Cir. 2019) (change in elementary school a student attends does not constitute a change in placement). However, the determination as to whether a change in placement has occurred must be made on a case-by-case basis. If the change "substantially or materially alters" the educational program and services provided to the student, then a change in placement occurs. *Letter to Fischer*, 21 IDELR 992 (OSEP 1994).

24. In the present case, a preponderance of the evidence supports a conclusion that the shift to remote learning did not substantially or materially alter the educational program and services provided to the Student. As discussed above, the social/emotional/behavioral SDI provided by the Student's IEP was delivered in his study skills class and his advisory class. The evidence demonstrates that the Student attended and participated in both of these classes. Although the Student did not have peers with whom to practice the skills identified in his IEP goals, he made some progress toward his goals. While the evidence is clear that the Student's attendance and participation in his *general education* classes declined between October 2020 and January 2021, that did have any effect on the Student's receipt of SDI because his SDI was not delivered in that setting. In sum, the evidence does not establish that remote learning constituted a substantial or material change to the Student's educational program. Therefore, the Parents have not met their burden of proof as to this claim.

## **Issue 2: The February 2021 and February 2022 Reevaluations were Inappropriate**

25. The Parents challenge the appropriateness of the District's February 2021 and February 2022 evaluations. In their post-hearing brief, they assert that both evaluations failed to use a variety of assessment tools and strategies to gather information about the Student and did not use assessment tools and strategies that would provide relevant information to directly assist in determining the Student's educational needs. They also contend that the evaluations were not sufficiently comprehensive to identify all of the student's special education and related service needs, did not include an appropriate Functional Behavioral Analysis (FBA), and failed to recommend special education services the student required.

## Applicable Law

26. A school district must reevaluate a student at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2).

27. A reevaluation must comply with the requirements set out in WAC 392-172A-03020 to 03080. Under these procedures, a “group of qualified professionals selected by the school district” must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . . .” WAC 392-172A-03020(2). The group must not use any single measure or assessment as the sole criterion for determining eligibility or educational programming, and must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors. *Id.*; see also 34 CFR §300.304.

28. Assessments must be administered by “trained and knowledgeable personnel” and “in accordance with any instructions provided by the producer of the assessments.” Students must be assessed “in all areas related to the suspected disability” and the evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.” WAC 392-172A-03020; see also 34 CFR §300.304(c).

29. Under WAC 392-172A-03025, as part of any evaluation or reevaluation, the team must review existing data on the student, including evaluations, information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers. WAC 302-172A-03025 further requires that the team:

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

- (i) Whether the student is eligible for special education services, and what special education and related services the student needs; or
- (ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

### The February 2021 Reevaluation<sup>33</sup>

30. The Parents first assert that the District's February 2021 reevaluation failed to use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent" as required by WAC 392-172A-03020(2). The evidence does not support this assertion. In conducting the February 2021 reevaluation, Ms. Zhang reviewed existing records, including previous special education evaluations, IEPs, and the 2019 FBA. A school nurse reviewed the Student's health records and spoke with the Mother, who relayed concerns that the Student was not doing well in his classes, became distracted easily due to access to websites such as YouTube, and had difficulties with social relationships and behaving appropriately. Ms. Zhang also sought information from the Student's general education teachers, who commented that the Student was not attending his general education classes consistently and was not turning in work. Additionally, Ms. Zhang reviewed diagnostic testing from 2019 and 2020 in the areas of Math and Reading, although she did not administer new assessments in these areas. Finally, Ms. Zhang administered the BASC-III, using the teacher and student rating scales, to assess the Student in the area of social/emotional/behavioral. This evidence demonstrates that Ms. Zhang used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the Parents.

31. Ms. Zhang did not, however, take any steps to assess the Student's refusal to attend or participate in class or to complete work, such as conducting a new FBA, even though the District was aware that the Student was not consistently attending or participating in his general education classes and was not producing work. The District typically provided FBAs and BIPs for students, like this Student, who participated in the self-contained behavioral program, but it failed to update the Student's FBA despite his lengthy history of behavioral problems and his declining attendance and participation in

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<sup>33</sup> In their post-hearing brief, the Parents contend the February 2021 reevaluation should have determined the Student qualified for special education services in the emotional behavioral disability eligibility category, rather than the other health impairment eligibility category. The Parents' issue statement, which was very specific, did not raise this claim and the District did not agree to expand the issue statement. WAC 392-172A-05100(3). The Parents have not articulated why this issue should be addressed despite not having been raised. Accordingly, these claims are not considered. *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 \*15-16; *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 \*34-35.

his general education classes. By January 25, 2021, the District knew that the Student often spent time playing games or visiting other websites when he was supposed to be participating in his general education classes from Mr. Kelley's classroom or from home. The Student's behaviors led to failing grades of "E" in four general education classes for the first semester of the 2020-2021 school year, in contrast to sixth grade when the Student's lowest grade was a C. Although Mr. Kelley testified that he was not concerned about the Student's failing grades because he believed positive comments about the Student's behaviors indicated the Student was making progress in the area of social/emotional/behavioral, the two are not mutually exclusive. The fact that the Student was failing his general education classes was an obvious red flag, especially when Mr. Kelley knew the Student to be intelligent and capable. The District was aware that the Student's behaviors were interfering with his ability to attend and participate in class but took no steps to assess these behaviors. Accordingly, the District's reevaluation was not "sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." WAC 392-172A-03020(2). This constitutes a procedural violation of the IDEA.

### **The February 2022 Reevaluation**

32. The Parents challenge the appropriateness of the February 2022 reevaluation for the same reasons that apply to the February 2021 reevaluation. The District contends that it was not required to reevaluate the Student in February 2022, or to develop an IEP at that time, because the Student did not reside in the District.

33. School districts in Washington are obligated to serve children who reside within the district's boundaries.<sup>34</sup> Under the IDEA, the definition of "residency" for purposes of determining whether a school district is required to serve a particular student is controlled by state law. *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1192 (W.D. Wash. 2002); *A.T. v. Fife Sch. Dist.*, 2015 U.S. Dist. LEXIS 120854 \*24-25 (W.D. Wash. 2015) (courts in the Ninth Circuit look to state law to determine a student's residency).

34. In Washington state, for purposes of the IDEA,

the term "student residence" means the physical location of a student's principal abode—i.e., the home, house, apartment, facility, structure, or location, etc.—where the student lives the majority of the time. The following shall be considered in applying this section:

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<sup>34</sup> See WAC 392-172A-02040 (child find activities shall extend to students "residing within the school district boundaries").

- (1) The mailing address of the student—e.g., parent’s address or post office box—may be different than the student’s principal abode.
- (2) The student’s principal abode may be different than the principal abode of the student’s parent(s).
- (3) The lack of a mailing address for a student does not preclude residency under this section.
- (4) If students are expected to reside at address for twenty consecutive days or more.

WAC 392-137-115; WAC 392-172A-01160.

35. When a student eligible for special education services no longer resides in a school district because his or her parents have unilaterally enrolled the student in an out-of-state program, the district’s obligations to the student under the IDEA terminate *if the district was providing FAPE when the Student was removed from the state. J.S. v. Shoreline*, 220 F. Supp. 2d at 1190-91 (emphasis added); WAC 392-172A-04115(3).

36. In *J.S.*, the ALJ determined that the district denied the student FAPE in sixth and seventh grade but was providing the Student with FAPE at the time the Parents withdrew him to attend a wilderness program in Montana. *J.S.*, at 1191. In determining whether the Parents were entitled to reimbursement, the court analyzed the requirements of 20 U.S.C. § 1412(a)(10)(C)(ii), which provides:

Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

See also WAC 392-172A-04115(3).

37. After considering the statutory language, the court concluded that it does not provide that a denial of FAPE at any time during a student’s schooling may entitle parents to reimbursement for private placement at some future date. Rather, the regulations

“plainly [provide] that reimbursement is only available if the child is denied FAPE at the time of withdrawal . . . .” *Id.*

38. In this case, the District was not providing FAPE when the Student left the District to attend Red Cliff. The fact that the Student attended Red Cliff for mental health purposes does not discharge the District of its obligations under the IDEA because the Parents also notified the District of their intent to place the Student in a residential program following Red Cliff. Unlike in *J.S.*, the District did not make FAPE available prior to the Student’s enrollment in Red Cliff or CALO. Accordingly, the District’s obligations under the IDEA did not terminate when he left the District to attend Red Cliff.

39. The District contends that its February 2022 reevaluation of the Student was appropriate. The Parents argue that the District failed to use a variety of assessment tools in conducting the reevaluation as required by WAC 392-172A-03020(2). During the hearing, Mr. Branen explained that the reevaluation largely consisted of reviewing Dr. Corelli’s report and preparing a reevaluation report that included information from Dr. Corelli’s report. To that end, the reevaluation report discussed the results of nine assessments administered by Dr. Corelli to evaluate the Student’s intellectual functioning (WISC-V); achievement functioning (WIAT-III); executive functioning (BRIEF2); and psychological and emotional functioning (MMPA-A; MACI-II); and to assess the Student for ASD (CARS-2; SRS-2) and depression (BDI-II; TASC). The reevaluation report also discussed the Student’s family relations, personal strengths and weaknesses, social development and peer history, educational history, developmental history, family psychiatric history, [REDACTED]

[REDACTED] In addition to reviewing and including information from Dr. Corelli’s report, Mr. Branen also reviewed existing data, including the Student’s past evaluations, 2019 FBA, and diagnoses. Although the Parents assert that the District should have included a classroom observation and more information from Dr. Corelli’s report in the reevaluation report, this goes to whether the reevaluation was sufficiently comprehensive. The Parents have not met their burden to demonstrate that the District failed to use a variety of assessment tools or strategies in conducting the Student’s reevaluation as required by WAC 392-172A-03020(2).

40. The Parents next claim that the February 2022 reevaluation was not “sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.” WAC 392-172A-03020. A preponderance of the evidence supports the Parents’ claim. First, the evaluation report did not include any of the teacher comments that had been included in the February 2021 evaluation report regarding the Student’s inconsistent attendance and lack of participation in his

general education classes and his failure to turn in work. Second, the report did not mention the Student's failing grades in seventh grade, or the fact that his grades changed dramatically between sixth and seventh grade. Third, in contrast to February 2021, when the District had no knowledge that the Student engaged in extreme behaviors when the Parents tried to limit his use of his school laptop, the District was aware of these behaviors in February 2022. The District also knew that in April 2021, the Student responded to limitations on his screen time by [REDACTED]. Additionally, the District was aware of the Student's suspension in June 2021, his attempt to persuade Mr. Kelley that he was excused from attending school for an entire week at the start of the 2021-2022 school year, and his purchase of an [REDACTED]. Despite this information and the District's typical practice of providing FBAs and BIPs for students in the self-contained behavioral program, the District took no steps to assess the Student's behaviors.

41. Additionally, Mr. Branen did not include Dr. Corelli's recommendation that the Student required an academic program in a small, therapeutic, residential school. During the hearing, Mr. Branen testified that he omitted this information because the IEP team was responsible for determining placement. I give no weight to this testimony because Mr. Branen, as a school psychologist, was aware that IEP teams rely on evaluative data and recommendations in evaluation reports when they make all sorts of decisions about educational programming. See *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1210 (9th Cir. 2008) (without appropriate evaluative information about a student, it is not possible for an IEP team to develop a plan reasonably calculated to provide the student with a meaningful educational benefit.) Here, the District initiated the reevaluation in response to the Parents' request for residential placement, relied on Dr. Corelli's evaluative data in conducting its reevaluation, yet failed to incorporate Dr. Corelli's recommendation regarding his academic programming and failed to explain why or to offer alternative recommendations. Accordingly, because the February 2022 reevaluation did not assess the Student's behaviors despite clear red flags that they were preventing him from accessing his education, and failed to either include Dr. Corelli's recommendation regarding the Student's academic programming or to provide alternative recommendations, the reevaluation was not sufficiently comprehensive to identify all of the Student's special education and related service needs. This violates the procedural requirements of the IDEA.

42. Not all procedural violations of the IDEA result in a denial of FAPE and warrant a remedy. WAC 392-172A-05105(2). In this case, however, the District's failure to conduct reevaluations in February 2021 and February 2022 that were sufficiently comprehensive to identify the student's special education needs deprived the Student's IEP team of information it required to develop appropriate IEPs. As discussed,

the Student was refusing to attend class, to participate in class, and to turn in work, and was therefore failing his general education classes. The reevaluations did not assess these behaviors and therefore did not provide the IEP team with information about how to address these behaviors, which was essential in order for the IEP team to develop IEPs that were reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d at 1210. Accordingly, the Parents have shown that the District's procedural violations in conducting the February 2021 and February 2022 reevaluations impeded the Student's right to FAPE and caused a deprivation of educational benefits. WAC 392-172A-05105(2). The Parents are entitled to a remedy for each violation, as discussed below. *Id.*

### **Issue 1.e: The February 2021 IEP was not Reasonably Calculated to Enable the Student to Make Progress Appropriate in Light of his Circumstances**

43. The Parents allege that the February 2021 IEP was not reasonably calculated to enable the Student to obtain an educational benefit because it did not contain a full statement of the Student's present levels of academic and functional performance; it did not provide sufficient and appropriate goals and objectives; it did not provide a BIP and behavioral supports; the Student could not learn using a remote learning model; and the IEP did not provide another learning model.

44. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry that must focus on the unique needs of the student at issue. "A focus on the particular child is at the core of the IDEA," and an IEP must meet a child's "unique needs." *Andrew F.*, 137 S. Ct. at 999 (emphasis in original). "Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Id.* (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

45. WAC 392-172A-03110(1) requires an IEP team, in developing an IEP, to consider the student's strengths; the student's most recent evaluation results; the academic, developmental, and functional needs of the student; and the parents' concerns for enhancing the student's education. The IEP team must also consider special factors unique to the student, including the use of positive behavioral interventions and supports, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others. WAC 392-172A-03110(2)(i). A functional behavior assessment is one type of behavioral intervention or strategy

that helps identify causative factors and objectionable behaviors. *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016); see also *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007) (a functional behavior assessment is required only when a student has been removed from her current placement).

46. An IEP must contain “[a] statement of the student’s present levels of academic achievement and functional performance,” which includes how the student’s disability affects their involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a). Additionally, an IEP must include a statement of measurable annual goals to enable the student to be involved in and make progress in the general education curriculum. WAC 392-172A-03090(1)(b).

47. Additionally, the IEP must contain a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d).

48. The educational benefits flowing from an IEP must be determined from the combination of offerings rather than the single components viewed apart from the whole. See, e.g., *Karl v. Bd. of Educ. of Geneseo Cent Sch. Dist.*, 736 F.2d 873, 877 (2<sup>nd</sup> Cir 1984); *Palo Alto Unified Sch. Dist.*, 118 LRP 21969 (CA SEA 2018) (citing *J.M. v. New York City Dep’t of Education*, 171 F. Supp. 3d 236, 247-48 (S.D.N.Y. 2016) (“An IEP must be considered as a whole; its individual parts cannot be judged in isolation.”)).

49. The February 2021 IEP contained a statement of the Student’s present levels of performance but it did not include significant information about how the student’s disability affected his involvement and progress in general education at that time. The IEP stated that the Student was consumed with technology and other off task work, but it did not mention his declining attendance in his general education classes, or his refusal to participate in his classes or to turn in work. There was no discussion of the Student’s failing grades in four general education classes for the first semester of the 2021-2022 school year. Not only was this a dramatic change from the previous year, in which the Student’s grades ranged from A to C, but it was particularly significant because Mr. Kelley he had no concerns about the Student’s academic abilities. Because the IEP did not even mention these factors, which were significantly affecting the Student’s involvement and progress in the general education curriculum, the

statement regarding the Student's present levels of performance did not satisfy the requirements of WAC 392-172A-03090(1)(a).<sup>35</sup>

50. Additionally, the IEP team did not consider the use of positive behavioral interventions and supports to address the Student's declining attendance, participation, and refusal to turn in work, as required by WAC 392-172A-03110(2)(i). The United States Department of Education issued guidance on this requirement, noting that "IEP Teams must consider and, if necessary to provide FAPE, include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers." *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. RE-1*, 71 IDELR 68 (EDU 2017).

51. In this case, the Student participated in a self-contained behavioral program and had a longstanding record of behavioral issues that impeded his learning and that of others. The District typically provided FBAs and BIPs for students in this behavioral program but declined to update the Student's 2019 FBA and BIP even after it became clear that he was refusing to participate in his general education classes, leading to failing grades. This was in stark contrast to sixth grade, when his grades ranged from A to C. Moreover, although the February 2021 reevaluation report recognized that the Student would benefit from school guidance counseling, the IEP team did not provide this support. Given the Student's history of behavioral issues, his participation in the self-contained behavioral program, and the dramatic change in the Student's grades between sixth grade and seventh grade, it was essential for the IEP team to consider the use of behavioral supports to address these behaviors as mandated by WAC 392-172A-03110(2)(i). Moreover, it is clear that the Student required behavioral supports in order to receive FAPE because the behaviors at issue were preventing him from attending and participating in class, and from turning in work. As the court noted in *Lexington Cty. Sch. Dist. One v. Frazier*, 2011 U.S. Dist. LEXIS 107813 \*27 (D.S.C.

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<sup>35</sup> In February and March 2021, the District was not aware of the Student's aggressive behaviors at home. Starting in February 2021, the Parents asked the District to keep the Student's laptop at school but they did not disclose the nature or seriousness of the problems it created until November 2021. Moreover, the Student engaged in extreme behaviors at various times during his seventh grade year but the Parents did not notify the District of any of these incidents. The first time the Student engaged in [REDACTED] in response to limits on computer use when he was present in school was in late April 2021, after the February 2021 IEP had been developed. For these reasons, it is not reasonable to expect the District to include information about the Student's extreme behaviors in response to computer limitations in the February 2021 IEP.

Sep. 22, 2011), a student is unable to obtain any benefit from an IEP if they refuse to attend school altogether.

52. Additionally, the IEP team did not develop any annual goals focused on attendance, participation, or appropriate computer use, despite the District's awareness that the Student was logged on to gaming sites or other non-school websites when he was supposed to be logged on to his general education classes. As discussed, these behaviors were preventing him from attending and participating in his general education classes, and therefore from obtaining an educational benefit.

53. Viewed as a whole, the February 2021 IEP was not reasonably calculated to enable the Student to make progress appropriate in light of his circumstances because it did not contain a complete statement of the Student's present levels of performance, goals focused on the issues that were impeding his involvement and ability to make progress in the general education curriculum, or behavioral supports to address the behaviors that led to declining attendance and participation in his general education classes and failing grades. This resulted in a denial of FAPE. Accordingly, the Parents are entitled to a remedy as discussed below.

#### **Issue 1.f: The February 2022 IEP was not Reasonably Calculated to Provide the Student with FAPE**

54. The February 2022 IEP, like the February 2021 IEP, contained a statement of the Student's present levels of performance but it did not include significant information about how the student's disability affected his involvement and progress in general education. Although the Student's general education teachers from seventh grade had made comments regarding his inconsistent attendance, lack of participation, and failure to turn in work, the present levels section of the February 2022 IEP did not include any of these comments and did not mention that he had failed four general education classes during the first semester of seventh grade, and three general education classes during the second semester. The IEP did not discuss the dramatic change in the Student's grades between sixth grade and seventh grade. Although the present levels reflected that the Student "became occasionally volatile" when teachers attempted to direct him and that he had been suspended for bringing a [REDACTED] to school on June 10, 2021, it did not mention the Student's extreme behaviors in the home learning environment when the Parents tried to limit his access to inappropriate websites when he was supposed to be in class. Because the IEP did not even mention factors that were significantly affecting the Student's involvement and progress in the general education curriculum, the statement regarding the

Student's present levels of performance did not satisfy the requirements of WAC 392-172A-03090(1)(a).

55. Additionally, the IEP team did not consider the use of positive behavioral interventions and supports to address the Student's declining attendance, participation, and refusal to turn in work. The Parents discussed their concerns that the Student's behavioral challenges were more extreme than the IEP reflected, but the IEP team disagreed, noting that the Student's few disruptions in the school environment had been easily remedied. It is clear from the record, however, that the District planned to continue using the school laptop to provide the Student with instruction through Schoology both at home and at school. As a result, the IEP team had an obligation to consider the Student's behaviors that were associated with the use of the laptop in *both* settings. Despite the District's awareness that the Student engaged in dangerous behaviors when the Parents tried to control his use of the school laptop, the IEP team did not discuss the use of any positive behavioral interventions or supports to address the Student's computer misuse as required by WAC 392-172A-03110(2)(i). As discussed at length above, it was essential for the IEP team to consider the use of behavioral supports to address these behaviors because they were impeding the Student's learning. WAC 392-172A-03110(2)(i). Moreover, it is clear that the Student required behavioral supports in order to receive FAPE because the behaviors at issue were preventing him from attending and participating in class and from turning in work, which was an obvious predicate to obtaining an educational benefit. *Lexington Cty. Sch. Dist. One v. Frazier*, 2011 U.S. Dist. LEXIS at \*27.

56. With respect to goals, the IEP team merely continued the Student's goals from the February 2021 IEP. The team felt that these goals were appropriate because the Student had not mastered them. In fact, the Student had not made any measurable progress toward these goals at all, despite working on them between March 2021 through the end of the 2020-2021 school year. Notwithstanding the lack of progress, the IEP team did not revise the goals or consider developing other goals, despite the Student's clear need to improve his attendance and participation in his general education classes in order to obtain an educational benefit.

57. The Parents also contend that the February 2022 IEP did not contain appropriate levels and types of SDI. Aside from broadly asserting that the Student required a more robust service package, however, the Parents have not articulated what level and type of SDI the Student required and did not introduce evidence to establish what the Student required. The Parents have not met their burden with respect to this claim.

58. The Parents also allege that the February 2022 IEP failed to provide the Student with a residential placement and the supports and components of such a placement.

59. School districts must ensure that special education students are served in the “least restrictive environment.” WAC 392-172A-02050. This means students should be served “(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.*

60. WAC 392-17A-02060(1) and (2) require that an IEP team, including the parents, make a decision about the educational placement of a student based on the following criteria:

- (a) the Student’s IEP;
- (b) the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070 . . .;
- (c) the placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals; and
- (d) a consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

See 34 CFR 300.116(b)(2).

61. The Ninth Circuit has developed a four-part test to determine whether a student's placement represents the least restrictive environment, as first set out in *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994).

We consider: (1) the academic benefits of placement in a mainstream setting, with any supplementary aides and services that might be appropriate; (2) the non-academic benefits of mainstream placement, such as language and behavior models provided by non-disabled students; (3) the negative effects the student's presence may have on the teacher and other students; and (4) the cost of educating the student in a mainstream environment.

*Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1137 (9th Cir. 2003) (Internal quotation marks omitted; citations omitted). “While every effort is to be made

to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child's IEP goals." *City of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9<sup>th</sup> Cir. 1996).

62. School districts must "ensure that a continuum of alternative placements is available to meet the special education and related services needs of students." WAC 392-172A-02055(1), which may include "placement in a public or private residential program in the event such a program is necessary to provide special education and related service to a child with a disability." 34 C.F.R. § 300.104. As discussed by the Ninth Circuit Court of Appeals, "[t]his 'continuum' of alternative placements may include 'placement in a public or private residential program,' in the event such a program 'is necessary to provide special education and related services to a child with a disability.'" 34 C.F.R. §300.104." *M.S. v. L.A. Unified Sch. Dist.*, 913 F.3d 1119, 1136 (9<sup>th</sup> Cir. 2019). (emphasis added).

63. In this case, the IEP team did not discuss whether the Student required a residential placement. The IEP team simply did not discuss placement because "the IEP was written with the assumption that [the Student] would return to Hilltop." There was no discussion regarding the *Rachel H.* factors, no discussion of the continuum of placement options available to meet the Student's needs, and no discussion of whether the Student required a residential placement to obtain an educational benefit. As a result, the IEP included a placement that was identical to the placement in the February 2021 IEP, without consideration of the fact that the Student had made no progress under that IEP or Dr. Corelli's recommendation that the Student required a residential placement.

64. Viewed as a whole, the Parents have demonstrated that the February 2022 IEP was not reasonably calculated to enable the Student to make progress appropriate in light of his circumstances because 1) it did not contain a complete statement of the Student's present levels of performance; 2) it merely continued the goals from the 2021 IEP, despite the Student's lack of any progress toward them; 3) it did not adopt any goals focused on the issues that were impeding the Student's involvement and ability to make progress in the general education curriculum; 4) it did not consider or adopt behavioral supports to address the behaviors that were impeding the Student's learning; and 5) it merely continued the Student's placement from the February 2021 IEP without consideration of whether that constituted his least restrictive environment. This resulted in a denial of FAPE. Accordingly, the Parents are entitled to a remedy as discussed below.

#### Issue 4: Parental Participation

65. The Parents contend that the District significantly excluded them from the educational process by failing to consider their input or the input of third-party professionals, not providing them with progress reports, failing to provide timely notice that they did not consider the Student to be a District resident, and refusing to communicate with Ms. Kajer-Cline.<sup>36</sup>

66. Parental participation in the IEP process is an essential component of the IDEA. See *Amanda J.*, 267 F.3d at 890-91. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.” WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

67. A district violates this procedural requirement if it predetermines a student’s placement, meaning that it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Likewise, a district “may not enter an IEP meeting with a ‘take-it-or-leave-it’ approach.” *Id.* Preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination. *Lee’s Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012). Also, parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

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<sup>36</sup> The Parents have asserted several claims related to parental participation that were not raised in their issue statement. Their post-hearing brief contends that the District impeded their participation by presuming Mr. Soliai’s opinion to be irrelevant and by messaging the Parents that behaviors outside the school building were irrelevant. During the hearing, the Parents’ counsel argued that the parental participation claim encompassed claims that the District violated the IDEA by failing to hold an IEP team meeting to develop the February 2021 IEP and by failing to amend the February 2021 IEP. The issue statement does not raise any of these claims. The parental participation issue included five subparts and did not raise any of these issues. Additionally, the District did not agree to expand the issue statement. WAC 392-172A-05100(3). Accordingly, these claims are not considered. *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 \*15-16; *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 \*34-35.

68. A preponderance of the evidence supports the Parents' claim that the District failed to consider the Parents' input and input from Dr. Corelli regarding the Student's placement when it developed the Student's February 2022 IEP. Rather, the IEP team did not discuss whether the Student required residential placement because it was "assumed" that the Student would attend Hilltop. Although the District relied on Dr. Corelli's evaluation in conducting its reevaluation, it did not include his recommendation regarding residential placement in the reevaluation report and the IEP team simply did not consider or discuss his recommendation as to what placement the Student required. This is not a case in which the District engaged in planning prior to the IEP meeting but was willing to consider other placement options. E.g., *K.D. v. Dep't of Educ.*, 665 F.3d 1110, 1123 (9th Cir. 2011). To the contrary, the evidence clearly demonstrates that the District had made up its mind regarding the Student's placement prior to the IEP meeting to the extent that it did not even discuss the Student's placement needs. This constitutes a procedural violation of the IDEA.

69. As discussed above, procedural violations warrant a remedy only if they

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

70. In this case, there is no question that the IEP team's predetermination that the Student would attend Hilltop, with no discussion of whether the Student required placement in a residential facility or in some other program, significantly impeded the Parents' opportunity to participate in the decision-making process. At the time of the meeting, the Student was still at Red Cliff and a key issue was determining an appropriate placement to meet his needs. Accordingly, it was important for the IEP team to discuss the continuum of placement options available to meet the Student's needs. It is troubling that the Parents, who were represented by counsel, also did not speak up to raise the issue of placement during the IEP team meeting. Ultimately, however, it was the District's obligation to determine an appropriate placement for the Student based on his needs. On balance, the District's predetermination of the Student's placement significantly impeded the Parents' participation in the decision-making process. Accordingly, they are entitled to a remedy as discussed below.

71. The Parents also claim that the District failed to provide timely notice that it did not consider the Student to be a District resident. A district must provide a prior written notice to the parents of a child eligible or referred for special education a reasonable time before it:

a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

WAC 392-172A-05010; 34 CFR 300.503(a).

72. The Parents appear to assert that the District should have sent PWN that it could not reevaluate the Student, even though the District did, in fact, reevaluate the Student. Additionally, they appear to assert that the District should have sent PWN that it was not obligated to develop an IEP, even though the District did, in fact, develop an IEP. Finally, they suggest that it was necessary for the District to send notice that it did not consider the Student a District resident. The plain language of WAC 392-172A-05010 does not require such notice. Even if the Parents could show that the District's PWN violated the procedural requirements of the IDEA, they have not articulated or proven how it significantly excluded them from the decision-making process. The Parents have not met their burden to prove this claim.

73. Next, the Parents claim that the District significantly excluded them from the decision-making process by refusing to talk with Ms. Kajer-Cline. During the hearing, the Mother conceded that even if Mr. Kelley had spoken with Ms. Kajer-Cline, and even if he had recommended against sending the Student to a wilderness program, the Parents still would have sent him to one. Additionally, other than broadly stating that it was important for Mr. Kelley and Mr. Knuckles to provide input to Ms. Kajer-Cline, the Parents have not stated how the lack of such input impacted them. The Parents have not met their burden with respect to this claim.

74. Finally, the Parents claim that the District failed to issue progress reports during the Student's seventh grade year. The IDEA requires school districts to report periodically on a student's progress toward their annual IEP goals. WAC 392-172A-03090(c)(2). The Mother acknowledged during the hearing that she had received progress reports for sixth grade. Mr. Kelley described the process for sending progress reports, which were attached to report cards and sent home by the office. Given this

process, and the fact that the progress reports are part of the record in this case, it is more likely than not that they were provided to the Parents. To the extent that this constitutes a procedural violation of the IDEA, the Parents have not shown that it resulted in a denial of FAPE, deprived the Student of educational benefit, or significantly impeded the Parents' participation.

**Issue 5: Whether the Student has lost educational opportunity as a result of District's failures as set forth in paragraph 1 a through e of the issue statement and is owed compensatory education to make up for lost educational opportunity.**

75. As discussed in issue 1.e, the Parents have met their burden to show that the February 2021 IEP was not reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. The record clearly demonstrates that the Student was not attending or participating in class and was not turning in work, resulting in failing grades for the first half of seventh grade. The IEP team did not address any of these issues and they persisted during the second half of seventh grade. Accordingly, the Student's behaviors continued, and his grades did not improve. It simply is not possible to attain an educational benefit from a class you do not attend. Because the February 2021 IEP failed to address the Student's attendance and participation issues, it is concluded that he lost educational opportunity as a result of the District's failure to provide him with FAPE. An appropriate remedy is discussed below.

**Issue 6: Whether the Student needs residential placement and whether the Parents' requested placement, CALO, is appropriate.**

76. Placement in a residential facility is appropriate under the IDEA if it is necessary in order for the Student to obtain an educational benefit. 34 C.F.R. § 300.104. If a placement "is a response to medical, social, or emotional problems . . . quite apart from the learning process," then it is not necessary under the IDEA. *Clovis Unified Sch. Dist. v. Calif. Office of Admin. Hearings*, 903 F.2d 635, 643 (9<sup>th</sup> Cir. 1990). As the Ninth Circuit Court of Appeals explained in *M.S. v. L.A. Unified Sch. Dist.*, 913 F.3d at 1136, the analysis for determining whether a residential placement is necessary to provide a student with FAPE "must focus on whether the [residential placement] may be considered necessary *for educational purposes*, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process." (emphasis in original).

77. In *County of San Diego v. Cal. Special Educ. Hearing Officer*, 93 F.3d 1458 (9<sup>th</sup> Cir. 1996), the Ninth Circuit determined that residential placement was appropriate.

The student in that case had been hospitalized for violent outbursts related to preparing a school science report and had been assigned little or no homework because it was too stressful. *Id.* at 1463. The court concluded that residential placement was necessary because the Student's "primary problems" were "educationally related." *Id.* at 1468. In *Edmonds Sch. Dist. v. A.T.*, 780 Fed. Appx. 491, 495 (9<sup>th</sup> Cir. 2019), the court emphasized that "[s]tudents who require residential placement to obtain an educational benefit are often experiencing some acute health crisis at the time they are placed – the severity of their condition is precisely why they need residential treatment." Moreover, students cannot be separated from their disabilities and school districts must "take students as they find them." *Edmonds Sch. Dist. v. A.T.*, 299 F. Supp. 3d 1135, 1143 (W.D. Wash. 2019). A residential placement that addresses the impacts of a student's disability-related behaviors can be educationally necessary under the IDEA. *Id.*

78. The Parents contend that the Student requires a residential placement for educational purposes. A preponderance of the evidence supports this assertion. First, it is clear that the Student was not making academic progress during seventh grade, as demonstrated by his failing grades in his general education classes. His grades plummeted as a result of his inability to participate in his classes and turn in work. Second, the Student made no measurable progress toward the goals in the February 2021 IEP, despite working on them between February and June 2021. Although Mr. Kelley made general comments that the Student had grown, I give little weight to these comments because there was no evidence that Mr. Kelley actually measured the Student's progress and when the District developed an IEP in February 2022, the present levels indicated the baseline levels remained unchanged.

79. Additionally, the overwhelming evidence in the record demonstrates that the Student's behaviors impede his learning and these behaviors cannot be addressed without treating his underlying emotional disabilities. Dr. Corelli persuasively testified that the Student's [REDACTED] are "at the root of his emotional difficulties," and that these emotional difficulties and dysregulation drive his behavioral issues. Appropriate treatment of the Student's underlying emotional difficulties is essential because "this is not really a behavior disorder as much as it is an [REDACTED]." As a result, treating or controlling the Student's behaviors without treating his underlying emotional issues will be ineffective. For children, like the Student, who have such severe social emotional deficits, it is necessary to intervene in the moment in order for skills to generalize. Dr. Corelli opined that the Student's academic program "must be residential in order to provide him with the degree of structure, predictability, and continuity of care that he needs." Without a residential placement that offers staff to

intervene as issues arise, the Student will not be able to acquire, practice, and internalize necessary social skills and learn how to develop and maintain healthy relationships. Considered as a whole, this evidence establishes that the Student requires a residential placement for educational purposes because the behaviors that impede the Student's learning cannot be addressed unless the underlying emotional issues resolved.

80. As discussed above, Dr. Corelli's testimony and recommendations are given significant weight because he conducted a detailed and thorough evaluation of the Student, on which the District relied in conducting its own reevaluation of the Student. Mr. Branen did not disagree with anything in Dr. Corelli's report and the District offered no evidence to rebut Dr. Corelli's testimony or recommendations. Further, Dr. Becker-Weidman recommended residential placement for reasons that are consistent with Dr. Corelli's reasons. Finally, the District did not present any expert testimony to rebut testimony that the Student required a residential placement for educational purposes.

81. The District relies on *Ashland Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004 (9<sup>th</sup> Cir. 2009) to support its contention that residential placement is inappropriate here. In that case, the court concluded that the student did not require a residential placement for educational reasons. The decision to place the student in a residential facility stemmed from the discovery that she was sneaking out of her home at night to see friends. Additionally, she "was well regarded by her teachers, able to learn in regular classes, and capable of benefitting from the education provided to her by the school. It was mostly her behavior away from school that was at issue." *Id.* at 1010-11. Here, in contrast, the Student's grades were abysmal because his behaviors prevented him from participating in his classes, much less benefitting from them. Moreover, the Student's home environment in this case was his learning environment throughout a good portion of seventh grade. The Parents tried to prevent him from using the school laptop to visit improper websites so that he would participate in his classes, and tried to limit his use of the laptop. When they did so, he responded with [REDACTED], as evidenced by the Mother's testimony that he had [REDACTED], and that the family had called WISE for assistance on numerous occasions.

82. Similarly, this case must be distinguished from *In the Matter of Monroe School District*, 110 LRP 66272 (SEA WA 2009). In that case, the Student engaged in dangerous behaviors at home that did not impede his learning in school. Here, in contrast, the Student engaged in very aggressive behaviors at home when his Parents sought to limit his use of his school laptop, which was the conduit for accessing remote learning at home. The behaviors that impeded the Student's learning occurred in the

home learning environment when the Parents could not prevent the Student from spending his time on non-school websites when he should have been participating in his classes.

83. For the reasons discussed above, the Parents have shown that it is more likely than not that the Student requires a residential placement for educational purposes. The appropriateness of CALO as a residential placement is discussed below.

#### Summary of Violations

84. The District violated the IDEA and denied the Student FAPE by:

- a) Failing to conduct an appropriate reevaluation in February 2021
- b) Failing to develop an appropriate IEP in February 2021
- c) Failing to conduct an appropriate reevaluation in February 2022
- d) Failing to develop an appropriate IEP in February 2022
- e) Predetermining the Student's Placement in February 2022

The Parents have not otherwise proven a denial of FAPE.

85. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered but are found not to be persuasive or not to substantially affect a party's rights.

#### Remedies

86. When a parent proves a violation of the IDEA, a tribunal may "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). The Parents have proven that the District violated the IDEA and denied the Student FAPE by failing to conduct appropriate reevaluations and to develop appropriate IEPs in February 2021 and 2022. Additionally, they have proven that the District predetermined the Student's placement in February 2022. Accordingly, they are entitled to remedies.

87. The Parents seek an order granting reimbursement for tuition paid to CALO and all related expenses. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if: (1) the district placement violated the IDEA; and (2) the Parents' private school placement is "proper" under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993).

88. In this case, it is concluded that the District's failure to conduct appropriate reevaluations and develop appropriate IEPs in February 2021 and February 2022 deprived the Student of FAPE. Therefore, the first prong of the test for reimbursement is met.

89. Under the second prong, "[a] placement is proper if it is specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *Bellflower Unified Sch. Dist. v. Lua*, No., 2019 U.S. Dist. LEXIS 112829 \*13 (C.D. Cal. July 8, 2019), aff'd 2020 U.S. App. LEXIS 33641 (9<sup>th</sup> Cir. 2020). It is not necessary for parents to show that the private placement "furnishes every special service necessary to maximize their child's potential." *Id.*, quoting *C.B. v. Special Sch. Dist. No. 1*, 635 F.3d 1155, 1159 (8<sup>th</sup> Cir. 2011). Parents "need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *Id.* Additionally, a private placement does not need to satisfy the IDEA's least-restrictive environment requirement to be proper under the Act. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 991 (8<sup>th</sup> Cir. 2011).

90. A preponderance of the evidence establishes that CALO is a proper placement for the Student. CALO is an approved nonpublic agency in the state of Washington and at the time of the hearing, another District student had been placed there. CALO specializes in working with students, like this Student, who have [REDACTED]. All staff are trained to respond to students in a consistent manner and to provide consistent feedback, which builds trust and is critical for students who have attachment issues. In addition, academics are an important part of CALO's programming. Teachers are credentialed by the state of Missouri and teaching staff includes certificated special education teachers, including two who worked with the Student. At the time of the hearing, the Student was doing well in his academic program and had achieved grades ranging from A to C+. He was also doing well in his therapeutic program. Multiple witnesses who were familiar with CALO, including Dr. Corelli, Dr. Becker-Weidman, Ms. Kajer-Cline, and Mr. Soliai, believed it was appropriate for the Student. No District witnesses testified that CALO was not appropriate for the Student. Accordingly, the Parents have shown that CALO is a proper placement. Because the Parents have established a denial of FAPE and that CALO is a proper placement, they are entitled to reimbursement.

91. The remaining question is to determine how much reimbursement is appropriate. *J. T. v. Dep't of Educ.*, 695 F. App'x 227 (9<sup>th</sup> Cir. 2017). "[E]quitable considerations are relevant in fashioning relief." *Florence Cty. Sch. Dist. v. Carter*, 510

U.S. 7, 15 (1993). At this stage, the tribunal must “exercise its ‘broad discretion’ and weigh ‘equitable considerations’ to determine whether, and how much, reimbursement is appropriate.” *J.T.*, 695 F. App’x. at 228.

92. On one hand, the Parents were not forthcoming about the seriousness and nature of the Student’s aggressive behaviors. They asked Mr. Kelley to keep the Student’s laptop at school on multiple occasions but stated only that it created problems for them. Only after the Student had been placed at Red Cliff did the Parents disclose the true nature of the Student’s behaviors. The Parents argue that it was the District’s obligation to ferret out this information and that it would undermine the evaluative process to place this burden on parents. This argument misses the point. The Parents may not have been required to disclose details about the Student’s behaviors, but if they had done so it is possible that the District would have understood the seriousness of the problem and taken action to address the Student’s behaviors. The record also demonstrates that Mr. Kelley made multiple attempts to schedule a meeting to amend the February 2021 IEP, but the Mother never responded with dates or reached out to schedule a meeting. Finally, the Parents could have initiated a discussion about residential placement at the February 2022 IEP meeting but declined to do so; the Mother offered no reasonable explanation for why the Parents and their counsel chose to remain silent. Without question, the District was responsible for discussing the Student’s placement. That being said, the Parents, as partners in the Student’s educational planning, could have raised this critical issue at the meeting.

93. On the other hand, the record demonstrates that even after the District became aware of the seriousness of the Student’s behaviors, it declined to act and presented the Student with an IEP that was essentially unchanged. Additionally, the District simply did not discuss the Student’s placement at the February 2022 IEP meeting, even though it was clear that a key purpose for the meeting was to discuss the Parents’ request for residential placement.

94. On balance, the equities do not weigh strongly in favor of either party. It is therefore appropriate to reimburse the Parents for the costs associated with the Student’s placement at CALO as presented at the time of the hearing. The District shall reimburse the Parents in the amount of \$103,520.00 to cover CALO tuition from February 11 through June 30, 2022 (\$96,620); transportation to CALO from Red Cliff (\$4,800.00); and payment to Mr. Soliai to accompany the Student from Red Cliff to CALO (\$2,100.00). The District shall also reimburse the Parents for the costs of CALO tuition for the months of July, August, and September after the Parents submit proof of payment to the District.

95. The Parents also seek compensatory education to make up for lost educational opportunity and the District's predetermination of the Student's placement in February 2022. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. Dist. of Columbia*, 401 F.3d 523-24. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524.

96. A hearing officer may fashion individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

631 F.3d at 1126.

97. The Student's behaviors become progressively worse during seventh grade. During that time period, he engaged in remote learning from home and remote learning from Mr. Kelley's classroom. By the end of January 2021, the District knew that the Student was not participating in his general education classes or turning in work. As a result, his grades in his general education classes plummeted. The District reevaluated the Student and developed an IEP in February 2021 but took no action to consider or address the behavioral issues that were impeding his learning. The present levels of performance did not even acknowledge that the Student, who was known to be intelligent and had received good grades in sixth grade, was suddenly failing four general education classes. The IEP team did not provide any behavioral supports or goals focused on the behaviors that were impeding his participation and learning.

During the second half of second grade, the Student made no measurable progress toward his IEP goals and failed three general education classes. By the end of April, 2021, the Student had engaged in [REDACTED] at school in response to limitations on his computer use, whereas previously those extreme behaviors were directed at the Parents when they tried to limit use of the school laptop. Moreover, the home behaviors in response to limitations on computer use were directly related to the Student's ability to obtain an educational benefit because the Student's educational programming was being delivered online in the home setting and the Parents were unable to prevent him from accessing inappropriate websites. When they attempted to do so, he reacted with [REDACTED]

[REDACTED]. As found above, the Student lost educational opportunity because his February 2021 IEP, which was in place through February 2022, was not reasonably calculated to enable him to make progress appropriate in light of his circumstances.

98. The evidence supports an award of compensatory education to place the Student in the position he would have been in had the District provided him with FAPE. At the time of the hearing, the Student was doing well at CALO both academically and with respect to the goals in his master treatment plan, which focused on [REDACTED]. The Student had made a friend, was starting to connect with his therapist and residential staff and was more receptive to coaching and feedback.

99. The District argues that residential placement at CALO is not appropriate because the Parents have not shown that the Student is incapable of receiving an educational benefit without residential placement. This argument hinges on the District's belief that the Student was making progress when the Parents enrolled him at Red Cliff. The overwhelming evidence in the record belies this assertion, as discussed at length throughout this order. Additionally, the District's argument ignores the fact that it had the opportunity to discuss and determine an appropriate placement for the Student during the February 2022 IEP meeting and declined to do so. Finally, while it would be possible for the District to provide compensatory education to the Student after he returns from CALO, the Student is already [REDACTED] years old, and time is of the essence in addressing the behavioral issues that are impeding his learning.

100. It is appropriate to award the Student placement at CALO as compensatory education for the period from February 2021 through February 2022, when the Student did not have an appropriate IEP in place. The equities, as discussed above, do

not weigh strongly in favor of either party and do not impact the award. As compensatory education, the District shall fund the Student's continued placement at CALO from October 1, 2022, through the end of the 2022-2023 school year.<sup>37</sup> Nothing in this order prevents CALO from discharging the Student prior to that time according to its discharge criteria. The District shall also fund the Student's transportation from CALO to his home upon discharge and the Parents' transportation to and from CALO at that time. The Parents shall be responsible for the costs of any other travel to CALO and any associated expenses.

101. Because this is a compensatory education award, rather than a prospective educational placement, it is limited to the end of the District's 2022-2023 school year and will not be the Student's stay-put placement in the event of any future due process complaint involving the parties. However, nothing in this order prevents the IEP team from placing the Student at a therapeutic boarding school beyond the compensatory education award if it determines that is the Student's appropriate placement to receive FAPE.

102. The Parents also seek "[a]n order that the Student shall be placed in the residential school CALO prospectively on an IEP." The District has already been ordered to fund the Student's placement at CALO through the end of the 2022-2023 school year as compensatory education. By that time, the Student will have been at CALO for approximately 16 months (February 2021 through June 2023), which is slightly longer than the typical stay of 12-15 months. Accordingly, placement at CALO beyond that time period through the Student's IEP is not appropriate.

103. To ensure that appropriate programming is in place when the Student is discharged from CALO, the District shall have until May 1, 2023, to perform a comprehensive evaluation of the Student. The District shall work with staff at CALO to conduct the evaluation and any assessments, and the Parents shall make the Student available to the District so that it may complete its comprehensive evaluation. Nothing in this order prevents the parties from agreeing to use the assessments that were already conducted by Dr. Corelli. The District shall have until June 1, 2023, to hold an IEP team meeting for the Student, which shall include discussion of an appropriate placement for the Student.

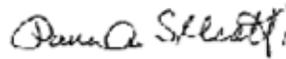
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<sup>37</sup> The record does not contain the District's calendar for the 2022-2023 school year. In determining when the 2022-2023 school year ends, the parties shall refer to the District's 2022-2023 calendar.

## ORDER

1. The District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education as set forth in Conclusions of Law (COL) 31, 41, 42, 53, 64, 68, 70, and 75.
2. The Parents have not otherwise established that the District denied the Student a free appropriate education.
3. As a remedy, the District shall fund the Student's placement at CALO from October 1, 2022 through the end of the 2022-2023 school year as discussed in COL 100. Additionally, the District shall complete a comprehensive evaluation of the Student as set out in COL 103.
4. The Parents' remaining requested remedies are denied.

Served on the date of mailing.



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Pamela Meotti  
Administrative Law Judge  
Office of Administrative Hearings

### **Right To Bring A Civil Action Under The IDEA**

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Parents



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Dated September 28, 2022, at Seattle, Washington.

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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101

cc: Administrative Resource Services, OSPI