

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 04 2022 OSPI 01580

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2022 SE 0058

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline Becker on October 3 through 7, 10, 11, 27 and 28, 2022. The Parents of the Student whose education is at issue¹ appeared and were represented by Charlotte Cassidy and Kerri Feeney, attorneys at law. The Seattle School District (District) was represented by Sam Chalfant, attorney at law. Nazik Youssef, senior assistant general counsel, was also present for the District. Rachele Stefanski of Pacifica Law appeared with Mr. Chalfant and observed the proceedings but did not participate.

PROCEDURAL HISTORY OF THE CASE

The Due Process Hearing Request (Complaint) in this matter was filed with the Office of Administrative Hearings (OAH) on April 28, 2022. The Complaint was assigned Cause No. 2022 SE 0058 and assigned to ALJ Becker. The matter was originally set for hearing in August 2022 but was continued at the request of the Parents to October 2022.

On September 15, 2022, the Parents filed a pleading seeking to clarify their requested remedies and withdraw several issues to be heard at the due process hearing. The District did not oppose the Parents' clarifications. On September 21, 2022, a prehearing order was issued granting the Parents' request to clarify. The final statement of issues to be heard at the due process hearing and the Parents' requested remedies are set forth below.

¹To ensure confidentiality, names of parents and students are not used.

EVIDENCE RELIED UPON

Exhibits Admitted:

Parents' Exhibits: P1 P7, P9 P16, P18 P29, P31 P76, P76A (pages 28, 41, 49 60, 91 193, and 238 252 only), P77 (excluding stricken paragraphs 3, 4, 9 17, 21 31, 33, 35 38, 40, 42 45, 48 62, 64, 66, and 69 73), P78 P83, and P86.²

District's Exhibits: D1 D11, D15 D16, D20, D23 D24, D26 27, D30 D44, D45 (excluding page 1), D46 D108 (including D54A), D112 D141, D143 D144, and D147 D151.

Joint Exhibits: J1.

Court Exhibits: C1 C3.

Witnesses Heard:

The Student's Mother (Ms. Parent)

The Student's Father (Mr. Parent)

Dr. Christopher Jones, developmental psychologist & board certified behavior analyst

Dr. Julie Osterling, clinical psychologist

Graydon Agar, board certified behavior analyst

Merrick Dazzo, board certified behavior analyst

Shannon Crissey, board certified behavior analyst

Phyllis Campano, District special education teacher

Kevin Bascom, board certified behavior analyst with Brooks Powers Group

Ellen Santarelli, District speech language pathologist

Lauren Yoho, District board certified behavior analyst

Dr. Caitlyn Sweetapple, Director of Education, Shrub Oak International School

Dr. Lucas Hung, clinical psychologist, Shrub Oak International School

Emily Trapani, speech language pathologist, Shrub Oak International School

Dr. Allison Brooks, psychologist, and clinical director of Brooks Powers Group

² Several exhibits offered by the parties were duplicates. In most cases, only one copy of the exhibit was admitted and used during the hearing, and the duplicate exhibit was withdrawn.

Due Date for Written Decision

The due date for a written decision in this case is thirty (30) calendar days after the close of the record. The record closed when the parties timely filed post hearing briefs on December 14, 2022, and the due date for the written decision is January 13, 2023.

ISSUES/REMEDIES

The issues heard at the due process hearing are whether the District violated the Individuals with Disabilities Education Act (IDEA) and Washington State regulations implementing the IDEA, and failed to offer the Student a free appropriate public education (FAPE), as follows:

1. Whether the District has failed to offer appropriate and timely educational programming and placement to the Student beginning two years prior to the date of the Complaint in this action, and/or to the extent it has offered appropriate and timely educational programming and placement, has failed to implement those offers in the following ways:

a. Failing to implement the Individualized Education Program (IEP) dated on or about January 9, 2020;

b. Failing to provide appropriate Extended School Year (ESY) services during the summer of 2020;

c. Failing to implement the IEP dated on or about March 9, 2021;

d. Failing to provide an IEP reasonably calculated to provide educational benefit insofar as the IEP dated on or about March 9, 2021, and subsequent amendments:

(i) failed to provide 1:1 Behavioral Technician (BT)³ and Board Certified Behavior Analysis (BCBA) support across all learning environments, including the school and home environments, in that during the balance of the 2020

³ The terms “Behavior Technician” and “BT” are used herein to refer to paraprofessionals providing behavior services directly to the Student, whether or not they are licensed Certified Behavior Technicians (CBT). As explained in the Conclusions of Law, below, a CBT is a person certified under Washington law to implement a behavior analysis treatment plan under the supervision of a licensed behavior analyst. The documents and testimony cited herein frequently do not differentiate between a “BT” and a “CBT” and both are generally referred to as a “BT”. The distinction is articulated when it is relevant.

21 school year, the District did not provide said services at school; and during the 2021-22 school year, the District did not provide said services at home except to a very limited degree intended to address school refusal in the early morning;

(ii) failed to provide for appropriate data collection across all learning environments, including the school and home environments;

(iii) failed to provide measurable and appropriate goals and objectives across all learning environments, including the school and home environments;

(iv) failed to provide a structured, out of home school setting for the Student;

(v) failed to place the Student in the least restrictive environment; and

(vi) failed to make necessary amendments to the IEP insofar as the March 9, 2021 IEP was never amended to make it appropriate in the above respects;

e. Failing to provide appropriate Behavior Intervention Plans (BIPs) between return to hybrid school in March 2021 and the implementation date of the BIP dated April 23, 2022 (finalized and provided to the Parent on May 13, 2022 and implemented on May 25, 2022) insofar as: the BIP dated on or about March 20, 2019 and subsequent BIPs failed to provide interventions across all learning environments, including the home and school environments, despite COVID closures;

2. Whether Student has lost educational opportunity as a result of District's failures as set forth in paragraph (1), (3), and (4) of this subsection and is owed compensatory education to make up for lost educational opportunity;

3. Whether the District has failed to initiate and complete timely and appropriate evaluations, including but not limited to Functional Behavioral Assessments (FBAs), beginning two years prior to the date of the Complaint in this action, in the following ways:

a. Failing to conduct a reevaluation of the Student after the reevaluation dated on or about January 9, 2020, despite the onset of COVID 19, COVID closures, the consequential change of educational placement, and escalating aggressive and avoidant behaviors by the Student;

b. The FBA dated on or about March 29, 2022 (and finalized and provided to the Parents on May 13, 2022, and implemented beginning May 25, 2022) is inappropriate insofar as it:

(i) focused primarily on school refusal;

(ii) ignored and failed to include the input of the Student's third party providers who had worked for many years with the Student;

(iii) did not consider or identify elements of residential placement as a necessary component of the BIP; and

(iv) was not completed in a timely fashion;

4. Whether the District's currently offered IEP and BIP are inappropriate and not reasonably calculated to provide educational benefit insofar as:

a. The BIP dated on or about April 23, 2022:

(i) focused primarily on school refusal;

(ii) was based on insufficient data;

(iii) failed to consider and include the input of the Student's third party providers who had expertise in his areas of disability and had worked for many years with the Student;

(iv) did not identify elements of residential placement as a necessary component of the BIP; and

(v) was not amended appropriately insofar as the BIP has not been amended to include the above elements;

b. The IEP dated March 4, 2022 is inappropriate insofar as it fails to provide the Student with residential placement (and the coordinated and integrated specially designed instruction, related services, structured environment, comprehensive goals across multiple environments, and room and board provided in residential placement); insofar as the District has not since March 4, 2022 amended the IEP to provide residential placement (and the coordinated and integrated specially designed instruction, related services,

structured environment, comprehensive goals across multiple environments, and room and board provided in residential placement); and insofar as the IEP does not provide placement in the least restrictive environment; and insofar as the IEP has not been amended to include these elements;

5. Whether the Parents' requested placement, residential school, is appropriate; and

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

a. failing to consider the opinions of third party professionals (behavioral and clinical) who have worked with the Parents and the Student currently and/or in the past; and

b. involving and instructing the Parents in behavioral interventions without doing so pursuant to an FBA and BIP, as repeatedly requested by the Parents.

And whether the Parents are entitled to any remedies set forth in the IDEA. The Parents seek:

1. An order that the District has denied Student a FAPE;

2. An order that the Student shall be placed in residential school prospectively on an IEP;

3. An order that Parents shall be reimbursed for tuition and all related services associated with a unilateral private placement prior to the date Student is placed in a residential school prospectively on an IEP;

4. An order that Parents shall be reimbursed for all applied behavior analysis (ABA) services, evaluations/assessments, and consultation services beginning two years prior to the date of the Complaint in this action, that are not otherwise excluded by settlement agreements previously executed by the parties; and

5. Such other and further relief, which is unknown to the Parents at this time, as deemed appropriate by the ALJ.

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 conflicts, the evidence adopted has been determined to be more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence is set forth below as necessary.

Background

1. The Student is [REDACTED] and is currently in the fifth grade. He was first assessed by the District in 2016 and was found to be eligible for special education services under the category of Developmental Delay. P77 p.1.⁴ The Student was diagnosed with Autism Spectrum Disorder in July 2017. D5 p.6.

2. The most recent comprehensive reevaluation of the Student was completed in January 2020. D5. It indicates that he has difficulty initiating tasks, shifting his thinking, planning, and organizing his thoughts, monitoring his behavior, attending to instruction, completing tasks independently, and transitioning between activities. He also has difficulties with flexible thinking, reading comprehension, math problem solving, and sentence composition. The Student has a language disorder that impairs his ability to learn vocabulary, understand and follow directions, comprehend academic information, and participate in conversations. *Id.* at 7.

3. The Student began attending kindergarten in the District in September 2017. To help address challenging behaviors he exhibited at the time, the Parents arranged for regular appointments with clinical psychologist Dr. Julie Osterling. P77 p.2. Dr. Osterling has a Ph.D. in child clinical psychology. P64. Her area of expertise is autism spectrum disorder and neurodevelopmental disabilities. Tr. 16. Dr. Osterling has been in private practice since 2013. Prior to that, she was the director of the University of Washington CARE Clinic, a training clinic that provides assessments and interventions for individuals with neurodevelopmental disabilities. She has also served as the director of psychological services in a medical clinic, and as the clinical director of the University of Washington Autism Center. P64 p.2. Dr. Osterling has extensive experience interacting with schools in that she has provided trainings for school

⁴ The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to "Tr. 80" is to the testimony at page 80 of the transcript. Exhibits are cited by party ("P" for Parents, "D" for District, "J" for Joint, and "C" for Court), exhibit number, and page number. For example, a citation to "P1 p.5" is to the Parents' Exhibit 1 at page 5.

districts and has consulted regarding specific students which required her to be a member of IEP teams. Tr. 184 85.

4. Dr. Osterling has worked consistently with the Student and his family since 2017. Tr. 187. She has provided a range of services including educating the Parents about the Student's disability, training the Parents in behavior interventions, and crisis management. *Id.* at 189 190. Dr. Osterling has participated in the Student's educational plan and assisted the Parents to align their strategies at home with strategies being used in school. *Id.* at 192. Dr. Osterling observed the Parents to be "incredibly competent" at working with the Student when they had adequate resources. *Id.* at 194. She further observed the Parents to work quite well with the District, and to be flexible and "willing to go the extra mile" before complaining. *Id.*

5. In early 2018, the Student began demonstrating increasingly dysregulated behaviors, including urinating, and defecating in inappropriate places. He also became extremely aggressive during therapy sessions. P77 p.2. Ms. Parent noticed over time that the Student's repertoire of maladaptive behaviors became entrenched, and he became more rigid in his negative behavior patterns. *Id.* at 5.

6. As of August 2018, when the Student started first grade, the family was working privately with Behavioral and Neurological Disorders Solutions (BANDS) to provide applied behavioral analysis (ABA) therapy for the Student.⁵ Behavior technician (BT) Kristin McMillan was assigned by BANDS to work with the Student just as he was starting first grade at Sanislo Elementary School (Sanislo). P77 p.9. The District agreed that Ms. McMillan could accompany the Student to school and act as a 1:1 support during the day. *Id.* at 9 10. In January 2019, Ms. McMillan began instructing the Student at home for part of each day. They focused on recognition of consonants, and by February 2019 the Student could identify all consonants in the alphabet. *Id.* at 12.

7. The Student's January 9, 2020 IEP provided specially designed instruction (SDI) in adaptive/life skills, reading, math, written language, and social/behavior skills, as well as related services in speech/language pathology (SLP) and occupational therapy (OT). D4 p.7. The service matrix provided the following:

⁵ The ABA therapy was funded by the Parents' private health insurance. P76 p.1.

Services 01/13/2020 - 01/12/2021

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Speech Language Pathology	SLP	SLP	30 Minutes / 6 Times Monthly	Special Education	01/13/2020	01/12/2021
No	Occupational Therapy	OT	OT	90 Minutes / Monthly	Special Education	01/13/2020	01/12/2021
Special Education							
No	SOCIAL/BEHAVIOR	Instructional Assistant	Special Education Teacher	40 Minutes / 4 Times Weekly	General Education	01/13/2020	01/12/2021
No	ADAPTIVE/LIFE SKILLS	Special Education Teacher	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	01/13/2020	01/12/2021
No	SOCIAL/BEHAVIOR	Special Education Teacher	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	01/13/2020	01/12/2021
No	MATH	Special Education Teacher	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	01/13/2020	01/12/2021
No	READING	Special Education Teacher	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	01/13/2020	01/12/2021
No	WRITTEN LANGUAGE	Special Education Teacher	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	01/13/2020	01/12/2021

Total minutes per week student spends in school: 1775 minutes per week
Total minutes per week student is served in a special education setting: 1167.5 minutes per week
Percent of time in general education setting: 34.23% in General Education Setting

Id.

8. At the January 9, 2020, meeting, the IEP team determined that the Student no longer needed an FBA or BIP. D4 p.6. The Parents did not agree with the decision to remove the BIP. D4 p.30. The IEP team further determined that Student did not need ESY during the summer of 2020. *Id.* at 28.

9. The Student’s eligibility category was changed from developmental delay to autism in January 2020. D5 p.36.

10. In March 2020, the District closed for in person learning due to the COVID 19 pandemic. Prior to the closure, the Student had been doing well. He attended school regularly and seemed to enjoy it, according to his Parents. Tr. 592.

11. At first, during the COVID closure, Ms. McMillan worked with the Student at home, but she soon had to decrease her hours. Merrick Dazzo⁶ of BANDS began working with the Student in May 2020. Tr. 845. Ms. Dazzo has been a BCBA since October 2021. Prior to becoming a BCBA, she was a registered behavior technician (RBT). She has extensive experience in clinical, school and home settings, providing

⁶ Ms. Dazzo has a master’s degree in education focusing on ABA. She was completing her studies to become a BCBA while she worked with the Student. Tr. 844.

1:1 support to individuals with autism. P81. Ms. Dazzo worked with the Student at home from May 2020 through July 2021. P80.

12. Online instruction started in the District in May 2020, and the Student attended online learning in the mornings. C1; Tr. 845. A BANDS staff member was with the Student from 8 a.m. to 5 p.m., Monday through Friday, throughout the time the Student's schooling was online. Tr. 846. Ms. Dazzo worked with the Student 1:1 as his BT, and also supervised and assisted other therapists to manage his challenging behaviors and implement therapy. *Id.* at 847, 850.

13. During online instruction, a BANDS therapist would set the Student up at a table with his laptop, and would try to get him to remain at the table to engage with his teachers. Tr. 858. The Parents did not feel the Student was able to access his education when it was online. *Id.* at 486. Ms. Parent described online instruction as "completely inaccessible" to the Student in that he did not pay attention to the screen and would often run away. *Id.* at 487.

14. BANDS performed an FBA of the Student in the summer of 2020. The report, dated August 1, 2020, identified five problematic or "target" behaviors. P56. They include aggression, elopement, inappropriate toileting, property destruction, and non compliance. The antecedents identified for the target behaviors included task demands, requests to engage in a non preferred activity, denial of a request for a preferred activity or food item, blocked access to a preferred activity, attention seeking, transitions, change in schedule or routine, and withdrawal of attention. *Id.* at 2.

The 2020 21 school year Third Grade

15. The Student was in third grade during the 2020 21 school year. The Student's special education teacher that year was Phyllis Campano. Ms. Campano has a bachelor's degree in psychology and a master's degree in teaching. She also holds a school administrator credential. Tr. 1194. Ms. Campano was a special education teacher at Sanislo from September of 2020 until October of 2022, at which point she left to work for the Washington Education Association. Prior to her position at Sanislo, Ms. Campano was a math interventionist in the District for six months, and she has eleven years of previous experience as a special education teacher. *Id.* at 1193 94, 1340 42.

16. Ms. Campano met online with the Parents and Ms. Dazzo before the school year started. Neither the Parents nor Ms. Dazzo raised any behavioral concerns about the Student at that time. Tr. 1197. As of September 2020, the Student was "well

regulated,” and the Parents had decreased their sessions with Dr. Osterling to an “as needed” basis. D 68 p.2.

17. Instruction in the District was 100% remote from September of 2020 to March 29, 2021. C1. The Student’s remote schedule on Mondays, Tuesdays, Thursdays, and Fridays⁷ consisted of a 30 minute “community meeting” first thing in the morning with Ms. Campano’s whole class. D64; Tr. 1348. The Student then worked independently for approximately one hour on math, reading and/or writing materials that Ms. Campano had supplied for his “work bins.” He then participated in specialist classes (such as art or music) with his general education class for 40 minutes, then worked with Ms. Campano for 30 minutes. D64; Tr. 1198, 1345. After lunch, the Student again worked independently on his work bins or with some type of asynchronous learning for the rest of the school day. D64; Tr. 1346. On Wednesdays, the Student attended the 30 minute community meeting in the morning. He then worked with Ms. Campano for 30 minutes, followed by a 40 minute period of offline learning. He then attended all school assemblies for 45 minutes. D64. During periods of offline learning, the Student worked on his own with assistance from someone in the home, including a BT, if necessary. Tr. 1344. During this time, the Parent’s medical insurance covered 20 hours per week of ABA services. P77 p.20.

18. On September 15, 2020, Ms. Parent wrote to Ms. Campano as well as Sanislo principal Erika Ayer⁸ and informed them that the Student’s academic skills had regressed. Ms. Parent also pointed out an apparent misunderstanding regarding use of BTs in that the Parents were not able to allocate their private BT hours toward implementing the Student’s IEP due to insurance constraints and limited hours. Ms. Parent asked the District to provide 1:1 support for the Student and asked for an emergency IEP meeting. D65 p.1.

19. On September 25, 2020, the Parents and several District staff members had a phone call regarding services for the Student. The District agreed that the Student could have a degree of BT support with online learning, but the BT had to “pull back” so the District could gather data about the Student. Ms. Campano made it clear to the Parents that she did not think BTs were necessary to support the Student’s online learning, and she felt they were actually “in the way”. Tr. 569 71. On September 28, 2020, Ms. Parent again emailed District staff to confirm the agreement that had been reached whereby the Parents would remove all at home 1:1 support for the Student’s

⁷ This schedule took effect on September 28, 2020. The schedule prior to that time was not substantially different in terms of minutes of SDI from Ms. Campano.

⁸ Tr. 545, 943.

online learning. The BT or Parent would help him set up initially and then remove themselves while the Student interacted with his teachers. D66 p.1.

20. Throughout the fall, the Student's behaviors were becoming increasingly dysregulated. The Student was experiencing what Ms. Parent described as "high intensity fits," and he would urinate and defecate on carpets in the house and in the yard. P77 pp. 22 23. He would scream, hit, spit, and attempt to elope from the house. *Id.* By November 2020, the BTs working with the Student locked themselves in the bathroom at times to escape the Student's aggression, and he would sometimes leave the house unaccompanied. *Id.* at 24. The Parents put locks on doors all around the house so the Student could not get out of sight due to his destructive behaviors and elopement. *Id.* at 27. Ms. Parent believed the Student was often too distracted or dysregulated to access remote learning. He would throw tantrums that lasted up to 90 minutes. P76 p.4.

21. During this time period, Ms. Campano believed the Student was able to access the instruction he received from her. In her opinion, he only needed assistance turning on the computer and getting ready. Tr. 1201 02. She did not see a need for a BT to be with the Student constantly. *Id.* During the time period that the BTs did not sit with the Student, Ms. Campano observed him to make it through the five tasks she set for him each day with "a lot" of prompting⁹ to stay focused. *Id.* at 1206. She observed him to elope on occasion, which she described as "bouncing out of the room." *Id.* at 1214. She also observed him push Ms. Dazzo on one occasion. Ms. Campano did not observe other aggressive behavior. 1214 15.

22. Ms. Dazzo did not believe that Ms. Campano was able to engage the Student in learning without a BT present with him. He would hide or try to talk with Ms. Campano about things unrelated to schoolwork, such as her pets. Tr. 860 62. The Student exhibited challenging behaviors such as running around or out of the room and throwing his laptop. *Id.*

23. In October 2020, the Parents contacted Dr. Osterling because the Student "was spiraling out of control." Tr. 197.

24. On October 5, 2020, Ms. Parent emailed District staff to inform them that the Parents were adding BT supports back in for the Student during school time. The Parents scheduled a meeting with school staff and planned to reassess the next step after the meeting. The Parents had seen such an uptick in aggressive behavior that

⁹ There are various types of prompting, including verbal, visual, gestural and physical. Tr. 1212.

they could not continue to run what felt to them like “an experiment for the purposes of gathering data on what our family knows about [Student] that he needs fully scaffolded support.” D68. Ms. Parent sent the District data that had been collected by the BANDS BTs and noted that no data could be collected on one day because the Student was so dysregulated. *Id.* Ms. Campano replied to the email and said that she had not experienced dysregulation in her sessions with the Student except for on one day. She noted that a “new person” was in the room with the Student on that day and stated she would “greatly appreciate communication when any part of my students [sic] plans or lessons have been altered.” Ms. Campano also stated, “There was no support from BTs as [Ms. Parent’s] e mail said there would be. What are the expectations for [Student] at this point? I have no data to show he was making progress on his IEP goals.” *Id.*

25. A meeting was held on October 22, 2020, to delineate teacher responsibility versus BT responsibility during the Student’s distance learning. D69. Ms. Campano felt the BTs were prompting the Student to answer questions from her without giving him the “think time” she wanted him to have. They were also rewarding him for every step of a task whereas Ms. Campano was rewarding him only at the completion of each task. It was determined that Ms. Campano would do the academic instruction prompting and the BT would do behavioral prompting in that the Student would get a reward for staying at the table. Tr. 1212, 1213 14. After the meeting, Ms. Campano drafted proposed new goals for the Student and sent them to the Parents and Ms. Dazzo. D70. The Parents told Ms. Campano they would provide feedback on the proposed goals but did not follow through on doing so. D75; D80.

26. On November 6, 2020, Ms. Parent emailed Ms. Campano and others, stating, “We continue to find that not having someone sit with [Student] and give him in person prompts is exacerbating behavior problems off the screen. If he has constant, very close support, he can keep himself contained... but without that, he goes off the rails. We had another emergency meeting of his out of school team yesterday to troubleshoot the issues mostly eloping and aggression. We agreed that one of the tools we need to access is being able to put the BT back at the table with him. So, they will start sitting with him again to give him lots of support and follow up prompting.” D50.

27. After receiving this e mail, Ms. Campano emailed other District staff members saying, “If the Student is becoming aggressive without the constant cueing during my session, then he has been and continues to be over cued in his home program... I want a plan for fading BT support for the school sessions and a plan for using the independent work bin in his schedule with the district paid BT time.” D73. Ms.

Campano felt the structure for the Student was too strict during instruction time and it was frustrating him by, for example, not giving him adequate time to think. Tr. 1219. She also felt that when a student shows success with prompting, the prompting should fade so the student can become successful on their own. *Id.* at 1221.

28. Ms. Dazzo disagreed with Ms. Campano regarding the Student being over cued. Tr. 879. She noted that the Student needed support in order to not escalate. She disagreed that the Student became aggressive due to over cueing. *Id.* Ms. Dazzo further did not agree that the Student would be confused by cueing from Ms. Campano as well as from the BTs. Rather, multiple reinforcement systems can keep a child more motivated. Tr. 880. Ms. Dazzo did not observe Ms. Campano to have “instructional control”¹⁰ over the Student when the BTs were not next to him. *Id.* at 885.

29. On November 9, 2020, Ms. Campano emailed Ms. Dazzo objecting to how Ms. Dazzo was working with the Student. Ms. Campano said, “You are rewarding him for different objectives than I am during the school program. If this isn't already confusing to him it will be and he will become resistant to working on his school work.” D74. Ms. Campano expressed concern that the service providers would not know what was working for the Student. She also stated, “I don't appreciate not having a conversation about the changes to school program prior to the changes. In the future as we work as a team, I need to be including [sic] in changes to the school program.” D74.

30. Ms. Campano was perceived by Dr. Osterling and others as being unwilling to work with the team to coordinate the Student's program. Tr. 301.

31. On December 2, 2020, the Parents and the District entered into a settlement agreement. P4. In the recitals of the agreement, the Parents contended the Student required BT/BCBA services in order to access a FAPE, while the District contended it needed more data to determine whether or not the Student required BT/BCBA support. The agreement provided that the District would reimburse the Parents for a portion of the BT/BCBA services provided by BANDS. *Id.* The agreement also provided, “The Parents, on behalf of themselves and the Student, resolve all... allegations that the Student was denied a FAPE or did not make adequate progress due to the BCBA/BT services being provided before and during the Reimbursement Period.” *Id.* The Reimbursement period was September 2020 through the occurrence of both of the following conditions: (i) the District returned to in person school and (ii) the Student's

¹⁰ “Instructional control” refers to a child being attuned to and coordinating their behavior with the instructor such that the instructor has the ability to gain the child's compliance through verbal means. In other words, the child follows the instructor's directions. Tr. 348-49.

IEP team determined that BCBA/BT services were not required or that a different provider should be used. *Id.*

32. Ms. Campano felt the Student had made progress with online instruction and was following the five task structure well. Tr. 1223. She would let the Student watch her feed her cat treats and feed her goldfish as a reinforcer at the end of the sessions. *Id.* She did observe that he had some dysregulation as to sitting still in the chair and he “had to move.” *Id.* at 1224. Ms. Campano conceded that she had “no idea what was going on in the home” other than what she saw online. *Id.* at 1310 11.

33. In January of 2021, the Parents retained attorney Kathy George to assist them with IEP meetings and other educational issues. P77 p.26.

34. An IEP meeting pertaining to the Student was held on January 27, 2021, to develop an ESY IEP. P5. The Student was recommended for ESY services over the summer of 2021 “on the basis of not making adequate progress on his IEP goals during remote instruction.” *Id.* at 3. The ESY IEP contained 14 goals and provided that the Student would receive 960 minutes per week of SDI, equally split between reading, math, social/behavior and written language. *Id.* at 4. There was no evidence presented as to how services the Student would need in the summer could adequately be determined five months earlier, in January.

35. On February 6, 2021, in preparation for an IEP meeting, Dr. Osterling sent a “school recommendations” summary to the Parents. P6. Dr. Osterling noted that the Student’s behavior had become disorganized and difficult during online schooling, and his rate of learning had decreased. She determined that he could not learn in the home environment because he could not focus. She noted he had gone from being fully toilet trained to urinating and defecating indiscriminately throughout his home. The Student had also become “resistant and inattentive” to instruction. Dr. Osterling noted that the Student had become a “line of sight kid,” meaning that it was unsafe for him to be out of sight of an adult. *Id.* The record is silent as to whether the Parents shared this letter and/or its contents with the District.

36. An IEP meeting was held on February 19, 2021, at the request of the Parents, to discuss the provision of in person services to the Student. P7. Dr. Osterling did not participate in the meeting. *Id.* at 3. The prior written notice (PWN) from that meeting notes that the IEP team rejected in person services for the Student because “the data from the school team on his IEP goals showed ample progress” such that in person instruction was not required. *Id.* The PWN further states, “IEP goals and related present level data was used to determine that the Student is making progress

remotely.” *Id.* The Parents disagreed with this decision. *Id.* The Parents contend they were very clear at the meeting that the Student was facing challenges with online instruction, was very dysregulated, and they wanted him back in a classroom as soon as possible. Tr. 488. Ms. Campano, however, does not recall the Parents raising any concerns about the Student’s behavior at home during any of the meetings in January, February, or March of 2021. *Id.* at 1229 1232. Based on the documentary evidence, and the detailed nature of their records and testimony, the Parents are found to be more credible than Ms. Campano as to their reporting of concerns about the Student’s behavior at home.

37. Ms. Campano did not think the “ample progress” determination conflicted with the ESY determination, made just a few weeks earlier, that the Student was not making adequate progress during remote instruction, because ESY services extended back to March of 2020 and were addressing lack of progress in the 2019 20 school year. Tr. 1228.

38. The Student’s annual IEP appeared to be due on January 9, 2021, but an IEP review did not occur until March 9, 2021. D32; P12. The “present levels of educational performance and measurable goals” section of the IEP developed at the review in March 2021 indicated that the Student was successful at keeping his school supplies organized on five out of five trials. P12 p.6 7; Tr. 1234. He was answering when/what/where questions with 68% accuracy on five out of five trials. He was able to state his first name consistently but could not state his last name and could not keep track of his daily schedule with a checklist. *Id.* Ms. Campano felt the Student could attend to his online work at this point which she viewed as a “big success.” Tr. 1237. He mastered three out of four communication goals and made mixed progress on other goals. P12; Tr. 1237 41.

39. The March 9, 2021 IEP (March 2021 IEP) provided that the Student would receive special transportation to school and that he would spend 0 39% of his time in the general education setting. P 12 p.12. The Parents requested that 1:1 ABA services be added to the IEP, but the District declined to add them. Tr. 490 92.

40. The March 2021 IEP provided the following SDI and related services:

Special Education and Related Services

Meeting Date: 03/09/2021

PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.

Services 03/15/2021 - 03/14/2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Speech Language Pathology	SLP	SLP	30 Minutes / 6 Times Monthly	Special Education	03/15/2021	03/14/2022
No	Occupational Therapy	OT	OT	60 Minutes / Monthly	Special Education	03/15/2021	03/14/2022
Special Education							
No	READING	Special Education Staff	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	03/15/2021	03/14/2022
No	MATH	Special Education Staff	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	03/15/2021	03/14/2022
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	03/15/2021	03/14/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	03/15/2021	03/14/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	General Education	03/15/2021	03/14/2022
No	ADAPTIVE/LIFE SKILLS	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	03/15/2021	03/14/2022

Total minutes per week student spends in school:	1775 minutes per week
Total minutes per week student is served in a special education setting:	1260 minutes per week
Percent of time in general education setting:	29.01% in General Education Setting

P12 p.20.

41. The PWN from the IEP meeting notes that the Parents requested daily data collection regarding the Student in the areas of behavior, academics and staying on task. The District team responded that the District was “proactively planning with Tier 3 behavior team so they can observe [Student] to determine whether BT is warranted.”¹¹ P 12 p.23. The PWN further notes, “The district rejected putting the ABA personal [sic] in the IEP.” *Id.*

42. On March 29, 2021, the Student began receiving “hybrid” instruction. The BANDS therapists did not accompany the Student to school during this time. Tr. 846-47. During hybrid, the Student attended school in person for 2.5 hours a day, four

¹¹ “Tier 3” is a broad term used to indicate multitiered levels of support provided to students with complex needs. Tr. 1084-85. Tier 3 students can be general education students or special education students. *Id.* at 1147-48.

days per week (from 8:00 a.m. to 10:45 a.m. according to exhibit C1 that was jointly submitted by the parties). He also received three hours and 45 minutes of remote instruction on those four days. C1. Ms. Campano testified that students attended school in person from 8:30 a.m. to 12:30 p.m. four days per week during hybrid times and received “almost three hours of instruction.” Tr. 1243. This is inconsistent with other evidence.

43. During hybrid, no in person instruction was provided on Wednesdays, a shorter day, and there is no evidence that the remote instruction offered on Wednesdays differed from the pre hybrid schedule. Thus, it is inferred that the Student was with Ms. Campano for 60 minutes and had 40 minutes of offline instruction on Wednesdays.

44. It is unclear what instruction the Student received during the hours he did not attend school in person on Mondays, Tuesdays, Thursdays and Fridays.

45. After the first couple of weeks of hybrid learning, the Student began exhibiting problematic behavior at school. Tr. 1244. He became aggressive when Ms. Campano worked with other students. *Id.* The Parents again requested 1:1 support for the Student but the District declined to provide it. P77 p.28. On April 22, 2021, the Student hit Ms. Campano and attempted to kick her. *Id.* Ms. Campano described the Student as having “pretty aggressive episodes of hitting and kicking to the point where I would have to call the principal from the office.” Tr. 1244. She had not seen such behavior when learning was online. Ms. Campano engaged Rachel Barrett,¹² a District behaviorist, to observe the Student and help manage him. *Id.* at 1244 46.

46. On April 23, 2021, Ms. Parent wrote a lengthy email to Ms. Campano and Ms. Ayer. She described what the Parents had learned about the Student over the years and the hundreds of hours they had spent working with therapists regarding the Student’s behavior. P14. She informed school staff that the best way to manage the Student’s problematic behaviors is to prevent them from occurring in the first place. Ms. Parent again asked for 1:1 ABA support for the Student. *Id.* She did not receive a response to this email. Tr. 496. She felt the District was “stunningly blind and woefully deaf” as to what the Parents had been trying to tell them over and over. *Id.*

¹² Ms. Barrett is a Tier 3 consulting teacher in the District. Tr. 1084-85.

47. In May of 2021, the Student had episodes of aggression in class that included throwing shoes, throwing a chair, knocking over furniture, laying on a mat and yelling, and hitting and kicking District staff. P77 pp.28 29.

48. On May 17, 2021, the Parents requested that an FBA be conducted and a BIP be developed. P77 p.29. The Student continued to exhibit extreme aggression at school, hitting and kicking Ms. Campano and other District staff members. *Id.* at 30 31. He was also exhibiting unsafe behavior on the bus. *Id.*

49. On June 1, 2021, Ms. Parent signed a consent for an FBA. Ms. Parent hand wrote on the consent form, "To be completed in conjunction with Graydon Agar and Merrick Dazzo of BANDS. ... Please coordinate FBA with the ABA company that has worked with [Student] for the past (almost) 3 years." D15. Ms. Barrett wrote the FBA. Tr. 1246.

50. Lauren Yoho,¹³ a BCBA and behavior program specialist in the District, was consulted by Ms. Barrett and Ms. Campano in the spring of 2021 to review the FBA and a BIP for the Student. This consultation was "very short" according to Ms. Yoho, and was not "in depth." Tr. 1084 85.

51. On June 3, 2021, the Student's IEP team determined that the Student should attend a "behavior based summer camp" during the summer of 2021 to receive "recovery services" necessitated by COVID school closures, and to continue to work on his adaptive and social/behavior goals. P15. The "Recovery Services Planning and Communication Tool PWN" documents this decision and states, "In the past month of in person instruction [Student] has begun to have behaviors of physical escalation that has begun to impeded [sic] his progress of his IEP goals." *Id.* at 2. At the Parents' request, the summer program at Seattle Community Care (SCC) was chosen for the Student. P77 pp.31 32. SCC provides camps for developmentally impaired children. It is not an ABA provider, does not employ certificated teachers, and does not provide academic instruction. Tr. 234, 497 98.

52. On June 14, 2021, the Student refused to go to school. P77 p.31.

53. Ms. Campano sent an email to the Parents in June 2021 in order to set a time to review the draft FBA and BIP. Tr. 1287. Ms. Parent does not recall ever receiving the email message and did not respond. *Id.* at 615 16.

¹³ Ms. Yoho has a master's degree in education and a teaching certification with a reading endorsement for grades K through 12. Tr. 1083-84. She is also a certificated special education teacher.

54. The Parents changed their home ABA providers in June of 2021 and Crissey Behavioral Consulting (CBC) began providing services to the Student. P77 p.32. Before providing direct services, CBC conducted an initial assessment and developed a treatment plan for the Student. The initial assessment period lasted approximately three months and commenced in March of 2021. Tr. 364. The BCBA from CBC noted that the Student was firmly entrenched in task avoidance behaviors, and that he was resistant to attending school. P72 p.3. According to CBC director and owner, Shannon Crissey,¹⁴ the Student expressed resistance to “virtually any demand and to any nonpreferred activity.” *Id.*

55. CBC implemented a plan designed to remove reinforcement of inappropriate behaviors and provide structured, adult led sessions with clear schedules to the Student. P72 p.3. Their goal was to obtain instructional control and present the Student only with demands that the staff knew he could meet. However, over time, the Student’s behavior deteriorated such that, in order for staff to be safe, two trained staff members had to be present at all sessions. Tr. 368. Ms. Crissey has only ever requested insurance approval for two staff members per session in one other case in her career. The Parents’ insurance did not approve CBC’s request. *Id.* Ms. Crissey began working with the Student herself, and eventually only Ms. Crissey and CBC’s clinical director felt capable of working with him. CBC rearranged the session environment and tried providing sessions in alternative settings, such as Ms. Crissey’s home. All of the attempted interventions proved unsuccessful. CBC staff observed very little progress, and some of the Student’s behaviors regressed. P72 at 34. Ms. Crissey opined at the due process hearing that the Student’s behavior had “spiraled out of control.” Tr. 367.

The 2021-22 school year – Fourth Grade

56. The Parents were “delighted” with how the summer went for the Student at SCC. Tr. 614.

57. The Parents requested an IEP meeting in August of 2021. P77 p.32. A meeting was held on August 31, 2021. The District had not yet completed the FBA or BIP that had been started in June. *Id.* The Parents proposed that the Student remain at SCC for up to a month at the start of the school year while the FBA and BIP were completed.

¹⁴ Ms. Crissey has a Master of Education degree in early childhood special education. She is a certificated teacher. She has taught public school and has extensive experience writing IEPs and being an IEP team member. Tr. 359, 362. She is also a BCBA. P71; P72; Tr 358. Ms. Crissey has been the Director of Crissey Consulting for ten years and oversees 35 employees. P72.

The District agreed to this proposal and the parties entered into a written agreement regarding the transition back to Sanislo. *Id.*; P23.

58. The PWN from the August 31, 2021 meeting is difficult to understand. It states that the family requested that “a BCBA write a new FBA,” but that this was rejected by the IEP Team because the District’s “FBA was written in consult with BCBA Lauren Yoho.” P18 p.3. The PWN further states that the District requested that “behavior support in school be faded” based on data. This request appears to have been rejected, but that is not clear. P18 p.3.

59. As of September 17, 2021, no one from the District had contacted or visited SCC to see how the Student was doing. Ms. Parent emailed multiple District staff members on September 17, 2021, asking if a BCBA had been assigned to work with the Student and whether someone from the District would communicate with SCC to firm up the plan for gathering data. P76A p.148. Ms. Parent also sent, as an attachment, the FBA and BIP that had recently been completed by CBC.

60. Prior to the IEP meeting scheduled for September 21, 2021, the District circulated a copy of its draft FBA. The draft was the same document that had been circulated in June, and no BIP was circulated. P77 p.33.

61. The Student’s IEP team met on September 21, 2021. The team discussed the agreement the Parents had reached with the District that the Student would transition back to school over a 30 day period, doing partial days at SCC, and that his 1:1 support from SCC would accompany him to school through October 29, 2021. P77 pp.34 35.

62. The date on which the District completed the FBA is unclear. The meeting date to discuss the FBA is listed as June 1, 2021. The FBA states that it is based on data up through January of 2022. The District refers to the FBA in their exhibit list only as “2021 FBA.” The FBA states that the data collection period ran from April 22 through June 4, 2021. D16 p.4.

63. The FBA notes that the Student engaged in assaultive behavior on approximately 23% of the school days from April 22 through June 4, 2021, and the average duration of his escalated behavior was 56 minutes. D16 p.4. Notably, the Student’s in person school day was 2.5 hours long during the spring of 2021.

64. The FBA thoroughly examined the Student’s behaviors and the antecedents to such behaviors. Antecedents to the behaviors included mounting anxiety before or during a transition, work demands and work output expectations, perseveration by the

Student as to school rules and routines, and an adult not giving him an expected response. Lack of attention from preferred adults was also determined to be an antecedent. D16. The FBA hypothesized that an underlying antecedent for aggression “may involve sensory stimuli.” *Id.* at 4 6. The FBA noted that the Student should use a “replacement behavior” of “scaffolded communication” when he was experiencing stress in order to express his needs. For example, he should utilize “I feel” and “I need” communication. A predictable environment and opportunity to connect with others were noted to reduce the Student’s stress and reduce his target behaviors. *Id.* at 6 7.

65. An IEP team meeting was held on October 1, 2021, to discuss the BIP that had been developed by the District. P24. The target behavior in the BIP was physical escalation. Another IEP meeting was held on October 9, 2021, regarding the District’s proposal to “initiate the FBA.”¹⁵ D20. The PWN from that meeting notes that a BCBA would consult on the case. *Id.* at 3. The Parents accepted the FBA and BIP. Tr. 1045.

66. Ms. Yoho was asked to find a contract BCBA to work with the SCC team to help transition the Student back to school and, in her words, to “provide ongoing supervision for the Community Care behavior tech or instructional assistant that was supporting the Student.” Tr. 1086. Kevin Bascom¹⁶ of Brooks Powers was engaged to be the BCBA. Ms. Yoho understood Mr. Bascom’s role to be:

To provide some supervision of the behavior tech and support making a behavioral plan that would be responsive to the Student’s needs as he was transitioning from being in the community care setting to going back to school, and then to provide ongoing supervision for the Student and the behavior tech working with him while the Student was working with that behavior tech in school.

Id. at 1087.

67. Mr. Bascom understood his role to be provision of behavior consultation services for the Student, and to help the team collect data and implement the BIP that was in place. Tr. 1399. He did not supervise the SCC BTs. *Id.* at 1404. Mr. Bascom was under the impression that Alexandra Feinberg of SCC was a BCBA and was supervising the BTs. *Id.* at 1433.

¹⁵ The timeline of these meeting and what was discussed is unclear, and some dates appear to be erroneous.

¹⁶ Ms. Bascom has an undergraduate degree in psychology and master’s degree in education with a focus on applied behavior analysis. Tr. 1398. He is a BCBA.

68. The Student returned to school in the District for full days early October of 2021. C1. Ms. Campano was his special education teacher again that year. The 30 day transition plan that had been agreed upon was not implemented because the 1:1 from SCC could not transport the Student between locations. P77 p.35. The 1:1 aide from SCC did accompany the Student daily to school in the District. *Id.* at 36.

69. Alex Byers, an employee of SCC, began working with the Student at school on October 7, 2022. D56 p.20. Mr. Byers was supervised by Ms. Feinberg of SCC. *Id.* Ms. Feinberg is not a BCBA. C3. Mr. Byers knew the Student from the summer at SCC, and Mr. Bascom observed that Mr. Byers worked effectively with the Student. Tr. 1401.

70. Mr. Bascom observed the Student in the fall of 2021 to be happy and successful at school. Tr. 1404. He noted the Student was good at communicating his needs when he was regulated. *Id.* at 1405. If he was escalated or upset, however, it was hard for him to communicate. *Id.*

71. Within a short time after his return to school, the Student's behaviors became a problem. Ms. Campano recalls that aggressive incidents became more and more frequent and "were pretty substantial in intensity." Tr. 1250. The Student's bus driver registered complaints on October 11 and 13, and the Student had to be put in a hold during class on October 14. P76 p.7; P76A p.41. According to documentation from the District and SCC, the Student had aggressive episodes ranging from 15 45 minutes on October 19 and 22; November 1, 10, 15, and 30; and December 2, 3, 13 and 15. P76 p.7; P76A p.106. This included kicking Ms. Campano twice on November 3. P76A pp. 57, 92. The Student assaulted another student on November 15, and injured a teacher on November 30. P76 p.7; P76A p.106.

72. In November of 2021, the Student began complaining on a daily basis that he did not want to go to school. He began refusing to get on the bus. At times, Ms. Parent drove him to school in the morning. P77p.37. On November 17, 2022, the Student refused to get out of bed but finally did so with much prompting from his parents. On November 19, the Student screamed about not wanting to go to school and hit Mr. Parent. On November 29, he again said he did not want to go to school and kicked Ms. Parent as she attempted to get him ready. *Id.* He refused to get on the bus on December 6, 8, 13, and 16, so Ms. Parent drove him to school. P76A pp.100, 102, 104, 126.

73. On November 12, 2021, an IEP review meeting was held to discuss amending the Student's IEP to add a 1:1 BT¹⁷ and a bus monitor. P26 p.1. The "general background" portion of this IEP states, "[Student] requires 1:1 BT support to assist with his behavior. The IEP team had determined that he cannot access the educational environment safely without 1:1 BT support. [Student] requires a bus monitor to assist with behaviors to access this environment safely." *Id.* p.9.

74. The amended IEP provided for the following special education and related services:

Special Education and Related Services (Amendment)							
Meeting Date: <u>11/12/2021</u>							
PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.							
Services 11/15/2021 - 03/14/2022							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Speech Language Pathology	SLP	SLP	30 Minutes / 6 Times Monthly	Special Education	11/15/2021	03/14/2022
No	Occupational Therapy	OT	OT	60 Minutes / Monthly	Special Education	11/15/2021	03/14/2022
Special Education							
No	READING	Special Education Staff	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	11/15/2021	03/14/2022
No	MATH	Special Education Staff	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	11/15/2021	03/14/2022
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	11/15/2021	03/14/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	11/15/2021	03/14/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	General Education	11/15/2021	03/14/2022
No	ADAPTIVE/LIFE SKILLS	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	11/15/2021	03/14/2022
Total minutes per week student spends in school:				1775 minutes per week			
Total minutes per week student is served in a special education setting:				1260 minutes per week			
Percent of time in general education setting:				29.01% in General Education Setting			
Supplementary Aids and Services:							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Behavior Tech monitored by BCBA and special ed teacher	Behavior Technician	Special Education Teacher	1260 Minutes / Weekly	Special Education	11/15/2021	03/14/2022
No	1:1 Bus/Transportation Monitor	Transportation/Bus Monitor	Special Education Teacher	300 Minutes / Weekly	Special Education	11/15/2021	03/14/2022
No	1:1 Instructional Assistant	Behavior Technician	Special Education Teacher	900 Minutes / Weekly	General Education	11/15/2021	03/14/2022

¹⁷ It appears that the Student had been provided with a 1:1 BT from the time he returned to school in October but this was not in his IEP.

P26 p.23. The PWN from the meeting is again confusing. It states, "Due to safety concerns on the school bus ride to and from school the team will discuss adding at [sic] bus monitor. The district has added the Behavior Tech to the IEP to be compliant." *Id.* at 26. The PWN language pertaining to the bus monitor is inconsistent with the IEP service matrix. The IEP service matrix is found to be the accurate documentation of the services that were to be provided to the Student.

75. On November 18, 2021, Mr. Parent emailed Ms. Campano and Ms. Ayer and asked about the status of the bus monitor. He also asked for help dealing with the Student's increasing school refusal. He received no response. P76 p.9; P76A p.55. The bus monitor was never provided to the Student because the District could not hire anyone for the position. Tr. 583, 1371.

76. As the fall progressed, the Student's behaviors became so violent and unpredictable at home that Ms. Crissey could not maintain enough qualified clinicians who could confidently manage the Student. P72 p.5. Some CBC staff member sustained injuries and others asked to be removed from his case. *Id.* As of October 2021, at least 12 hours per week of approved BT time was not being provided by CBC due to staffing issues. D128 p.3.

77. On November 19, 2021, Dr. Osterling emailed the Parents and Ms. Crissey and stated that the "screaming battle to get the Student out the door" is becoming more difficult." P27. The Student had begun physically fighting his Parents' attempts to get him out of bed to go to school in the mornings. Tr. 550. Dr. Osterling further stated, "The family needs to seriously look into residential placements and get these organized so that you have a backup plan and that you can activate that plan as soon as possible." P27. Dr. Osterling's treatment note of December 10, 2021, states, "Parents have worked to get [Student] on waitlists for residential treatment. Today we just processed the decision and family coping strategies with [Student] until he is placed." D125 p. 50.

78. Ms. Parent does not recall whether she informed District personnel that the Student was urinating and defecating in inappropriate places in November of 2021. Tr. 619 20.

79. On December 1, 2021, Ms. Crissey informed the Parents that CBC could no longer work with the Student. She said, "His aggression is becoming 'smarter' and harder with more forceful attempts aimed directly at people's faces and I truly think someone is going to end up with a broken nose." *Id.* at 38.

80. On December 2, 2021, the Student ██████████ in his classroom, requiring other Students to be cleared of the room. P77 p.40. His resistance to attending school began to worsen. At one point, Ms. Campano asked Ms. Parent “what the Parents were doing at home” that always made the Student want to go home. The Parents felt this demonstrated a fundamental lack of understanding as to how difficult and stressful the school environment was for the Student. *Id.* at 41. The Student was placed in physical holds at least three times in December due to aggression. *Id.* at 43. On December 13, he engaged in a 45 minute episode of hitting and kicking, and on December 15 he escalated for 25 minutes, during which he hit and kicked people and threw objects in the classroom. P76 p. 8.

81. Darius Heggins, an employee off SCC, replaced Mr. Byers and began working with the Student as his 1:1 support on December 3, 2021. D56 p.98. Mr. Heggins was supervised by Ms. Feinberg. *Id.*

82. On the morning of December 6, 2021, Ms. Parent emailed Ms. Campano and Ms. Ayer and informed them that the Student refused to get on the bus to go to school that morning. He also refused to get in Ms. Parent’s car but she continued to work to persuade him. P76A p.100. The same thing occurred on December 8, 13, and 14, 2021. *Id.* at 102, 104, 109. The Student continued to refuse to get on the bus on other mornings but would eventually agree to be driven by Ms. Parent or one of her friends. Tr. 554. Ms. Parent informed the District of these occurrences. *Id.*

83. When school resumed on January 4, 2022, after the winter break, the Student refused to get on the bus in the morning. P77 p. 44; P76A p.130. When he was being driven by Ms. Parent and realized they were heading to school, he began screaming, and hit and kicked Ms. Parent while she was driving. His Parents took him to Seattle Children’s Hospital’s emergency room, but the hospital staff did not suggest programs or supports to help the family. *Id.*

84. The Student attended school all other school days in January of 2022. Tr. 1258. He was put in physical holds by District staff members at least three times that month, but reports of physical restraint were not consistently sent to the Parents, so the actual number of holds is uncertain. P77 p.45.

85. An annual IEP review meeting was held on February 3, 2022. P32. The PWN from the meeting indicates that the Student’s goals were extensively discussed. *Id.* Ms. Campano thought the Student’s placement was appropriate and that he was making progress. Tr. 1260. She did not believe his aggression was enough of a concern to warrant a change of placement. According to Ms. Campano, “We had a

BCBA. We got a BT into school that was that had more skill in behavior management. So we felt like we were on the right track with him.” *Id.* at 1261.

86. The Student’s BIP was revised slightly and was reviewed at the meeting on February 3, 2022. This revised BIP states that it is based on data collected from October 2021 through January 2022. D24 p.1. It notes that the Student exhibited 43 assaultive behaviors in that timeframe. However, when addressing the target behavior of physical escalation, the data described refers to physical escalations on only seven days. *Id.* This data in the target behavior section is identical to that in the previous BIP of October of 2021 and appears to have been left in the February 2022 BIP inadvertently due to cutting and pasting when developing the newer BIP. *Compare* D24 p.1 and P24 p.3.

87. The February 3, 2022 BIP targets one behavior, physical escalation. It includes two pages of intervention strategies that are almost completely identical to those in the October 2021 BIP, despite the increase in the occurrence of physical escalations. D24; P24.

88. Mr. Bascom testified that he thought the Student’s physically aggressive behavior was decreasing over time. Tr. 1456. The basis for this belief is unclear given that he was only present in the Student’s classroom for approximately four hours per month. *Id.* at 1461 62. This testimony is inconsistent with the data in the Student’s BIPs and is given no weight.

89. On February 10, 2022, Ms. Parent emailed the Director of Admissions at Shrub Oak International School (Shrub Oak) to set up an interview. Ms. Parent stated, “[W]e are not including [the Student’s] school district in our conversations. We plan to place him at a therapeutic residential boarding school ourselves, and then work with our lawyer to negotiate with the school district.” D134 p.2. Ms. Parent also emailed Dr. Osterling that same day and told her the Parents had been advised by their attorney to place the Student at the residential placement first, and then go into a due process hearing after he was placed. Consequently, they were not involving the District in the decision making process. D100 p. 2

90. On February 11, 2022, the Student tested positive for COVID 19. He returned to school on the morning of February 15 after testing negative. P77 p.47. Shortly after the Student arrived at school, Ms. Parent received a call telling her she needed to pick him up and he could not return until Monday, February 28, after the mid winter break, because he was not good at wearing a mask. *Id.* D102. The Student refused to go to school on February 28, 2022, and again on March 1.

91. On March 1, 2022, Ms. Parent emailed Ms. Campano and Ms. Ayer and informed them that the Student had become “dangerously aggressive” when his Parents attempted to get him onto the bus. Ms. Parent informed the District staff that Dr. Osterling recommended “transition support services” to help the Student readjust to school after absences. Ms. Parent requested an emergency IEP meeting to discuss the issue. P76A p.142. Ms. Ayer responded that Ms. Campano had volunteered to come to the family home to assist in the morning. Ms. Parent responded that, while the family was appreciative of the offer, “charitable efforts of an off duty teacher” could not be a substitute for appropriate support in the Student’s IEP. She further stated, “We have seen this issue of school refusal crop up over and over again, especially after breaks and holidays.” *Id.*; D104 p.2.

92. An IEP meeting was held on March 4, 2022. P38. The IEP meeting invitation indicated that the purpose of the meeting was to review the annual IEP and “add behavior tech with BCBA support.” D26 p.1. The IEP developed at that meeting states:

NEED FOR 1:1 BEHAVIOR TECH WITH BCBA SUPPORT: Due to high frequency, severe behaviors, the IEP team added BT/BCBA support to [Student’s] IEP. He accesses learning and behavioral supports with intervention by a behavior technician supervised by a Board Certified Behavior Analyst. [Student] receives 2,160 minutes per week therapy [sic] with a BT during the full school day with 210 minutes weekly supervision by a BCBA. In addition, the BT meets [Student] at his home in the mornings before school for an additional 150 minutes per week to support him with school refusal behaviors. The BT cues [Student] to board transportation to school either from outside the student’s home or from the living room of the student’s home.

School refusal consultation with BCBA who specializes in school refusal: Due to parent reports that [Student] has a pattern of refusing to board transportation following a break in school, the IEP team has decided to add school refusal supervision and consultation by a BCBA to [Student’s] IEP. The current BCBA who supervises [Student’s] programing is in consultation with the school refusal specialist and will continue to consult with the IEP team regarding school refusal during his regular supervision of this case.

P38 p.4.

93. The March 4, 2022 IEP notes that the Student had made “solid progress” in the area of communication in that he met three of his four communication goals and made progress on the fourth. P38 p.8.

94. The March 4, 2022 IEP provides the following special education and related services:

Services 03/09/2022 - 02/06/2023

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Speech Language Pathology	SLP	SLP	30 Minutes / 6 Times Monthly	Special Education	03/09/2022	02/06/2023
No	Occupational Therapy	OT	OT	60 Minutes / Monthly	Special Education	03/09/2022	02/06/2023
Special Education							
No	READING	Special Education Staff	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	03/09/2022	02/06/2023
No	MATH	Special Education Staff	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education	03/09/2022	02/06/2023
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	03/09/2022	02/06/2023
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	03/09/2022	02/06/2023
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	General Education	03/09/2022	02/06/2023
No	ADAPTIVE/LIFE SKILLS	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	03/09/2022	02/06/2023

Total minutes per week student spends in school:

1775 minutes per week

Total minutes per week student is served in a special education setting:

1260 minutes per week

Percent of time in general education setting:

29.01% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Behavior Tech monitored by BCBA and spec ed teacher	Behavior Technician	Special Education Teacher	2000 Minutes / Weekly	Special Education	03/09/2022	02/06/2023
No	1:1 Bus/Transportation Monitor	Transportation/Bus Monitor	Special Education Teacher	300 Minutes / Weekly	Special Education	03/09/2022	02/06/2023
No	1:1 Board Certified Behavior Analyst (BCBA) direct service to student	BCBA	Special Education Teacher	210 Minutes / Weekly	Special Education	03/09/2022	02/06/2023
No	1:1 Behavior Tech monitored by BCBA and spec ed teacher	Behavior Technician	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	03/09/2022	02/06/2023
No	1:1 Behavior Tech monitored by BCBA and spec ed teacher	Behavior Technician	Special Education Teacher	160 Minutes / Weekly	Special Education	03/09/2022	02/06/2023

P38 pp.28 29. As indicated, BCBA “direct services” were added to the Student’s IEP.

95. The PWN from the March 4, 2022 IEP meeting states, in part:

Description of the proposed or refused action: Parent reached out to the principal to meet to discuss having the BT help [Student] get on the bus. Purpose of this meeting was to discuss [Student’s] school refusal and how to get him back to school. Parent shared [Student] was doing well and then he got COVID, was quarantined, break, then back at square one of school refusal, saying he has a pattern that repeats itself over and over again.

The reason we are proposing or refusing to take action is: Parent reports that [Student] has been refusing to get on the bus or in the car to come to school after an extended absence from school due to quarantine, then a school break. Parent reported that [Student] refused to get on the bus or in the car on February 28, March 1st, 2nd, 3rd and 4th.

Description of any other options considered and rejected: The school district offered trying different transportation for [Student], discussed easing back to school using Community Care (a behavioral support agency), having Community Care with the Behavior Tech assisting at home and having Brooks Powers (an ABA agency) assisting the family. District also noted to start new FBA and BIP.

The reasons we rejected those options were: The Parent wanted to discuss these options with her husband. Discussed that the district would attempt to get a slot on the Brooks Powers school refusal program for now and cancel if the family decided not to participate.

P38 p.32.

96. At the due process hearing, the Parents disputed the accuracy of this PWN. Ms. Parent testified that she accepted easing back to school using SCC, and accepted having Brooks Powers assist the family. Her understanding was that the FBA and BIP would move forward as part of Brooks Powers’ work. Tr. 655 57, 665 671. Ms. Parent specifically recalls Mr. Figueroa¹⁸ of the District stating that the Student had to get on

¹⁸ Mr. Figueroa is one of the District’s special education supervisors. Tr. 1097.

Brooks Powers' list right away, and if the Parents decided later that they did not want to involve Brooks Powers after all, the District would remove that service. *Id.* at 668.

97. Ms. Yoho's recollection of the meeting is somewhat consistent with Ms. Parent's. Ms. Yoho recalls that Ms. Parent said the Parents would sign a consent for a new FBA and BIP. Tr. 1093. But Ms. Yoho also recalls that Ms. Parent wanted to talk with her spouse about the FBA and BIP. *Id.* at 1100.

98. There was discussion at the meeting about the Parents receiving training from Brooks Powers regarding school refusal, but the Parents' attorney stated they had already received training on how to address school refusal and additional training was not appealing to them. Tr. 1092, 1265-66.

99. Ms. Campano, who wrote the PWN, clarified at the due process hearing that the options noted as "rejected" were actually not rejected; rather, they were considered and left open. Tr. 1365. According to Ms. Campano, "The Parents weren't rejecting it, but they wanted the option was to discuss everything with her husband before she said yes or no." *Id.* However, the team moved forward with the BT going to the home. *Id.* at 1365-66.

100. Based on the above, it is found that the PWN from the March 4, 2022 IEP meeting is inaccurate and does not reflect what actually occurred at the meeting. Ms. Parent's testimony is therefore given more weight than that given to the PWN.

101. The Parents stopped working with attorney Kathy George after the March 4, 2022 meeting. Tr. 657.

102. The Student refused to attend school on March 2, 3 and 4, but returned to school on Monday, March 7, 2022. P76A p.48. On the bus ride home on March 7, the Student became severely dysregulated, and a disciplinary notice was placed in his school record that threatened to suspend him from riding the bus. The Parents were not informed of this incident or the disciplinary notice until after they filed the due process complaint in this matter. *Id.*

103. The Student attended school on March 8 and 9, but refused to attend on March 10 and 11. P77 p.49. On March 11, Mr. Heggins, the SCC BT who worked with the Student at school, came to the family's home and stood outside on the sidewalk. He had been sent by the District to try to help get the Student to attend school. *Id.* The intensity of the Student's school refusal was worsening at this time in that he

completely refused to get out of bed and became physically assaultive if his Parents attempted to help him do so. P76 p.15.

104. The Student refused to go to school March 14 through 18, and March 21 through 25. P76 pp.17 18. Toward the end of March, the District authorized Mr. Heggins to enter the family's home when he went each morning to encourage the Student to attend school.

105. On March 22, 2022, the Parents' new attorney, Charlotte Cassady, notified the District via email that the Parents intended to place the Student in a residential placement and seek reimbursement from the District if the District did not offer an IEP reasonably calculated to provide the Student with educational benefit within the next ten days. P42; D107.

106. At 7:16 a.m. on March 24, 2022, Ms. Campano emailed the Parents and copied several District staff members. Ms. Campano stated, "Attached is the IEP we just met for with the BT to assist to help [Student] on the bus from the 3/4/22 meeting with [Ms. Parent and Parents' former attorney, Ms. George]. The PWNs from the two IEP meetings and the ERP.¹⁹ We still need to meet to discuss the FBA and BIP." The March 4, 2022 IEP was attached, as were two PWNs. P43. One of the PWNs pertained to an IEP meeting held on February 18, 2022. P43 p.9. It states, "The team agreed to meet again to discuss the Behavior Intervention Plan," and, "The team will reconvene to complete the Behavior Intervention Plan." *Id.*

107. The Student's IEP team met again on March 24, 2022. That meeting is documented in a highly unclear PWN dated March 4, 2022, which purports to initiate action on March 11, 2022.²⁰ D26 pp. 34 35. The PWN states, "The team discussed the family's request for residential placement at the 03/24/22 meeting and finished amending the IEP to add additional BT/BCBA supports." *Id.* at 34. The PWN further states, "School team rejects the request for residential placement and believes he can be served at Sanislo Elementary with supports in the IEP, rejecting the request for residential placement." *Id.* Mr. Parent recalls that there was essentially no discussion about residential placement as an option for the Student because the District's attorney "immediately rejected it." Tr. 1073 74.

¹⁹ ERP appears to stand for "Emergency Response Protocols."

²⁰ The chronology of meetings, and implementation dates for various services, are not clear because the same PWN document was used repeatedly, and additions were made to portions of it at differing times.

108. The March 4, 2022 PWN further states:

3/24/22

1. The team discussed the draft March 4, 2022 IEP with overview of added supports in Supplemental Aids and Service, the need for 1:1 Behavior Technician with BCBA support, adding 210 BCBA minutes, adding 30 minutes of a Behavior Technician supported by BCBA at home to support school refusal in morning. Consultation with school refusal specialists was added as an accommodation of supports for personnel. The supports are also described in the General Background. School and family agreed the BT support at home for school refusal would begin 3/25. ... The parent asked if the Behavior Technician was certified. A. Feinberg responded no, he is not certified, but has received the 40 hour training from Community Care and overseen by a BCBA.

D26 p.34.

109. The PWN also reflects that the Parents believed the IEP goals were inadequate and the Student had been moved to new goals before completing existing goals. The District did not agree with this position. The Parents also questioned why the BIP they thought had been previously agreed to had not been finished. The PWN states, "The District explained we have not met to finish addressing BIP and ERP, as the school refusal took priority and new FBA would address school refusal. ... The District explained that all goals were reviewed previously and collaborated on at earlier meetings." D26 p. 35.

110. After the meeting on March 24, 2022, the Parents' attorney emailed the District's attorney, Ms. Nazik, and thanked her for "working with us today on IEP development, along with the rest of the Seattle team." P44 p.1. The Parents' attorney also informed Ms. Nazik that the Parents objected to the March 4, 2022 IEP because it did not provide residential placement for the Student. The Parents also objected to the IEP goals as being inadequate and to any assertion that the Student had met exiting goals. *Id.* pp.1 2. The email goes on to discuss the role the Parents will play when "BT Darius [Heggins]" starts coming into the house the following day.

111. Ms. Nazik replied on March 25, 2022, stating:

The school team will be sure to document the below objections and requests from the parents' [sic] in the PWN. I will forward you a copy of the IEP and PWN asap.

Additionally, at the March 4 meeting when the school team initially proposed BT support in the morning + Brooks Powers the team also discussed a new FBA and BIP to address the school refusal and discussed utilizing data that could be collected during the morning support time. At the time, the supports were not added into the IEP, as [Ms. Parent] was going to think it over. Given that we are now moving forward with the plan (with understanding the parents are objecting to the IEP and have given notice of residential placement), Lauren Yoho will be seeking consent from the parents to start the FBA.

P44 p.1.

112. On March 28, Mr. Parent signed a consent form to allow the District to conduct another FBA. P76 p.19; P45.²¹

113. On March 29, Mr. Bascom wrote to the Parents to introduce himself and stated that he would assist with the FBA to examine school refusal.²² The Parents completed an assessment questionnaire sent by Mr. Bascom and provided detailed information about the Student. P76 p.19; P49. Mr. Bascom was tasked with gathering data and leading development of the portion of the FBA pertaining to school refusal. Tr. 1407, 1447.

114. On March 31, 2022, Ms. Parent emailed Ms. Cassady and Dr. Osterling and informed them that the Student had experienced his first good day in two months. She also inquired of Ms. Cassady as to whether she should share her ideas with the District regarding how to get the Student to attend school. She suggested that the Student and Mr. Heggins ought to get together at other times of the day to form a relationship outside the “pressure cooker” of the early mornings. She also thought playdates with neighborhood children might entice the Student to go back to school. P47. These ideas were not shared with the District staff. Tr. 1269. Ms. Campano testified that the input would have been “very helpful” to the District. *Id.* Dr. Osterling opined that even if these ideas for intervention had been initially successful, once the novelty had worn off, the Student would have returned to noncompliance. She opined that there was very little chance these ideas for intervention would have been successful. Tr. 349 50.

²¹ The date on the consent form, exhibit P45, is erroneously typed as 3/28/2002. The year should read 2022. Tr. 935.

²² According to Ms. Yoho, Mr. Bascom was “in charge” of doing the FBA. Tr. 1101.

115. In the same March 31, 2022 email chain, Ms. Cassady stated that the Parents should be sharing with the District that the Student “is not really sustainable in the home/community setting right now.” P47 at 3. Ms. Cassady stated she was “surprised that the previous attorney [Ms. George] had recommended this strategy I have never approached a case by withholding information...I think it is important that we are a team with the District.” *Id.*

116. The Student refused to attend school for the entire month of April. P76 p.20. No FBA addressing school refusal had been completed as of the end of April. P76 p.21.

117. On April 28, 2022, the Parents filed the Complaint in this action.

118. The Student attended school on May 4, 5, and 6 for reasons unknown to his Parents. P76 p.21. He then refused to attend on May 9 (a Monday) and continued to refuse to attend until May 31st. Ms. Campano observed the Student to make progress when he did attend school. His socialization had improved in that he was approaching other children to ask if he could play with them. Tr. 1271

119. On May 13, 2022, the District shared the FBA and BIP with the Parents. P52 p.1. The BIP is dated May 6, 2022. D30. The FBA is dated April 23, 2022. P53 p. 4. The “contributing factors” portion of the FBA states, “Throughout [Student’s] life, he has had refusal behaviors in response to demand [sic] which has included intense aggression toward family, school staff, and therapy providers. [Student] is more likely to have refusal responses in non preferred activities and settings.” P52 p.5. The first target behavior identified in the FBA is “forceful physical contact with others resulting in attention and access to desired items and activities.” *Id.* The second target behavior is school refusal. *Id.* at 8.

120. The FBA provides that one intervention that had already been implemented was, “Behavior Technician in the home environment in the morning to model intervention strategies and assist in prompting and encouraging [Student] to attend school.” P53 p.7. The recommendations to the IEP team contained in the FBA do not provide for in home interventions other than a short period in the morning. One notable recommendation is that the Student “should notice a distinct difference between the amount and type of attention he receives for meeting expectations compared to when he engages in refusal behavior.” *Id.* at 9.

121. Mr. Bascom's hypothesis pertaining to school refusal was that when the Student was presented with a demand to get on the bus or attend school, he tried to avoid attending by verbal protests, shouting, and physical aggression. He may also have engaged in such behavior to gain attention and to access preferred items and activities. Tr. 1412-13. Mr. Bascom found that the student highly preferred parent attention. *Id.* at 1414. The interventions Mr. Bascom developed included functional communication, i.e., the Student was prompted to fully communicate his feelings and needs. Interventions also included reinforcement of steps toward the desired behavior of attending school. That entailed "a shaping procedure" in which steps toward the terminal goal of school attendance were gradually reinforced. *Id.* Moreover, when the Student did attend school, demands there would be reduced and he would be given a choice of activities. Only small steps were expected at first, and when the Student met an expectation, he would get a predetermined reward. *Id.* at 1415. According to Mr. Bascom, behavior toward the terminal goal needs to be shaped, and "you don't get there until you see some success with each step." *Id.* at 1416.

122. According to Mr. Bascom, when the Student verbally expressed his needs, such communication would be reinforced by honoring the request and allowing him some time before reminding him of an expectation. If the Student met a goal for the day, he would be given "high value attention" and a predetermined reward. Tr. 1417. If school refusal did occur, the response would be to minimize attention, validate the Student's feelings, remind him of the goal, and increase physical distance to avoid physical interaction. *Id.*

123. Regarding school refusal, the BIP states that the Student will be taught to use functional communication to express his refusal, by stating, for example, "I don't want to go to school." Antecedent strategies to precede the behavior include reducing demands at school and providing a choice of activities at school, among other things. "Consequence strategies" include letting the Student know he missed the chance to earn a predetermined reward and that he will have another opportunity on the next school day. *Id.* pp. P 54 pp. 4-5. The BIP further provides that the Student should receive "usual attention *after* school hours." *Id.* at 5, emphasis added. This implies that attention should be withheld or reduced during school hours on days on which the Student refuses to attend.

124. On May 18, 2022, Mr. Bascom emailed the Parents regarding the BIP. Mr. Bascom wrote that the crux of the plan was to reinforce steps towards school reengagement while also reinforcing the Student's use of functional communication to express his refusals. Mr. Bascom attached a flow chart to make the BIP easy to understand. He asked the Parents to create a list of activities and items that the

Student would be motivated to earn as rewards. He also stated that the first step for the Student should be small, such as getting out of bed and coming upstairs. Once the Student did that three days in a row, he would move to the next step, such as getting dressed. D117. The goal was not that the Student attend school on the first day because that was too big an expectation. Tr. 1416. The BIP was not implemented until on or about May 25, 2022. P 76 p. 21.

125. The Parents felt the FBA minimized the scope, longevity and severity of the Student's behaviors. P51. Dr. Osterling agreed with the Parents because learning the history and function of the targeted behavior is necessary in order to determine why the behavior is occurring. Tr. 250. Dr. Osterling also felt that the strategies set forth in the BIP had already been tried. Reducing demands and then gradually increasing them was not a new intervention for the Student. Dr. Osterling noted, "The Student was very happy to hang out with ABA providers, and the moment he detected there was a demand, we would see a huge escalation in behavior." *Id.* at 252. The Parents felt the BIP exhibited no understanding or acknowledgement of the extensive efforts they had already made, since the beginning of the school year, to reward the Student for school reengagement. The BIP did not contain any interventions that the Parents and their private therapists had not already implemented. *Id.* at 586. Nonetheless, the Parents provided ideas for rewards when the Student made efforts to attend school, such as making a smoothie or watching a preferred video. P76 p. 21 22.

126. On May 24, 2022, the Student asked to watch a video first thing in the morning. His father told him he had to get dressed first. The Student began screaming and hitting, and his escalated behavior lasted for 45 minutes. The Student ran downstairs and urinated in his bed. He punched his father in the eye, but eventually got dressed. Once the video was turned on as a reward, the Student took off his clothes and refused to go to school. P76 p.22.

127. On May 25, 2022, Mr. Bascom came to the family home for the first time. When he told the Student he needed to get dressed before he could watch a video, the Student threw a tantrum, screaming, hitting and throwing things. He ripped a bulletin board off the wall, but eventually got dressed. When the video was turned on, he immediately removed all of his clothes and hit Mr. Heggins. The Student did not go to school that day. P76 p.23.

128. On May 26, the Student got dressed in the morning but ran out the front door and down the block. He refused to go to school. On May 27, the Student got dressed and made a smoothie with his father, but refused to go to school. The Student attended school for four days straight from May 31 through June 3rd for reasons unknown to

his Parents. On each of those days, he got dressed and attended school without needing any reinforcement. P76 p.23. Mr. Bascom felt this was an indication that the Student could still go to school, and that the reasons he was avoiding school could potentially be overcome. Mr. Bascom took this as an indication that “we could have some success with the plan.” Tr. 1420.

129. The Student refused to go to school for the remainder of the school year. From February 28 through June 17, 2022, the Student attended school on 10 out of 69 available school days.²³ *Id.* at 27; P78.

130. The first goal in the BIP was that the Student would get dressed three days in a row with a minute or less of physical aggression. According to Mr. Bascom, that goal was not achieved. Tr. 1458. Mr. Bascom’s testimony as to this point is confusing in that the Student did get dressed and attend school for four days in a row from May 31 through June 3, but he did not ever get dressed for three consecutive days after that. The BIP called for the Student to be denied access to a predetermined reward if he did not meet the engagement goal. This meant that if the Student did not get dressed, he would not have access to the predetermined reward, such as a Snow White video, for the remainder of the day. It was up to the Parents to withhold the reward. *Id.* at 1459-60. Mr. Heggins and Mr. Bascom were only present at the family’s house for approximately 30 minutes per day, first thing in the morning. *Id.*

131. Mr. Parent was present each morning to implement the BIP. He observed that the BIP reinforced the Student’s escalating aggressive behaviors by teaching him that demands on him would be reduced in response to those behaviors. By the end of the BIP implementation period, the Student was rewarded for merely putting a shirt on over his pajama top, which was a regressed behavior compared to the beginning of the BIP implementation. See P76A p.181. The Parents feel the BIP failed to address the root cause of the Student’s school refusal behavior, which is his desire to avoid non-preferred activities such as attending school. P76 p.27.

132. On June 7, 2022, the Parents informed the District that they intended to unilaterally place the Student at Shrub Oak at the beginning of the summer and would be seeking reimbursement for that placement from the District. D121.

133. The Student’s IEP progress report from March through June of 2022 indicates that the Student was absent extensively. He attended eight SLP sessions during that

²³ On June 13, 2022, the family was on vacation and the Student did not attend school because he was out of town, not due to refusal. D120.

time. Several of his SLP goals were not “targets” during the sessions. D34 pp.1 3. No progress data was input for the months of April, May and June in the areas of reading, math, written language, adaptive/life skills, and social/behavior. D34.

Other information

134. Ellen Santarelli²⁴ was the Student’s SLP at Sanislo from the time he was in kindergarten. Tr. 1475. When the Student returned to hybrid learning, Ms. Santarelli’s services remained remote. He was making “solid progress” in the remote setting and it was best to not be wearing a mask during the sessions (masks would have been required if the session was held in person). *Id.* at 1476. Ms. Santarelli felt she was able to effectively provide SLP services to the Student remotely although there were times he did not attend sessions due to behavioral issues in the home. *Id.* at 1484.

135. Ms. Santarelli began delivering SLP services to the Student in person in the fall of 2021. Tr. 1484. He made progress on his speech/language IEP goals during the 2021 22 school year. *Id.* at 1490 96. The Student frequently moved around the room and sometimes left it during his SLP sessions. He received extensive support from his BT to stay attentive to the sessions. *Id.* at 1485 86, 1506 09. He did not engage in aggressive behavior with Ms. Santarelli although he did kick the BT during at least one session. *Id.* at 1485 86, 1513.

136. Ms. Santarelli opined that the Student has had functional communication since kindergarten, although if he is escalated it is hard for him to communicate. She believes he was getting an appropriate education at Sanislo during his time there and that he does not need a residential placement. Tr. 1501, 1527.

137. Ms. Campano observed the Student to have basic functional communication skills at school in the spring of 2022. Tr. 1274. He was able to ask to go to the bathroom, to tell adults when he was hungry, to tell other students to “go away” if they were too close to him, and to tell the staff when he was mad. She noted he started to talk about his emotions toward the end of the school year. *Id.* Ms. Campano does not believe the Student requires residential placement because he was making progress. *Id.* at 1275. However, Ms. Campano has never experienced a child with school refusal as extreme as the Student’s, both in the amount of refusal and the intensity of the refusal behavior. *Id.* at 1359 60.

²⁴ Ms. Santarelli has a bachelor’s degree in education and a Master of Science degree in speech and hearing science. Tr. 1474. She has been an SLP for 20 years.

138. Ms. Dazzo described the Student as “among the most behaviorally challenging children I have ever worked with.” P80 p.2. Ms. Dazzo frequently had to consult with the owner of BANDS, Graydon Agar, for advice regarding how to handle the Student’s behaviors. Ms. Dazzo noted that the Student’s behaviors escalated if attention was withdrawn or if he was deprived of his preferred activities. He also “cycled through a lot of behaviors” in that if one subsided, he would display another. The therapists were “constantly in this circle of trying to come up with strategies to de escalate him.” Tr. 853. Ms. Dazzo observed the Student to throw pots and pans and attempt to break glass items in the home. He would run into the street. On one occasion when Ms. Dazzo took the Student on an outing, he ran onto train tracks after the railings lowered (indicating the approach of a train) and she had to grab him from the tracks. *Id.* at 857. Ms. Dazzo does not believe that BANDS made consistent or sustained progress with the Student. Based on her observations, Ms. Dazzo’s professional opinion is that the Student requires a residential placement in order to develop behavioral and adaptive skills. P80 pp.2 4; Tr. 853, 911.

139. Ms. Yoho testified that Mr. Bascom was the BCBA providing ongoing supervision of Mr. Heggins. Tr. 1125. Ms. Campano, too, believed Mr. Bascom was supervising the SCC BTs and that he understood that. *Id.* at 1294 95. Ms. Campano also believed Alex Byers of SCC, who had worked with the Student at school, was a BT in that this is what she had been told. *Id.* at 1296.

140. The parties stipulated that Alex Byers and Darius Heggins are both employees of SCC, are not registered behavior technicians, and are not certified behavior technicians. C3. The parties further stipulated that Alexandra Feinberg is an employee of SCC, was the supervisor of Ms. Byers and Mr. Heggins, and is not a BCBA. The parties further stipulated that Rachel Barrett of the District is not a BCBA. *Id.*

Current status Shrub Oak Fifth Grade

141. On July 1, 2022, the Student was placed by his Parents at Shrub Oak in Mohegan Lake, New York. The Parents have visited him there several times. Ms. Parent has seen marked improvement in the Student’s behavior and adaptive skills since he has been at Shrub Oak. Prior to attending, he would not wash his hair, and needed help using the toilet and washing his hands. He would not brush his teeth without assistance. P77 p.49. He had not bathed for three or four weeks prior to his arrival at Shrub Oak. Tr. 675. As of September 26, 2022, the Student was almost completely independent in his hygiene routine. He bathes almost entirely by himself and washes his hands thoroughly. P77 p.49.

142. The Parents have borrowed heavily from their retirement accounts and the equity in their home to finance the Shrub Oak tuition. P77 p.49. They had paid \$375,695 in tuition and fees to Shrub Oak as of October 6, 2022. C2. They had also incurred approximately \$5,800 in travel expenses to transport the Student to Shrub Oak and to visit him there.²⁵

143. Information about Shrub Oak was presented at the due process hearing by Dr. Caitlin Sweetapple and other Shrub Oak staff members. Dr. Sweetapple²⁶ is the Director of Education. P65 p.1. Shrub Oak is a private coeducational therapeutic day and boarding school for students aged 8-30 who are on the autism spectrum. It focuses on students with complex challenges who typically have co-occurring disabilities in addition to autism and have high personal attention needs. Shrub Oak is approved by the Office of Superintendent of Public Instruction (OSPI) as a non-public agency.²⁷ *Id.* at 2; Tr. 413. There are currently 78 Students at Shrub Oak. Tr. 414.

144. Students at Shrub Oak live in a contained holistic community that permits them to participate in school, recreational activities with peers, household life, and vocational opportunities. Highly trained and specialized staff deliver integrated specialized instruction and related services throughout the daily life of the students. Residential staff are always with students. P65 2 5. According to Dr. Sweetapple, it is “imperative that our students have around the clock services, as well as the same interventions during the school day that they are receiving during residential hours, in order for the students to make adequate progress.” Tr. 417. There are three service departments in Shrub Oak: the education department, the campus life department, and the clinical department. Service providers include special education teachers, psychiatrists, SLPs, OTs, physical therapists, mental health providers, BCBA’s, social workers, psychologists, and nurses. P65 pp. 3-4; Tr. 415-17. The teachers and professionals are all certified or licensed in New York. Tr. 418. A transdisciplinary meeting is held every weekday regarding every student to ensure consistent programming around the clock. *Id.* at 422. Shrub Oak conducts parent trainings online

²⁵ This figure is approximate in that it does not account for frequent flier miles used to purchase airfare. It also includes expenses for the Student’s sibling to accompany the Parents on a visit to Shrub Oak in September of 2022. C2.

²⁶ Dr. Sweetapple has a doctorate in Education Leadership for Diverse Communities and has worked with students with autism for over 12 years. P65. She is also an Advanced Crisis Prevention Institute Trainer. *Id.* at 2.

²⁷ A non-public agency is a private school or facility approved by OSPI with which school districts can contract for the provision of special education services. See WAC 392-172A-04080.

every month and communicates directly with individual parents regarding their student. *Id.* at 419 20.

145. Shrub Oak created an “individual support plan” (ISP) for the Student as well as an individualized transdisciplinary education plan (ITEP) which is similar to an IEP. P59; Tr. 431 33. The ISP provides for occupational and speech therapies for the Student. Shrub Oak also performed an FBA of the Student. It identifies physical aggression, refusals (which include non compliance and school refusal), and elopement as target behaviors. P61. The FBA identifies a lengthy list of triggers of the target behaviors including non preferred activities, task demands, receiving an instruction relating to the need to be safe, transitions, anxiety and distress, waiting for a preferred activity, completing a preferred activity, being blocked from engaging in ritualistic behavior, need for sensory stimulation, attention of staff being directed at someone else, and a preferred staff member being unavailable. *Id.* at 5. The FBA notes that the Student performs best in a highly structured and predictable environment with close one to one support, and that implementation of clear expectations and rules is crucial. *Id.* at 9. The Shrub Oak staff consistently models how to effectively communicate, and behavior data is collected weekly, during both education and residential hours. Tr. 424 25.

146. A BIP was also developed for the Student at Shrub Oak. P61.

147. The Student’s classes at Shrub Oak include math, English language arts, science, social studies, art, music, and physical education. P60. There are five students, one teacher, and four educational assistants in the Student’s classroom. He receives one to one paraprofessional support for behavior during residential and educational hours, and for 16 hours per day on weekends. Tr. 428. As of September 23, 2022, the Student had attended school every school day, although he has not attended any elective music classes and one of his goals is to attend that class. P65 p.7. Tr. 446 47. He has made tremendous progress in his ability to engage in academic work. The Student is working on addition and subtraction and sight word recognition. The length of his episodes of dysregulation have decreased, and he has greatly improved his ability to participate in recreational activities in group settings. Tr. 438.

148. The Student is given medication by medical staff at Shrub Oak as needed, and has received such medication at least four times. *Id.* at 457 60. The medication is Seroquel, which is an antipsychotic medication the Student had been taking prior to going to Shrub Oak. *Id.* at 678. The Student’s instances of dysregulated behavior increased in September of 2022 as compared with July and August. Dr. Sweetapple

attributes this to increased demands being placed on the Student as the academic program progressed. *Id.* at 465.

149. Dr. Sweetapple was questioned at the due process hearing about several instances of the Student's behavior that did not generate an incident report but should have. For example, on September 20, 2022, the Student was denied the use of glue. In response, he took off his clothes, urinated on the floor, and was kicking, screaming and spitting. D139. He required medication with Seroquel. This constituted an "incident," but no incident report was generated as to this occurrence. Tr. 463-64. There was at least one other such instance. *Id.* at 462. From this it is inferred that the number of instances of dysregulated behavior on the part of the Student of which Dr. Sweetapple is aware may not be entirely accurate.

150. It typically takes Shrub Oak students three to five years to become sufficiently regulated to return to their home community. Tr. 440-41.

151. Emily Trapani²⁸ is the Student's SLP at Shrub Oak. She has 16 students on her caseload, all of whom are autistic. Tr. 635, 637. Ms. Trapani provides two 30 minute sessions of speech and language services to the Student per week. She also provides group services in his residential and educational settings. For example, every Wednesday Ms. Trapani is the Student's 1:1 support in his "club group," so the Student gets additional therapy at that time. P70; Tr. 638.

152. Ms. Trapani works with the Student to develop his skills in receptive language, expressive language, and pragmatic language. Tr. 641. Currently, they are working on following multistep directions. *Id.* Ms. Trapani has observed that the Student is progressing with his speech and language skills. He is also "much more focused and attentive" in working with Ms. Trapani than he was when he came to Shrub Oak. P70 p.3.

Expert Testimony

Dr. Osterling

153. Dr. Osterling's clinical impression of the Student is that he is a high energy, socially motivated, easily bored boy who has difficulty communicating. She believes the Student's nonverbal reasoning skills are significantly higher than his verbal abilities. He is constantly in need of stimulation but does not know how to get it in a

²⁸ Ms. Trapani has a bachelor's degree in communication science and a master's degree in communication disorders. Tr. 635.

prosocial manner, so he engages in a high level of negative attention seeking in order to get his needs met. He is also extremely persistent and tends to be obsessive compulsive. Tr. 188. The Student wants to engage in social interactions but has difficulty doing so successfully. *Id.* at 189.

154. Dr. Osterling has not observed the Student in public school since 2018. Tr. 279. She did not work with the Student directly very often. Rather, she trained the Parents in how to implement supports for him. *Id.* at 190. However, periodically she observed him and talked with him briefly when he came to appointments with the Parents. *Id.* Much of her information about the Student came from the Parents. *Id.* at 322.

155. On April 27, 2022, Dr. Osterling wrote a lengthy letter setting forth her professional opinions and recommendations for the Student. She expressed concern that the Student was learning that “maladaptive and aggressive behavior is the way to effectively communicate your needs and get them met.” P50 p.1. He was also learning “that he is incapable of dealing with discomfort and that any type of challenge is beyond his capability.” *Id.* Dr. Osterling opined that the Student has a long history of struggling in the classroom dating as far back as kindergarten. These struggles have manifested behaviorally in aggression and persistent elopement, and the Student has repeatedly failed to learn in a school based special education program. Dr. Osterling detailed the variety of interventions that have been attempted with the Student, including BCBA support for the classroom teacher, private occupational therapy, one to one support in home instruction, and FBAs and BIPs. Despite four years of highly skilled professionals working together, the Student has remained unable to access an appropriate education in Dr. Osterling’s opinion.

156. Dr. Osterling further opined that the Student can be “totally fine” if you give him everything he wants. But as demands were placed on him, his maladaptive behavior became increasingly entrenched. Tr. 200 01. The Student’s school refusal in the spring of 2022 was consistent with his functional pattern of avoidance as a communication and coping strategy, which has increased in severity over time. P50 p.2. Dr. Osterling opined that the Student does not have the component skills required to engage in the level of learning required in the classroom setting. In her view, the problem is not school refusal; the problem is that the Student lacks the foundational skills necessary to learn. Dr. Osterling opined that the Student needs significant intervention that is “intensive, integrated, systematic and consistent throughout his whole day, every day,” that “relentlessly targets the development of foundational learning skills.” *Id.*

157. Dr. Osterling has observed that with a “tightly coordinated, very systematic and quick responding, fine tuned system, we could keep a lid on [his behaviors] enough that he could gain skills.” Tr. 202. This required a level of intensity, collaboration and coordination that is “usually unheard of” for a child in a home placement. *Id.* at 203. Dr. Osterling’s opinion is that the Student needs to be placed in a residential treatment center that has expertise in teaching children with autism skills that can be generalized to less restrictive environments, such as a self contained classroom in a neighborhood school. P50 pp.2 3. In her opinion, focusing on the school refusal behavior masked the underlying problem and had become unsafe in that the Student was becoming increasingly aggressive in order to get his needs met. Dr. Osterling also cautioned that denial of his daily activities as a method to avoid reinforcing school refusal would be damaging to the Student. *Id.*

158. Dr. Osterling rarely recommends residential placement for children on her caseload. Tr. 218. Dr Osterling does not believe that intensive home based ABA intervention would be successful with the Student at this point. *Id.* at 217. She opined that the extremely well qualified private ABA providers who previously worked with the Student were not able to keep their behavior techs safe, which is a minimum requirement “for even thinking about attempting an ABA program.” Even if the Student were to attend a specialized day school program, he would lack the highly coordinated, around the clock structure and support he needs. *Id.* at 254. Dr. Osterling estimates that the Student requires residential placement for a minimum of two years. *Id.* at 347. However, any decision to change the Student’s placement would have to be “criterion based,” i.e., the frequency and fluency of his skills with high support, moderate support, and low level support would need to be measured. Once he is able to demonstrate functional communication and other necessary skills at a “low level of support and be able to initiate and be fluent” in the skills, then a transition plan out of residential placement could be initiated. Such a plan would have to be highly coordinated. *Id.* at 346 47.

159. Dr. Osterling does not believe the Student can make educational progress outside a residential placement. *Id.* at 254. She observed the Student at Shrub Oak in September of 2022 for approximately 75 minutes via remote virtual observation. *Id.* at 352. She noted that his personal hygiene was greatly improved. Moreover, he was able to follow adult instruction at a level he was not following before. He was able to attend to and complete academic assignments. Self advocacy and functional communication were embedded in every interaction with Shrub Oak staff members, and there was significant teamwork on the part of the staff. *Id.* at 254 55. In Dr. Osterling’s opinion, having functional communication embedded in every interaction with staff throughout the day is essential and is the only way the Student is going to

learn. The same interventions, approach, prompting and support need to be implemented with the Student at all times for the interventions to succeed. The level of intensity is not something that family members can provide in a home environment. *Id.* at 345 46.

160. The District questioned the reliability of Dr. Osterling’s opinions in part because of her record keeping. The “progress” box in her note taking template requires an entry, but Dr. Osterling admitted at the due process hearing that those entries were not always accurate. She would “check a box” from a drop down menu “so she could close out of the program” even if the checked box was not accurate. Tr. 286. Her rationale for this was that the “progress” entry is not important to her and her patients “do not fit in a box.” *Id.*

161. The opinions Dr. Osterling expressed are well reasoned. They are supported by extensive knowledge of the Student and his family and are supported by the evidence presented in the due process hearing. For these reasons, Dr. Osterling’s opinions are given substantial weight.

Shannon Crissey

162. Ms. Crissey personally worked with the Student while CBC was providing services to the family. Prior to working at CBC, Ms. Crissey was employed as an Educational Resource Specialist at the University of Washington Haring Center Professional Development Unit. In that position, she created and conducted intensive multiday trainings on the provision of specialized instruction and intervention to children with disabilities, typically with an emphasis on inclusion in the public school setting. She is well versed in the aspects of serving students with extreme behaviors in a school setting. P72 p.5. Ms. Crissey has also worked in the District to provide behavioral support for students. Based on her experience, she does not believe the District has the resources to manage the Student’s behavior.

163. Ms. Crissey has worked with numerous students with autism in her career, both in the public school system, and in community and home settings. The Student is the only child she has worked with about whom she can opine with “100% certainty” that he needs a therapeutic residential school placement in order to access his education. P72 p.6. By the time CBC attempted to serve the Student, he was so resistant toward school and other demands that the possibility of working on academic goals, or other important but challenging skills, seemed “utterly futile” to Ms. Crissey. P72 p.6. The level and intensity of his behaviors, as well as the “creativity” and unpredictability of the challenging behaviors completely prevented the providers from implementing

interventions even in a highly controlled environment. Tr. 317-72. The range of problematic behaviors displayed by the Student were more than Ms. Chrissy had ever seen with any other student or client. If one behavior was mitigated, a new one would arise. *Id.* at 373. She cannot envision “any scenario” in which staff members in a traditional classroom environment could manage the Student’s behaviors to the point where he could access an education. *Id.* at 374. She opined, “It’s not about being in the building... It’s about accessing education... My biggest concern with him was that time just seemed to be slipping away and he was losing what is clearly going to be important skills that he needs to learn.” *Id.* at 376.

164. Ms. Crissey did not ever observe the Student in the school setting and she did not speak with any of his District teachers. Tr. 401-02.

Dr. Jones

165. Dr. Christopher Jones testified as an expert for the Parents at the due process hearing. Dr. Jones holds a Ph.D. in developmental psychology. He is a BCBA and a licensed behavior analyst. P63. A BCBA is a national certification in behavior analysis granted by the Behavior Analyst Certification Board. The license is from the Washington State Department of Health. Tr. 97.

166. Dr. Jones is an adjunct faculty member at the University of Washington Applied Behavior Analysis Graduate Program at which he teaches professionalism and supervision. P63; Tr. 97. Dr. Jones was a consultant at the University of Washington Haring Center from 2014-2020, where he provided clinical support to challenging students and their IEP teams. Tr. 98. Dr. Jones has experience reviewing IEPs and has participated in the IEP team process. He has conducted approximately 80 FBAs and has helped develop BIPs in school districts. *Id.*

167. Dr. Jones is an expert in behavior analysis and has focused on children with autism since 2001. Tr. 100. Dr. Jones was asked by the Parents to conduct an evaluation of the effectiveness of the Student’s educational programming by the District and his current placement at Shrub Oak. P79.

168. Dr. Jones wrote a lengthy “Expert Opinion Evaluation Report” pertaining to the Student. P79. The “Overall Conclusions” section of that report provides as follows, in part:

[Student] has been engaging in challenging behaviors at school and at home consistently since as early as March of 2018. These challenging

behaviors include physical assault on others in his environment, property destruction, elopement into unsafe environments, unsanitary toileting behaviors, and school refusal. Because of these behaviors, [Student] has experienced inconsistent access to least restrictive environments that are sufficient to meet his educational needs. As a result, over time, [Student] has learned complicated maladaptive and challenging behavior routines to get his complex needs met. While [Student] has developed a history of school refusal, in the 2021-22 school year, his additional challenging behaviors evolved to include high rates of aggression and school refusal which resulted [in] his near complete refusal of school from the end of February through the end of the school year. Numerous evidence based and empirically supported intervention approaches and strategies have been attempted with [Student] to reduce and/or eliminate these challenging behaviors over the years dating as far back as 2017. These strategies and interventions have been developed and implemented by highly qualified professionals with extensive experience in the fields of behavior analysis and education and were hired and paid by the parents on many occasions and by the school district on others. Unfortunately, those efforts were unsuccessful in reducing [Student's] challenging behaviors sufficiently enough that he is able to access a free and appropriate public education where he is progressing in attaining his educational and developmental needs.

Because of [Student's] inability to access a sufficient and necessary education, as of July 1, 2022, [Student's] parents made the difficult decision to place him at Shrub Oak International School in Mohegan Lake, New York where he is now residing and attending school. According to reports from Shrub Oak clinical, residential, and educational leadership and associated personnel, [Student] has successfully transitioned to this new environment. This is evidenced by multiple metrics including but not limited to his full attendance in school (e.g., he has not missed a single day of classes since they began on July 11), the important increase in his ADL's (Activities of Daily Living), and a reduction in the frequency of his challenging behaviors. In addition, [Student] is now experiencing multiple opportunities each day to engage in social interactions with similar aged peers, he participates in his community, and he is accessing learning opportunities in his classroom that have been missing since February. This has all occurred in less than 3 months.

It is because of this success noted above and the lack of consistent and sufficient progress within Seattle public schools over the past 5 years that it is my professional recommendation that Seattle Public Schools continue [Student's] placement at Shrub Oak for a minimum of four years, at which point the team should reconvene, evaluate [Student's] progress, and make the determination if services in that environment should continue or transition back within geographical boundaries of the school district.

P79 pp.1 2.

169. Dr. Jones further concluded that, due to the extent of the Student's "past challenging behaviors and the inability of his educational and clinical teams to consistently reduce them, [Student] has not accessed sufficient opportunities within an educational environment to benefit from the instruction of his teachers, nor has he accessed the social and communication opportunities when participating in school with his peers." Because of this, the Student is now several years behind his typically developing peers across nearly every area of development and academics. P79 p.7.

170. In forming his opinions, Dr. Jones reviewed 11 IEPs/IEP amendments, progress reports starting in 2017, two evaluations, six FBAs, six BIPS, clinical data commencing in 2020, treatment plans from BANDS and CBC, as well as other documents. P79. He observed the Student at Shrub Oak for two hours on September 28, 2022, via remote video.²⁹ D148; Tr. 746. Dr. Jones did not speak with anyone from the District and did not conduct any direct assessments of the Student. Tr. 772 74. Dr. Jones spent more than 30 hours reviewing material to develop his opinions. *Id.* at 774

171. Dr. Jones assessed the Student's IEP goal progress between 2018 and 2022 and determined that half of the goals showed almost no progress. P79 p.3. This indicated the Student was not making sufficient progress. Tr. 112. Dr. Jones opined that the March 9, 2021 IEP should have included an FBA and BIP due to the Student's level of challenging behaviors. P79 p.3.

172. Dr. Jones opined that the Student would have been able to return to in person learning in March of 2021 without exhibiting increased problem behaviors if he had been getting the support he needed during remote learning. Preparation for return to

²⁹ These observations occurred after Dr. Jones wrote his initial report, but the observations did not change any of the conclusions set forth in the report.

the in person setting should have been part of his programming so that he was prepared for the transition. Tr. 789.

173. Dr. Jones noted that the Student was engaging in “very high frequency” maladaptive behaviors at the time the October 2021 BIP was put into place. Tr. 116. The frequency of escalated behavior at school severely diminished the Student’s ability to benefit from instructional time because there is a long period after escalated behavior subsides during which a child is calming back to a state in which they can benefit from instruction. *Id.* at 117.

174. Dr. Jones opined that the District’s most recent BIP should have focused on noncompliant behaviors in response to task demands in general, not just on school refusal which is only one such behavior. Tr. 753.

175. Dr. Jones opined that the Student’s BIPs included strategies and intervention approaches that were well thought out, based on best practices in the field of behavior analysis, and were explained in such a way that most paraprofessionals and direct care staff would understand them. He was concerned, however, that despite the existence of these plans and the wealth of knowledge and backgrounds that multiple professionals brought to support the Student’s programming, his challenging behaviors were constant at best, and progressively worsened as time went on. From this, Dr. Jones concluded that “skill and knowledge about behavior change was not the issue that was affecting [Student’s] success.” P79 p.5. Rather, the Student was “just too complex for everyone.” Tr. 755.

176. Moreover, Dr. Jones opined that the Student’s BIPs from 2021 and 2022 were not successful because he was not accessing consistent strategies at all times. The strategies in place at school were not necessarily in place at home and the Student got “mixed messages.” As Dr. Jones described, “[D]espite the best efforts of the parents to try to listen to the recommendation of the school...they are not behavior analysts. They’re not trained in these types of complex maladaptive behaviors. So there’s no reason to expect that they would be able to implement these strategies with someone as complex as Student. So he was just not given the support across both environments.” Tr. 759 61.

177. Dr. Jones further concluded that Shrub Oak’s program looks very promising for the Student and its model appears to be working. Dr. Jones noted that the Student had only engaged in 13 episodes of physical aggression across more than 76 days, and his instances of yelling/screaming and elopement were drastically reduced. P79 p.5.

178. Dr. Jones recommends the Student be placed at Shrub Oak for a minimum of four years because he has gotten farther and farther behind as time went on. It took at least two years for the Student to develop severely challenging behaviors so it will take two years to unlearn those behaviors. Then he still needs to “catch back up.” Tr. 767 68.

179. Dr. Jones erroneously thought the Student was attending school for only three hours per day during the 2021 22 school year. The Student was, in fact, attending for full days, when he did attend. Tr. 791.

180. Dr. Jones was recalled by the Parents on the last day of the due process hearing to rebut the testimony of Dr. Brooks. The District objected continuously through the rebuttal testimony that it was not actually rebuttal and should not be permitted. Tr. 1782 86, 1790 96. For clarity of analysis of this issue in the Conclusions of Law, below, Findings of Fact as to what Dr. Jones testified to in rebuttal include the following:

There is no certification or degree that qualifies a person to be a “school refusal expert.” School refusal is a behavior, and ABA functions to address behavior, be it school refusal or something else. Dr. Jones therefore opined that he is qualified to address issues of school refusal. Tr. 1797 98.

Appropriate supervision of BTs implementing a BIP is “incredibly important.” Tr. 1805. A BT cannot make clinical decisions and cannot determine if an intervention is working. *Id.* Appropriate supervision makes a big difference as to whether a BIP is successful. *Id.* at 1807.

During the implementation of the school refusal BIP in May and June of 2022, the BT should have remained in the family home for longer than 30 minutes, in Dr. Jones’ opinion. Tr. 1808. Thirty minutes is insufficient, and it is “pretty standard” that a BT should engage in a much longer period of time to attempt to get a child to go to school.

According to Dr. Jones:

“There’s absolutely a standard in our field of applied behavior analysis that with any behavior change program we try or any behavior change strategies, we try that strategy three times. And if it's not successful or we're not making progress, we change that strategy. And it could be

three times on the same day. It could be three times across across three different days. But basically you try it three times and you make a change. And if you don't see progress after three more times, you make a different change. If you start to see progress, maybe you continue that strategy for another two or three days to see if progress is continuing to be made. So it's not to say that they would have to write an entire new BIP every three days. But they definitely need to be changing their strategies every three times that they attempt them.”

Tr. 1812 13.

181. Dr. Jones’ explanation of his report and his recommendations reflect a thorough assessment of the Student’s needs, and starkly highlight the interventions the Student repeatedly received that did not result in his behavior improving. Dr. Jones’ opinions are very detailed and are supported by specific evidence. For these reasons, Dr. Jones’ opinions are given very substantial weight.

Dr. Brooks

182. Dr. Allison Brooks has a Ph.D. in school psychology. She is currently the clinical director and a licensed psychologist at Brooks Powers. D150. Dr. Brooks has previously served as a psychologist and director of professional training at the University of Washington Autism Center, as well as the clinical director of the University of Washington’s Tacoma Autism Center. Dr. Brooks has also been an adjunct and affiliate lecturer in the University of Washington education department. She has served as the clinical site supervisor of practicum students, doctoral interns and postdoctoral fellows at the University of Washington School of Psychology and the Seattle Pacific University clinical psychology programs. *Id.* Dr. Brooks has been working with people with autism since she was in college and considers herself an expert in the area of autism in children. Tr. 1602, 1607.

183. Dr. Brooks is the co owner of Brooks Powers, which she and Tom Powers started in 2006. Brooks Powers is an interdisciplinary group that includes licensed psychologists, mental health counselors, certified teachers, behavior technicians, and board certified behavior analysts. Brooks Powers performs comprehensive neuropsychological and other psychoeducational evaluations. They also provide individual therapy, family coaching, school consultation, group therapy, and trainings. Tr. 1603. Approximately half of Brooks Powers’ work is performed directly for school districts, and the other half is through private arrangements with families. *Id.* at 1604. Brooks Powers works primarily with children. *Id.* at 1605.

184. Dr. Brooks has extensive experience consulting with IEP teams, and Brooks Powers frequently works with students exhibiting school refusal behaviors. Tr. 1605. Brooks Powers performs evaluations of students exhibiting school refusal, and also provides training to school teams, clinical providers, and families regarding how to address school refusal behavior. Tr. 1605 06. Dr. Brooks estimates that she has worked on 50 100 cases of school refusal during her career and considers herself an expert in addressing school refusal. *Id.* at 1606 07.

185. Dr. Brooks opined that there are different degrees of school refusal. “Acute” school refusal is a pattern of significant refusal behavior lasting from two weeks to a year. “Chronic” school refusal is behavior that has gone on for more than a year. Tr. 1612. By the time school refusal has become acute or chronic, it is due to a complex web of multiple factors and reversing the pattern can be a lengthy process. *Id.* Dr. Brooks opined that “ideally,” a school district should address a student’s school refusal behavior within one week. *Id.* at 1734.

186. According to Dr. Brooks, parents are not the cause of school refusal in children. However, parents play an important role in addressing school refusal because the need for communication and collaboration across all settings is critical to the success of efforts to remediate school refusal. Tr. 1613.

187. Dr. Brooks has supported placing students in residential placements at times. Tr. 1608. She described one of the greatest benefits of residential placement as the capacity to provide consistent programming and responses to behavior throughout all contexts of a child's life. Residential placements provide consistency across the living situation, educational setting, and clinical services of a child. According to Dr. Brooks, one of the most significant downsides to residential placement is separation from the child’s family, home, and community. There are also safety risks in residential placements from inappropriate staff training and behaviors of other children. Moreover, it can be difficult to transition a student back to their home, and there is a risk that behaviors that led to disruption in the home in the first place will re emerge once a child returns. *Id.* at 1609 10.

188. The District asked Dr. Brooks to provide expert testimony in the present case. In preparing to do so, she reviewed progress notes from Dr. Osterling, emails between Dr. Osterling and others, progress notes from SCC, emails and documents created by Mr. Bascom, and school documents pertaining to the Student from 2016 to the present such as IEPs, evaluation summaries, and PWNs. She also reviewed documents from Shrub Oak, BANDS, Crissey Behavioral Consulting, and Dr. Jones’

expert report. Dr. Brooks also watched videos of the Student exhibiting school refusal behavior. Tr. 1616-17. Additionally, she had a phone call with Mr. Bascom in order to “better understand the general aspects of the case and his role.” *Id.* at 1709. Dr. Brooks spent approximately 10-15 total hours reviewing material in order to develop her opinions and prepare to testify. *Id.* at 1735. She did not write a report of any kind. *Id.* at 1736.

189. Dr. Brooks opined at the due process hearing that the Student does not require residential placement and a residential placement is not his least restrictive environment. Tr. 1623. She believes the Student made progress toward his educational goals from March of 2021 to the beginning of 2022. *Id.* at 1652-53. Dr. Brooks described the Student as being in the “acute” phase of school refusal in the spring of 2022 and she opined that there was not a sufficiently sustained period of intervention to make a determination about whether the interventions designed to address school refusal were effective. *Id.* at 1666. Dr. Brooks opined that it is significant that the Student attended school on some days in the spring of 2022 because this indicates an interest in returning to school and positive benefits from being in school. She opined that efforts to continue implementing the BIP designed to get the Student back to school “should be promising.” *Id.* at 1667.

190. Dr. Brooks was asked by the undersigned how long a BIP should be implemented before it can be determined whether it is working. Tr. 1736. In response, Dr. Brooks did not offer a period of time that would be reasonable to determine whether the Student’s school refusal BIP would be effective. She stated,

The challenge in school refusal cases is the need for good collaboration and communication and consistency across settings and implementation of a plan because school refusal is a behavior and and or because school refusal is something that develops over time, and typically as a result of factors in multiple settings for an individual student, the response plan or the response needed to to effectively address that problem also requires participation and collaboration from individuals across multiple settings. So that type of collaboration, communication, and work can... take quite a bit of time. And how much time it takes depends on the consistency depends in part on the consistency and collaboration among all the parties.

Id. at 1736-37. Dr. Brooks opined that it is “very important” that the various parties implementing a school refusal plan trust each other in order to collaborate. If such

trust is strained or breached, either the team members need to change, or clinical skills need to be applied to address the breach. *Id.* at 1747.

191. Dr. Brooks further opined that other factors need to be considered in school refusal, such as whether a child's behavior is deteriorating so much that intervention is unlikely to work. Tr. 1742. She also noted that school refusal often involves a significant element of anxiety on the part of the child, and there should be a professional on the team that has expertise in addressing anxiety. *Id.* She identified Dr. Osterling as a person who could address the Student's anxiety. *Id.* at 1742-46.

192. Dr. Brooks opined that the BIP developed by the District in May of 2022 was an appropriate method by which to address the Student's school refusal. Tr. 1670-71. Dr. Brooks disagrees with Dr. Osterling's opinion that, because CBC already tried a similar reduced demand BIP, the May 2022 BIP is likely to be unsuccessful. *Id.* at 1677.

193. Dr. Brooks has no clinical relationship with the Student and has never met him, although other members of Brooks Powers have worked with the Student. Tr. 1680-81, 1702. Dr. Brooks testified that Mr. Bascom's involvement providing services to the Student did not change her opinion or overall impressions of the case. *Id.* at 1712.

194. Dr. Brooks' opinion as to residential placement is not persuasive. The relatively short amount of time she spent reviewing the Student's very copious records gives the undersigned pause as to the depth of understanding Dr. Brooks was able to gain regarding the Student and his history. Moreover, Dr. Brooks' opinion is somewhat incomplete in that she did not explain why the Student's behavior should not be considered to have "deteriorated to such a point that intervention was unlikely to work." She also did not elaborate as to how the Student's anxiety was being addressed in the BIP or his IEP despite anxiety likely being a "significant factor" in his school refusal.

195. Finally, Dr. Brooks was in the awkward position of opining as to the appropriateness of a BIP that her own employee, Mr. Bascom, helped develop and implement. Brooks Powers would benefit financially if the Student were to remain in the District and continue receiving services from them rather than being in a residential placement. While the undersigned is persuaded that Dr. Brooks did not consciously allow these factors to influence her opinion, the factors do undermine her neutrality and therefore her credibility to at least some degree.

196. For these reasons, Dr. Brooks' opinion is given less weight than the opinions of Dr. Jones and Dr. Osterling.

Licensure and oversight requirements of certified behavior technicians and BCBAs

197. Dr. Jones was the primary author of the Washington statute creating a Department of Health license for behavior analysts. P79 p.1. He described the licensing and credentialing as follows: There are three classifications of behavior service provider licenses in Washington. A certified behavior technician (CBT) provides services directly to a client. Tr. 104. A licensed assistant behavior analyst and a licensed behavior analyst are authorized to conduct an assessment of a client and write a treatment plan. They then supervise the CBTs who implement the plan. *Id.* In Washington, CBTs must be supervised by a licensed behavior analyst. Tr. 108.

198. Darius Heggins is not a CBT in the State of Washington. Tr. 745.

199. A BCBA is a credential bestowed by the Behavior Analyst Certification Board. Tr. 105. See P71 p.1.

200. Employees of a school district do not need to have a license as a CBT in order to work as a BT with students. Employees of a school district who supervisor district BTs also do not need to be licensed. However, outside contractors or consultants who are not employed directly by a school district *do* need to be licensed as CBTs, behavior analysts or assistant behavior analysts. Tr. 105.

Procedural issues in the due process hearing

201. At the due process hearing, the District repeatedly objected to the introduction of evidence regarding the licensure of "behavior technicians" and their supervision requirements in Washington. The District asserted that this issue was not properly before this tribunal in that the only issues the Parents identified related to implementation of the Student's IEPs are instruction and transportation. Tr. 1773 78.

202. The undersigned did not hear or decide any pretrial motions pertaining to discovery. The District submitted a letter on September 13, 2022, pertaining to a discovery dispute. By order dated September 15, 2022, the Parents were given time to respond to the District's letter and September 22, 2022, was set as the date to hear the motion. However, the parties resolved the dispute, and the motion was not heard or decided by the undersigned. See Chalfant letter of September 20, 2022, in OAH case file.

203. On May 31 and August 18, 2022, the Parents filed “clarifications” of the issues to be heard at the due process hearing. The District did not object to these clarifications and the issue statement was amended accordingly. The District did not bring any motions to clarify or narrow the issues.

204. On September 19, 2022, Ms. Cassidy wrote to Mr. Chalfant in response to the District’s requests for facts supporting the issues for the hearing. D151. Ms. Cassidy asserted that the Parents are not required to identify all facts supporting their allegations, but she did provide additional information.

205. Dr. Brooks was deposed by the Parents’ attorneys on September 22, 2022, prior to the due process hearing. She was asked at her deposition about whether someone from Brooks Powers was supervising Mr. Heggins. She responded, “Not to my knowledge.” Tr. 1622-23.

206. The District also objected at the hearing that the rebuttal evidence offered by the Parents was not actually rebuttal. Tr. 1782-86, 1790-96. The only rebuttal witness the District called was Dr. Jones, who they recalled to rebut the testimony of Dr. Brooks.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings 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 IDEA; Chapter 28A.155 Revised Code of Washington (RCW); Chapter 34.05 RCW; Chapter 34.12 RCW; and the regulations promulgated pursuant to these statutes, 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. See *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Since the Parents are the party seeking relief in this case, they have the burden of proof. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party’s burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98

102, 101 S.Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

3. The IDEA and its implementing regulations provide federal funds to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982) (Rowley), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? 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 206-207 (footnotes omitted).

4. A FAPE consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" [FAPE] as defined by the Act.

Id. at 188 189.

5. The Supreme Court clarified the substantive portion of the Rowley test quoted above in 2017:

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. . . [H]is educational program must be appropriately ambitious in light of his circumstances .

..

Endrew F. v. Douglas County Sch. Dist. RE 1, 580 U.S. ___, 137 S.Ct. 988, 999 1000 (2017).

6. 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. 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*.” *Endrew F.*, 137 S.Ct. at 999 (emphasis in original). “An IEP is not a form document” and the “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* “Above all, an IEP team is charged with developing a ‘comprehensive plan’ that is ‘tailored to the unique needs of a particular child.’” *L.C. on behalf of A.S. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *21, 119 LRP 18751 (W.D. Wash. 2019), *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048 (9th Cir. 2022) (*quoting Endrew F.*, 137 S.Ct. at 994).

7. 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 benefit.

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

Whether the issue of licensure and supervision of the behavior technicians who worked with the Student is properly before this tribunal

8. WAC chapter 246 805 pertains to ABA. It defines a BCBA as a professional who is certified with the Behavior Analyst Certification Board (BACB) as meeting the education, training, supervised experience, and examination standards to practice ABA independently. WAC 246 805 010. A certified behavior technician (CBT) is defined as a person certified under RCW chapter 18.380. *Id.* RCW 18.380.010 defines a CBT as a paraprofessional who implements a behavior analysis treatment plan under the close, ongoing supervision of a licensed behavior analyst or a licensed assistant behavior analyst, but who does not design or supervise the implementation of a behavior analysis treatment plan. That provision of the RCW also defines a “licensed behavior analyst” as an individual who is licensed under this chapter to engage in the practice of behavior analysis and defines a “licensed assistant behavior analyst” as an individual who is licensed under this chapter to engage in the practice of applied behavior analysis under the supervision of a licensed behavior analyst. RCW 18.380.010(1) (4).

9. A person who is not certified as a CBT pursuant to RCW 18.380.020 may not represent themselves as a CBT. RCW 18.380.020. Prior to providing services, a CBT must disclose in writing the name and contact information of their supervisor. WAC 246 805 020. A CBT may not independently design or modify a client treatment plan. WAC 246 805 320. However, nothing in RCW chap. 18 380 prohibits an employee of a school district from performing their regular duties as long as the employee does not offer behavior analytic services to any person or entity other than their school district employer. RCW 18.380.020(3).

10. A Registered Behavior Technician (RBT) is defined as “a paraprofessional who is credentialed by the BACB to practice ABA under close ongoing supervision of a BCBA or BCaBA³⁰ who is responsible for the work performed by the RBT, and meets the education, examination and training standards of the BACB.” WAC 246 805 010(12).

11. In the present case, the District asserted at the due process hearing and argues in its briefing that the issue of whether the ABA professionals and unlicensed “BTs” working with the Student had the proper licensures and oversight is not properly before this tribunal. District’s Post Hearing Brief (District’s Brief) at 47 48. The District asserts that this question was not specifically identified as an issue for the hearing and was not identified as an IEP implementation issue during discovery.

³⁰ Board Certified Assistant Behavior Analyst.

12. A party requesting a due process hearing is not permitted to 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 USC § 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.*, *34 35 (upholding ALJ’s refusal to address claims raised for the first time in post hearing brief where the parent cited no evidence that the parties agreed to expand the scope of the 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.

13. Significant issues clearly identified for hearing in this matter include whether the Student’s IEPs were properly implemented, and whether the Parents’ unilateral placement of the Student at Shrub Oak was appropriate. These issues are analyzed in detail below, but a determination central to the IEP implementation claims is whether there is a discrepancy between the services an IEP required and the services the Student actually received. In order to make this determination, the services required and the services provided must be examined. When an IEP calls for services by a “behavior technician monitored by a BCBA,” as does the November 2021 amendment to the March 2021 IEP, the relevant inquiry is whether appropriate BT services were provided and whether they were monitored by a BCBA. Similarly, an element central to the determination of whether a unilateral residential placement made by a parent is appropriate is whether the child at issue was being offered FAPE at the time of the placement. The appropriateness of the Student’s IEPs and BIPs, and the behavior interventions the Student received, are integral to that determination. Thus, the training, experience and supervision of the ABA professionals delivering services to the Student is relevant to determinations that are properly and necessarily before this tribunal. Although the issue of credentialing and supervision of such professionals may not be specifically identified in the issue statement, it is subsumed in the analysis of the identified issues.

14. As set forth above, Washington law specifically dictates who can provide ABA services and what sort of supervision various ABA professionals require. The licensure of professionals working with a student, the employer of those professionals, and the supervisor of those professionals should be easy to ascertain and is information to which parents are entitled. However, the District’s refusal to provide such information in this case led to what the Parents aptly termed a “protracted cat and mouse drama”³¹ that played out in the hearing as the Parents attempted to prove who held

³¹ Parents’ Post-Hearing Brief at 8.

what credentials and who was supervising whom. In what could be deemed a comedy of errors were the situation not so profoundly serious, Ms. Yoho and Ms. Campano thought Mr. Bascom was the BCBA supervising the SCC personnel. But Mr. Bascom understood his role only to be that of a consultant, not a supervisor. Mr. Bascom thought Ms. Feinberg was the BCBA supervising the SCC “BT,” Mr. Heggins, who was not actually a certified BT even though the law requires that he be certified. But Ms. Feinberg is not a BCBA, and the District finally stipulated to that easily attainable fact three quarters of the way through the due process hearing. Ms. Barrett, the District “behaviorist,” was also involved in developing behavioral interventions for the Student and was consulted by Ms. Campano. However, she, too is not a BCBA and the District finally stipulated to that easily attainable fact three quarters of the way through the due process hearing, as well.

15. Parents should not be required to pay attorneys to take depositions and/or to engage in formal written discovery in order to ascertain the credentials of the professionals serving their child. This should have been a non issue on which no hearing time was spent. The District’s repeated assertion that the issue of credentialing and supervision of ABA providers was not properly before this tribunal, and that the District did not have to provide such information, is not well taken. Training, credentials and supervision of ABA professionals is an integral component of the provision of FAPE to the Student. The issue will therefore be considered and is addressed below.

Whether rebuttal testimony of Dr. Jones was appropriate and should be considered

16. The District argues that the rebuttal testimony provided by Dr. Jones was not actually rebuttal and should not be considered. The District asserts that the testimony could have been offered when Dr. Jones initially testified in the Parents’ case in chief and was not responsive to new matters raised by the District in its portion of the case. District’s Brief at 37-39.

17. Rebuttal evidence is permitted in administrative hearings. See WAC 10-08-200(9). Rebuttal evidence is defined by Black’s Law Dictionary as “testimony and evidence that shows that the evidence that was presented by the opposing party is not true.” <https://thelawdictionary.org/rebuttal-evidence>. Caselaw in Washington has established that rebuttal evidence is admitted “to enable the plaintiff to answer new matters[s] presented by the defense.” *State v. White*, 74 Wn. 2d 386, 394 (1968)(citation omitted). According to the Washington Supreme Court:

Genuine rebuttal evidence is not simply a reiteration of evidence in chief but consists of evidence offered in reply to new matters. The plaintiff, therefore, is not allowed to withhold substantial evidence supporting any of the issues which it has the burden of proving in its case in chief merely in order to present this evidence cumulatively at the end of defendant's case. Ascertaining whether the rebuttal evidence is in reply to new matters established by the defense, however, is a difficult matter at times. Frequently true rebuttal evidence will, in some degree, overlap or coalesce with the evidence in chief. Therefore, the question of admissibility of evidence on rebuttal rests largely on the trial court's discretion, and error in denying or allowing it can be predicated only upon a manifest abuse of that discretion.

74 Wn. 2d at 394 95.

18. The U.S. Court of Appeals for the Ninth Circuit has similarly held that “[t]he general rule has long been that whether material evidence (which could have been received as part of the case in chief) should be admitted in rebuttal, lies solely within the sound judicial discretion of the trial court.” *Rodella v. United States*, 286 F.2d 306 (9th Cir. 1960).

19. Dr. Jones' rebuttal testimony was relevant as to several topics. One pertinent point was that, in the field of behavior analytics, if progress addressing problem behavior is not achieved after three attempts with the same intervention, a new intervention should be implemented. This testimony rebutted Dr. Brooks' assertion that there is no standard timeframe for which a BIP should be implemented before it can be determined if the BIP is effective, an assertion she made in response to questioning by the undersigned. This inquiry does not appear to have been made by the Parents' counsel at Dr. Brooks' deposition and the response could not have been reasonably anticipated by the Parents. Dr. Jones' rebuttal to that response was therefore not an instance of the Parents "withholding" evidence in order to present it at the end of the case.

20. A second pertinent point of Dr. Jones' rebuttal was that there is no degree or certification that qualifies a person to be a "school refusal expert." This was in response to Dr. Brooks' testimony that she is such an expert and her company, Brooks Powers, has special expertise in school refusal. Dr. Jones' input as to what training and experience does or does not make a person a "school refusal expert" is valuable to the undersigned who is charged with weighing conflicting opinions of highly qualified experts. This is particularly true since the District argues in its briefing that Dr. Jones is not a school refusal expert, and his opinions should therefore be "disregarded."

District's Brief at 36-37. It is well within the undersigned's discretion to admit Dr. Jones' testimony about what does or does not make one "a school refusal expert" even if the testimony was provided in the rebuttal portion of the case. Moreover, it is not reasonable or realistic to expect, as the District seems to argue in its briefing, that the Parents would anticipate every aspect of Dr. Brooks' testimony and rebut her points before they were made, particularly since she did not submit a written report that could have been reviewed ahead of the hearing.

21. The third relevant aspect of Dr. Jones' rebuttal testimony pertains to specific aspects of implementation of the Student's school refusal BIP. Much of the rebuttal testimony addressed evidence that came out over the course of the due process hearing. Moreover, the protracted inquiry regarding credentials and supervision of ABA professionals should have been a non-issue, as set forth above. The degree to which the District refused to provide that information could not be anticipated by the Parents. Dr. Jones' rebuttal testimony is therefore relevant and admissible to rebut the Dr. Brooks' assertion that the Student was being offered FAPE in the spring of 2022.

22. Dr. Jones' rebuttal testimony was properly admitted. The Findings of Fact made above based on Dr. Jones' rebuttal testimony are appropriate and will therefore be considered in formulating conclusions of law.

Whether the District violated the IDEA and failed to offer the Student FAPE by failing to implement the January 9, 2020 IEP during the 2019-20 school year³²

23. It is clear in the Ninth Circuit that a "material failure" to implement an IEP violates the IDEA. *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the Child's IEP." *Id.* A child's educational progress, or lack thereof, may be probative of whether there has been more than a minor shortfall in the services provided. *Id.*

24. The Parents argue that the District provided minimal online instruction, and the Student was not able to access his education through that modality once school buildings closed due to COVID in the spring of 2020. Parents' Post Hearing Brief (Parents' Brief) at 24-26. They argue that an IEP amendment or a Continuous Learning Plan should have been developed and that the Student only made progress on one of 13 goals during the spring of the 2019-2020 school year. *Id.*

³² For clarity of analysis, some of the issues are addressed in a different order than that in which they are listed in the issue statement, and/or in combination with other issues.

25. The Parents have not met their burden to prove by a preponderance of the evidence that there was a material failure to implement the Student's IEP during this time period. The evidence is not clear as to what instruction the Student did or did not receive, and broad allegations that the Student did not pay attention to the computer screen are not sufficient to prove a material failure.

Whether the District violated the IDEA and failed to offer the Student FAPE by failing to implement the January 9, 2020 IEP during the 2020 21 school year

26. The evidence is much more detailed as to the portion of the 2020 21 school year that was covered by the January 9, 2020 IEP (September 2020 through March 15, 2021, at which point a new IEP was implemented). The January 9, 2020 IEP called for the Student to receive 1100 minutes (18.3 hours) per week of SDI from a special education teacher. This amounted to 3.6 hours per day. The evidence shows that the instruction the Student received from Ms. Campano fell far short of that requirement. He received one hour per day of instruction with Ms. Campano, half of which was the "community meeting" in which Ms. Campano's entire group of students met together. The Student's "offline learning" and "bin work" totaled to approximately 2.5 hours per day (except on Wednesdays), which would have potentially met the SDI requirements of the IEP if such times had truly provided SDI. However, bin work and offline learning were not delivered by a special education teacher.

27. The settlement agreement entered into by the parties on December 2, 2020, waives any claims by the Parents that the Student was denied FAPE due to the BCBA/BT services being provided. It does not waive claims related to the denial of FAPE for other reasons, such as the Student receiving too few hours of SDI.

28. No changes were made to the IDEA and its implementing regulations in response to the challenges presented by COVID, and school districts were not relieved of their duty to comply with those laws. OSPI Questions and Answers: Provision of Services to Students with Disabilities During COVID 19 (originally released 3/24/20), Question A 1.³³ Even assuming that the Student was able to access and receive one hour of SDI from Ms. Campano via the community meeting and his 30 minute instruction time with her, which is questionable at best, the issue remains as to whether the 2.5 hours of bin work and offline learning provided the SDI called for in the January 9, 2020 IEP. It is clear that it did not. Worksheets and other independent learning, even if facilitated by a BT, does not equate to SDI delivered by a special education teacher. A BT is not a special education teacher. Applying the reasoning in

³³ The undersigned disagrees with the District's broad interpretation of OSPI guidance as to what can constitute SDI. See District's Brief at 41.

Van Duyn to the facts of this case it is clear that the shortfall in instruction was material. Moreover, the evidence shows that the Student's behavior was regressing during this time. The District could have addressed this situation by amending the Student's IEP, bringing him back to school in person, or possibly by developing a Continuous Learning Plan, but it did not do so.

29. The District's failure to implement the January 2020 IEP from September 2020 through March 15, 2021, resulted in the Student being denied FAPE.

Whether the District violated the IDEA and failed to offer the Student FAPE by failing to provide appropriate ESY services during the summer of 2020

30. WAC 392 172A 02020 pertains to ESY services and provides that the purpose of ESY is the "maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors." WAC 392 172A 02020(5). The need for ESY is based on documented evidence of regression, or determinations of the IEP team. *Id.* at (6).

31. The Student's IEP team determined in January of 2020 that he did not need ESY that coming summer. The Parents argue that the Student's lack of progress on his IEP goals as of June of 2020 indicated that he did need ESY. However, this is not sufficient evidence to prove by a preponderance that the student would regress without ESY.

32. The Parents have not met their burden to prove this claim.

Whether the District violated the IDEA and failed to offer the Student FAPE by failing to implement the March 9, 2021 IEP

33. The March 2021 IEP called for the Student to receive 240 minutes (four hours) per day of SDI in a special education setting, delivered by "special education staff" and monitored by a special education teacher. It also called for 40 minutes per day of SDI in a general education setting, delivered by special education staff and monitored by a special education teacher. It is unclear what sort of instruction the Student received and from whom he received it when he returned to hybrid instruction in late March of 2021. The Parents argue that the Student did not receive the minutes of SDI called for in his IEP, but they do not cite to the record sufficiently to support this claim. Parent's Brief at 28. Moreover, there is insufficient evidence as to who was considered to be "special education staff" charged with delivering services as contemplated by the IEP. It therefore cannot be concluded by a preponderance of the evidence that the

District failed to deliver the specified minutes of SDI set forth in the March 2021 IEP during hybrid instruction in the spring of 2021.

34. The Parents further argue that the November 12, 2021 amendment to the IEP was not implemented. This amendment called for the same SDI as set forth directly above. It also provided that the Student would receive a 1:1 bus monitor for 300 minutes (five hours) per week, a 1:1 BT monitored by a BCBA and the special education teacher for 1260 minutes (21 hours) per week, and 1:1 “instructional assistant” services provided by a BT for 900 minutes (15 hours) per week. This amounted to 36 hours of 1:1 time per week, or roughly seven hours per day.

35. It is undisputed that the bus monitor was never provided to the Student due to the District’s hiring difficulties. This clearly constituted a material failure to implement the IEP, as there is more than a minor discrepancy between the zero minutes of bus monitor services that were provided to the Student each week and the 300 minutes called for by the IEP. This complete failure to provide a bus monitor violated the IDEA and constituted a denial of FAPE to the Student.

36. As to the “BT monitored by a BCBA” and the “instructional assistant” services, the Student was provided with a 1:1 aide from SCC, usually referred to as a “BT,” each day starting in October 2021, before the IEP was amended. There is no evidence that there was a shortfall of hours of 1:1 instructional assistant support. The so called “BTs” who worked with the Student, Mr. Byers and Mr. Heggins, were not CBTs. The Parents have not demonstrated by a preponderance of the evidence, however, that this lack of appropriate credentialing negatively impacted the instructional assistant services the Student received or denied him FAPE.

37. Such is not the case as to the behavioral services the Student received from Mr. Byers and Mr. Heggins. The evidence is overwhelming that the Student was exhibiting serious behavioral issues during the time period these services were provided pursuant to the amendment to the March 2021 IEP (November 15, 2021 through March 9, 2022). Whether these behaviors were exacerbated by lack of appropriate credentials on the part of Mr. Byers and Mr. Heggins, lack of supervision of their services by a BCBA, or both, is immaterial; what is clear is that IEP mandated that the Student receive services from appropriately trained and supervised “BTs” and the Student did not receive such services. As articulated by Dr. Jones, supervision of BTs is “incredibly important” because BTs cannot make clinical decisions and cannot independently determine if an intervention is working. See *Neosho R V School District v. Clark*, 315 F.3d 1022, 1028 (8th Cir. 2003)(although the special education teacher and paraprofessional “commendably attempted” to cope with the student’s behavioral

issues, they were not professionally trained to successfully reduce the inappropriate behavior and the student was not able to obtain a benefit from his education).

38. It cannot be determined whether adjustments by a BCBA to the interventions provided by the SCC personnel could have helped to better manage the Student's behaviors. However, the fact that BTs were not licensed, and BCBA supervision was not provided to them for the entire time the IEP amendment was in effect, constituted a material failure to implement the IEP, and a denial of FAPE.³⁴

Whether the March 2021 IEP and its subsequent amendments were reasonably calculated to provide an educational benefit to the Student

39. In developing a student's IEP, WAC 392 172A 03110 requires the IEP team to consider:

- (a) The strengths of the student;
- (b) The concerns of the parents for enhancing the education of their student;
- (c) The results of the initial or most recent evaluation of the student; and
- (d) The academic, developmental, and functional needs of the student.

40. The appropriateness of an IEP is determined by reviewing its goals and services at the time it was offered and determining whether it was reasonably calculated at that time to confer an educational benefit. This is known as the "snapshot rule." *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). 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." *Endrew F.*, 137 S.Ct. at 999 (emphasis in original).

41. When determining whether an IEP is appropriate, "the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, 458 U.S. at 206 07. The IDEA does not require states to provide disabled children with "a potential maximizing education." *Id.* at 197 n.1. A student is not denied FAPE simply because the district's proposed educational plan provides less educational benefit than that which a student's parents might prefer. However, a reviewing court may fairly expect school district authorities "to be able to offer a cogent and responsive explanation for

³⁴ The District argues this "regulatory argument" is "not of substantive import" and that there was "no substantive deprivation to the Student" as a result of these regulatory violations. District's Brief at 49. This argument is not persuasive. Violations of the RCWs and WACs cannot simply be overlooked. Moreover, it certainly cannot be determined that there was no substantive deprivation to the Student as a result of the violations.

their decisions that show the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew F.*, 137 S.Ct. at 1002.

42. In the present case, the Parents first argue that the March 2021 IEP should have provided for BT and BCBA support in both the home and school environments. Parents’ Brief at 29. The Student was attending school remotely when the IEP was developed, and he was receiving behavioral services at home from BANDS. The District was funding a portion of the BANDS services pursuant to the settlement agreement reached in December of 2020. The Parents had raised concerns about the Student’s behavior and his ability to attend to online learning, but he had been successful at meeting some of the goals from the previous IEP. The IEP team should have anticipated that the Student would return to school in person during the effective period of the March 2021 IEP, and possibly should have anticipated that the Student would need 1:1 BT/BCBA support at school upon his return. However, a preponderance of the evidence does not support a conclusion that the March 2021 IEP was not reasonably calculated to provide the Student with educational benefit at the time it was developed due to failure to include BT/BCBA supports in the home and at school.

43. The Parents next argue that the November 12, 2021 amendment to the IEP, which provided 1:1 BT and BCBA support in school, should have also provided such support in the home environment. Parents’ Brief at 29. At the time the amendment was developed, the Student was receiving behavioral services at home from CBC, and there is scant evidence that the District should have been providing behavioral services to the Student in his home. A preponderance of the evidence does not support a conclusion that the November 12, 2021 IEP amendment was not reasonably calculated to provide the Student with educational benefit at the time it was developed due to failure to include BT/BCBA supports in the home.

44. Other issues set forth in the issue statement for the due process hearing pertaining to the March 2021 IEP include failure to provide appropriate data collection, failure to provide appropriate and measurable goals, failure to provide a structured out of home setting for the Student, failure to place the Student in his LRE, and failure to make necessary amendments to the IEP. None of these issues is clearly addressed or explained in the Parents’ briefing. An ALJ is not required to wade through the record to find evidence to support claims. *E.M. v Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, (9th Cir 2011), citing *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); see *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs hunting for truffles buried in briefs”). A preponderance of the evidence does not support a conclusion that the March 2021 IEP was not reasonably calculated to

provide the Student with educational benefit for any of these reasons. The Parents have not met their burden of proof as to these claims.

Whether the District failed to provide appropriate BIPs between the Student's return to hybrid school in March of 2021 and the implementation of the BIP dated April 23, 2022, in that the BIP dated March 20, 2019, and subsequent BIPs

45. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 USC § 1414(d)(3)(B)(i); 34 CFR. § 300.324(a)(2)(i). A BIP must describe, at a minimum:

- (1) The pattern of behavior(s) that impedes the student's learning or the learning of others;
- (2) The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;
- (3) The positive behavioral interventions and supports to:
 - (a) Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;
 - (b) Ensure the consistency of the implementation of the positive behavioral interventions across the student's school sponsored instruction or activities;
- (4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

WAC 392 172A 01031.

46. "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 *10 (E.D. Cal. June 14, 2016); see *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007).

47. A school district's failure to address behavioral issues appropriately can amount to a denial of FAPE. *Neosho R V School District*, 315 F.3d at 1028.

48. In the present case, the Student did not have a BIP in place between January 2020 and October 2021. Although not entirely clear from their briefing, the Parents appear to first argue that a BIP should have been in place during the time period between March 2021 and October 2021. A preponderance of the evidence does not support this assertion. Once the Student's behaviors began to escalate at school when he returned to hybrid learning, Ms. Campano consulted the District's behaviorist. An FBA and BIP were initiated in early June of 2021. This does not represent significant delay or failure to address the Student's behaviors.

49. The Parents next argue that the BIP implemented in October 2021 was not appropriate and did not provide the Student with the behavioral support he needed. Parents' Brief at 31-32. This BIP had only one target behavior, physical escalation, and pertained only to the school environment. Aside from refusing to go to school on June 14, 2021, the Student did not begin to exhibit significant school refusal issues until November of 2021, when he began to complain every day that he did not want to go to school and began refusing to get on the bus. It therefore cannot be said that the BIP implemented in October of 2021 should have addressed school refusal.

50. Moreover, a preponderance of evidence does not show that the BIP should have applied to the home environment as of October of 2021. Although the evidence is clear that the Student was and had been exhibiting very problematic behaviors at home, there is insufficient evidence to conclude that the District was adequately made aware of the behaviors. Moreover, the Student had experienced a reasonably successful summer at SCC with which the Parents were "delighted." For these reasons, the Parents have not met their burden to prove that the BIP was inappropriate at the time it was developed and implemented.

51. As time progressed, however, it became clear that the BIP was no longer appropriate in that the interventions were not effective. The Student's aggressive episodes became more frequent and more intense, and he engaged in 43 assaultive behaviors in the four month period of October 2021 through January 2022 (which included a lengthy December break during which there was no school). The Student's episodes lasted up to 45 minutes and resulted in injuries to teachers and at least one assault on another student. One to one support and a bus monitor were added to the Student's IEP in November of 2021, but no changes were made to the BIP. Repeated school refusal behavior then began to emerge and escalate. The Parents asked for help with school refusal in mid November, yet the Student's special education teacher thought he was making progress and his behavior management was "on the right track." The BIP was revised slightly and reviewed by the IEP team on February 3, 2022,

but essentially no changes were made to it and the interventions were almost completely identical to those in the previous BIP. Behavior data from the previous BIP was left in the revised BIP, making the data on which the revised BIP was based unclear. At the time of the February 2022 BIP revision, no BCBA was or had been supervising the October 2021 BIP's effectiveness or the personnel who were implementing it. There was no consideration given to adding behavioral support at home to provide consistent interventions in the home environment despite the escalating problem behaviors. The District finally proposed conducting a new FBA and BIP at the March 4, 2022 IEP meeting, but this took time,³⁵ and a new BIP was not implemented until late May of 2022. It is concluded that by the February 3, 2022, the District was well aware that the Student's high frequency maladaptive behaviors were severely diminishing his ability to benefit from instruction, and the Student was denied FAPE due to the inappropriateness of the February 2022 BIP. See *S.S. v. Board of Educ. of Harford County*, 498 F. Supp. 761 3d (D. Md. 2020)(increase in frequency and intensity of problematic behaviors after implementation of a BIP required additional intervention by the District).

Whether the FBA and BIP of April 23, 2022, are appropriate

52. The Student's newest FBA and BIP are dated April 23, 2022. The BIP was implemented on or about May 25, 2022. The FBA and BIP did not provide new insights or novel interventions for the Student. They again identified functional communication as a goal for him (using "I feel/I need" statements). The FBA identified antecedents to problematic behaviors that were very similar to those identified in the previous FBA, including distress and undesired demands being placed on the Student. On March 1, 2022, the Parents informed District staff members that the Student had become "dangerously aggressive" when they attempted to get him to go to school. Later that month, the Parents informed the District that they felt the Student needed residential placement. Ms. Campano had never seen school refusal as extreme as the Student's. However, the May 2022 BIP did not provide interventions in the home environment except for the short period of time in the mornings when Mr. Heggins and Mr. Bascom went to the family's home to attempt to get the Student to attend school. As Dr. Jones opined, this was insufficient intervention, and it left the Parents, who are not trained

³⁵ The District attempts to place blame on the Parents for the length of time it took for a new FBA and BIP to be developed and implemented. This assertion is not persuasive. The District is obligated to provide the Student with FAPE, and minor delays and/or episodes of confusion on the part of the Parents, who were generally cooperative and attentive, did not relieve the District of that obligation. See *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir 2008)("[A] school district cannot abdicate its affirmative duties under the IDEA" even if parents adopt a litigious approach); *Doug C. v. Hawaii Dep't of Educ.*, 720 F.3d 1038, 1045 (9th Cir. 2013)("We have consistently held that an agency cannot eschew its affirmative duties under the IDEA by blaming the parents").

behaviorists, to withhold attention and rewards that would have been provided had the Student cooperated with the BIP. They were left to manage the Student's behavior by themselves, all day every day, while the Student was at home and receiving no educational services.

53. When examined with the "snapshot rule" in mind, it is concluded that the FBA was inappropriate at the time it was developed. It did not include recommendations that were sufficient to deal with the Student's extreme behaviors and it did not identify new interventions that had not already been tried in response to the Student's refusal behaviors and aggression.

54. With respect to the BIP, it is concluded that by the time the BIP was implemented, the Student's behavior had deteriorated so much that intervention was unlikely to work. The Student's behavior regressed further during its implementation in that he learned that he could obtain a reward by putting a shirt on over his pajamas, and he could then remove the shirt and go back to bed. Success with even the basic first steps was not achieved. Even the District's expert opined that in such a situation, a BIP is unlikely to be effective. Given the Student's lengthy history of resistance to demands, his extreme behaviors to avoid demands, and the interventions that had been implemented for years, it is concluded that the April 2022 BIP was inappropriate.

55. The District's argument that the BIP was not in place for a long enough period of time to determine whether it would succeed is not persuasive. It defies reason to expect the Parents to continue to implement a BIP that was failing abysmally, for an unspecified period of additional time (the District's expert could not provide an estimate as to how much time would be needed), while their child languished at home in his pajamas receiving no education whatsoever. No IEP progress data could be obtained for the months of April, May and June in the areas of reading, math, written language, adaptive/life skills, and social/behavior due to the Student's absence from school, but the District had an ongoing obligation to provide the Student with FAPE. And, to compound matters, the Parents were expected to withhold attention and preferred activities every school day, risking irreparable damage to their relationship with their relatively young son as well as their own safety.

56. For these reasons, it is concluded that the Student was denied FAPE as a result of the inappropriate FBA and BIP as of April 23, 2022.

Whether the Student's current IEP of March 4, 2022, is inappropriate for failing to place the Student in residential placement, and failing to place him in his LRE

57. It is undisputed that the Parents informed the District in writing on March 22, 2022, that they felt the Student needed residential placement and they intended to place him in such a setting if the District did not offer residential placement in an IEP. The District members of the team rejected the idea of residential placement after an extremely brief discussion on March 24, 2022.³⁶ The lack of robust discussion about the Student's placement gives the undersigned pause as to whether the District even considered the Parents' request and whether the IEP team examined what constituted the Student's LRE.

58. WAC 392 172A 02050 pertains to LRE and provides:

Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:

- (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.

59. "The LRE inquiry is individualized and fact specific, and must be balanced with the primary objective of providing an appropriate education." *D.M. v. Seattle Sch. Dist.*, 2016 U.S. Dist. LEXIS 122519 *62 (W.D. Wash. Sept. 9, 2016) (citations omitted).

³⁶ Throughout its briefing, the District repeatedly asserts that the Parents concealed their intent to place the Student in a residential setting from the District and that this somehow prejudiced the District. See, e.g., District's Brief at 66, alleging that the Parents "intentionally withheld critical information from the IEP team." This argument is not well taken. The Parents informed the District of their plan over three months prior to placing the Student at Shrub Oak. When informed of that plan, the District rejected the idea of residential placement outright and essentially ignored the Parents' request that the IEP team consider a residential placement. The District cannot now argue that it would have behaved differently had it been informed of the Parents' intent earlier, because it took no action when it did learn of that intent.

“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 (9th Cir. 1996).

60. According to *M. S. v. Los Angeles Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 14356 *22 23 (C.D. Cal. 2019), *aff’d sub nom. M. S. by & through R.H. v. Los Angeles Unified Sch. Dist.*, 913 F.3d 1119 (9th Cir. 2019):

The IDEA provides that school districts ... “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. § 300.115(a). This “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 service to a child with a disability.” 34 C.F.R. § 300.104.

61. Placement in a residential facility is appropriate under the IDEA if it is necessary for the Student to obtain an educational benefit. 34 CFR § 300.104. Thus, a residential placement is “necessary” when a student cannot receive an appropriate education outside a residential placement. *Seattle Sch. Dist., No.1 v. B.S.*, 82 F.3d 1493, 1502 (9th Cir. 1996). If the 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 (9th Cir. 1990). For some students, a residential placement may well be the LRE. *Seattle Sch. Dist., No.1 v. B.S.*, 82 F.3d at 1501 (*quoting Board of Educ. v. Diamond*, 808 F.2d 987, 992 (3^d Cir. 1986)). In *Seattle Sch. Dist., No.1 v. B.S.*, the Ninth Circuit upheld a lower court’s findings that the student at issue needed a residential placement because she was unable to derive any meaningful benefit from her past education and the school district’s new proposal was “similarly unlikely to provide educational benefit.” 82 F.3d at 1500 01.

62. The IDEA requires a district to provide an education that meets a student’s “academic, social, health, emotional, communicative, physical and behavioral needs.” *Ashland Sch. Dist. v. Parents of E.H.*, 587 F.3d 1175, 1185 (9th Cir. 2009) (citation omitted). Residential placement is appropriate when a student’s behavioral issues are severe and ongoing such that a nonresidential placement can no longer meet his needs. *J.B. v. Tuolumne County. Superintendent of Schs.*, 2021 U.S. Dist. LEXIS 64351 *27 (E.D. Cal. March 31, 2021). Moreover, residential placement is appropriate if a

student requires a completely consistent environment around the clock in order to learn. *Ash v. Lake Oswego Sch. Dist. No. 7J*, 766 F. Supp. 852, 863 (D. Or. 1991).

63. In the present case, the Parents contend the Student should have been placed in a residential facility in late March of 2022. A preponderance of the evidence does not support a conclusion that the Student should have been placed in a residential setting at that time. However, by the end of the 2021-22 school year, the need for residential placement as the Student's LRE was quite clear. By then, the Student had almost entirely stopped attending school. He was isolated from his peers. He could not succeed at basic first steps to attend school. Rather, he intentionally urinated on his bed in the morning, assaulted his father, hit Mr. Heggins, damaged property, ran down the block unsupervised, and disrobed after getting a reward for merely putting a shirt on over his pajama top. From March through June, the Student attended school on 10 out of 69 available days. The present case is similar to *Seattle Sch. Dist., No. 1 v. B.S.*, 82 F.3d at 1500-1501, wherein the ALJ found that the student's progress was deteriorating, and she needed residential placement.

64. A preponderance of the evidence supports a conclusion that the Student could not obtain an educational benefit from his placement in the District as of the conclusion of the 2021-22 school year. As of that time, a residential facility was his LRE. The Student's March 4, 2022 IEP was appropriate as to the Student's placement when it was developed, and pursuant to the "snapshot rule" the IEP's placement of the Student in the District did not deny him FAPE at that time.

65. Although the Student's placement pursuant to the IEP is no longer appropriate, the District is not to be faulted for failing to amend his IEP. Shortly after the 2021-22 school year ended, the Student was unilaterally placed at Shrub Oak by his Parents, and it is not reasonable to expect the District to have convened in an IEP meeting to address placement under those circumstances. Therefore, the failure to amend the Student's IEP to change his placement was not a denial of FAPE. The Parents have not met their burden of proof as to this issue.

Whether the District should have conducted a reevaluation of the Student after January 9, 2020

66. The Parents contend that the Student should have been reevaluated at some point between the completion of his last reevaluation on January 9, 2020, and the filing of the complaint in this action. Parents' Brief at 33-34.

67. Reevaluations are addressed in WAC 392-172A-03015, which provides, in part:

Reevaluation timelines.

(1) A school district must ensure that a reevaluation of each student eligible for special education services is conducted in accordance with WAC 392 172A 03020 through 392 172A 03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

68. None of the circumstance enumerated in WAC 392 172A 03015 existed as to the Student during the relevant time period. There is no evidence that the Parents or anyone else requested a reevaluation, and the District did not determine that a reevaluation was warranted. See *M.S. v. Lake Elsinore Unified Sch. Dist.*, 678 F. App'x 543 (9th Cir. 2017) (district had no duty to reevaluate the student when it did not determine a reevaluation was necessary, neither the parent nor the teacher requested a reevaluation, and fewer than three years had elapsed since the previous evaluation).

69. To the extent the Parents argue that the District *should* have determined that the educational or related services needs of the Student warranted a reevaluation, that contention is not supported by the evidence. Two FBAs were conducted to address the Student's increasingly problematic behaviors. Although anxiety, or something else, may have been a component of the behaviors that should have been assessed, a preponderance of the evidence does not demonstrate that the District should have determined that a reevaluation was warranted. The Parents have not met their burden to prove that a reevaluation should have been conducted.

Whether the District excluded the Parents from the educational process by failing to consider the opinions of third party professionals who worked with the Student and by involving and instructing the Parents in behavioral interventions without doing so pursuant to an FBA and BIP

70. 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 (9th Cir. 2007). A school district must ensure that a student’s IEP team includes, “at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student.” WAC 392 172A 03095.

71. Neither the IDEA nor Washington special education law specifically define “meaningful participation.” Determining what is “meaningful” requires balancing of the totality of the circumstances specific to an IEP meeting. *Mercer Island Sch. Dist.*, 121 LRP 1640 (SEA Wash. 2020). In reviewing and balancing the totality of the circumstance, a tribunal may consider items including whether the parents received notice of meetings, received draft documents before meetings, were represented by an attorney, engaged in discussion, posed questions, and had opportunities to comment. *Id.*

72. In the present case, the Parents contend the District repeatedly disregarded and/or did not seek the professional input of the Student’s private service providers such as Dr. Osterling and Ms. Dazzo. Parent’s Brief at 43 45. That is true to some extent, but the Parents were very active in requesting IEP meetings and in participating in such meetings. The Parents were given every opportunity to express their opinions and concerns as to the Student, to invite outside providers to attend meetings, and to call the District’s attention to input from outside providers. The fact that the District did not follow the advice of such providers does not indicate a denial of parental participation. See *Crofts v. Issaquah Sch. Dist.*, 22 F.4th 1048, 1056 57 (9th Cir. 2022)(school districts are entitled to deference in deciding on a student’s programming). The evidence does not support a conclusion that the District failed to consider the input of the Student’s outside service providers to such a degree as to deprive the Parents of meaningful participation in Student’s educational process.

73. The Parents further argue that the District excluded them from the educational process by “involving and instructing them in behavioral interventions without doing so

pursuant to an FBA or BIP as repeatedly requested by the Parents.” Parent’s Brief at 45. The Parents note that the instruction they received from Mr. Heggins when he came to their home was inappropriate because he is not a licensed BT and there was no BIP addressing school refusal in place for part of that time. The Parents further argue that they did not receive adequate “counseling and training” as defined in WAC 392 172A 01155. The BIP implemented in May of 2022 has already been determined to be inappropriate, above, in part because inadequate interventions were provided in the home by trained staff. The evidence does not support a finding that the Parents were excluded from the educational process due to inadequate counseling and training, however, and no such conclusion is reached here.

74. The Parents have not met their burden to prove that they were excluded from the Student’s educational process by the District’s actions.

Whether the Student lost educational opportunity as a result of the District’s failure to provide the Student with FAPE

75. The evidence is persuasive that the Student lost educational opportunity in several respects as a result of the District’s failure to provide him with FAPE. The Student was deprived of the opportunity for an education with his peers and lost a very significant amount of instructional time. Moreover, he was deprived of the opportunity to develop confidence and skills required to cope with demands and challenges.

76. For these reasons, it is concluded that the Student lost significant educational opportunity as a result of the District’s failure to provide him with FAPE.

Whether the Parents are entitled to their requested remedies

77. When a parent proves a violation of the IDEA, a tribunal may “grant such relief as the court determines is appropriate” based on the evidence. 20 USC § 1415(i)(2)(C)(iii). Relief is “appropriate” if it furthers the purposes of the IDEA and helps to ensure that a student receives the education to which he was statutorily entitled at the time of the violation. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 719 (3d Cir. 2010).

The Parents’ placement of the Student at Shrub Oak was appropriate

78. WAC 392 172A 04115, entitled “Placement of students when FAPE is at issue,” provides in part:

If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

WAC 329 172A 04115(3).

79. Caselaw regarding unilateral parental placement is consistent with the WAC. According to the U.S. Supreme Court, parents who unilaterally enroll a student in a private school are entitled to tuition reimbursement if: (a) the school district's placement violated the IDEA, and (b) the parents' private school placement is proper under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 114 S. Ct. 361, 364 (1993); see *Burlington v. Dep't of Educ.*, 471 U.S. 359, 369, 105 S. Ct. 1996 (1985).

80. In the present case, it is concluded above that the District was not providing FAPE to the Student prior to his unilateral enrollment at Shrub Oak and his placement in the District therefore violated the IDEA. The FBA and BIP in effect as of April 23, 2022, were inappropriate, and as of the end of the 2021 22 school year, the Student was not placed in his LRE.

81. In order for a unilateral private placement to be appropriate and proper under the IDEA, it must have been reasonably calculated at the time of enrollment to meet the Student's needs. *J.T. v. Dep't of Education*, 695 Fed. Appx. 227 (9th Cir. 2017). As such, parents must 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." *C.B. v. Garden Grove Sch. Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011). In *Garden Grove*, the student at issue had unique needs in math, among several other areas. The private center in which he was placed provided only language based services, and no instruction in math. Nonetheless, the Ninth Circuit found the private placement was proper because it met some, though not all, of the student's

educational needs, and provided significant educational benefits. *Id.* at 1159 60. In contrast, a private placement is not proper when the educational benefits conferred are “meager” and the student at issue makes no progress in essential areas. *M.N. v. State of Hawaii*, 509 F. App’x 640, 641 (9th Cir. 2013). In other words, a placement is “proper” if it is “reasonably calculated” to meet the student’s needs. *J.T. v. Dep’t of Education*, 2018 U.S. Dist. LEXIS 92407 (D. Haw. 2018). Moreover, a private placement does not have to be the Student’s least restrictive environment to be appropriate for reimbursement purposes. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981 (8th Cir. 2011).

82. In the present case, the evidence overwhelmingly demonstrates the placement of the Student at Shrub Oak is appropriate and proper. Shrub Oak is an NPA recognized by OSPI that specializes in serving students on the autism spectrum. The instruction and services provided to the Student include: a BIP targeting physical aggression, refusal behaviors, and elopement; occupational and speech therapies; one to one paraprofessional support for behavior during educational and residential hours; and consistent programming around the clock. These services are reasonably calculated to meet the Student’s needs and will allow him to benefit from his instruction. It is concluded that Shrub Oak is a proper placement for the Student, and tuition reimbursement is appropriate.

Whether equitable factors weigh in favor of tuition reimbursement and/or other equitable relief

83. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of FAPE. *Burlington v. Department of Educ.*, 471 U.S. at 370; *Parents of Student W. v. Puyallup School Dist., No. 3*. 31 F.3d 1489, 1496 (9th Cir. 1994). “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*, 31 F.3d at 1497.

84. When determining whether to award tuition reimbursement, a tribunal must consider whether the equities in the case weigh in favor of an award to the parents. *Forest Grove Sch. Dist. v. T.A.*, 638 F.3d 1234 (9th Cir. 2011). In *Forest Grove*, the Ninth Circuit stated that reimbursement is to be considered by the court under “general principles of equity,” and “the ‘preponderance of the evidence’ standard necessarily requires the court to weigh the equitable factors.” 638 F.3d at 1239 (emphasis in original). In weighing the equities, an ALJ must consider “all relevant factors.” *Forest Grove*, 557 U.S. 230, 247, 129 S. Ct. 2484 (2009).

85. In the present case, both parties argue that the other party has “unclean hands.” The District contends the Parents withheld their intent to place the Student at a residential facility for two to three months, and also intentionally failed to provide an exhaustive list of ideas to help address the Student’s school refusal. The equitable arguments raised by the District are minor and are not persuasive. Once the Parents informed the District that they intended to place the Student in a residential setting, the District essentially ignored the information. Moreover, Parents are not required to develop interventions to address school refusal that is the District’s obligation.

86. The Parents’ contention, however, is more serious. They contend that the equities weigh in their favor because the District misrepresented the licensure and supervision of the people who provided behavioral services to the Student. The District’s confusion regarding credentials and supervision appears to have been inadvertent, and there is no evidence that the District affirmatively withheld that information from the Parents initially. Nonetheless, licensure and supervision are important, and inadequate supervision was a potential contributor to the Student’s increasingly problematic behavior. Moreover, once the parties were in the throes of litigation, the District was consistently unforthcoming with basic information.

87. It is concluded that the equities weigh in favor of an award of tuition reimbursement to the Parents for the expenses they have incurred in placing the Student at Shrub Oak.

88. The approximately eight months of residential placement for which tuition will be reimbursed is reasonable to address the FAPE denials found above.

Prospective placement at Shrub Oak is appropriate and necessary

89. As set forth above, the Student required residential placement as his LRE as of the conclusion of the 2021-22 school year. A preponderance of the evidence compellingly demonstrates that the Student continues to require a residential placement in order to benefit from his education. Dr. Jones opined that the Student was not able to access instructional, social and communication opportunities while in the District. The Student is now accessing such opportunities at Shrub Oak. He is also being provided with the support he needs across all environments. Dr. Jones recommended the Student be placed in a residential facility for a minimum of four years. Dr. Osterling opined that the Student needs significant intervention that is “intensive, integrated, systematic and consistent throughout his whole day, every day.” She recommended that he be placed in a residential setting for at least two years. The

information provided by Dr. Sweetapple and others at the due process hearing demonstrated quite clearly that Shrub Oak is capable of meeting the Student's needs.

90. It is concluded that a residential placement is necessary to provide special education and related services to the Student as contemplated by 34 CFR § 300.104. This program, including non medical care and room and board, must be at no cost to the Parents. It is further concluded that Shrub Oak is an appropriate prospective placement for the Student.

91. IEPs are reviewed each year because a student's needs change over time. Consequently, prospective placement of the Student at Shrub Oak beyond the one year term of a new IEP will not be ordered at present. If the District makes a future offer of placement through a new IEP with which the Parents disagree, they have the right to file a new due process hearing request. Given the recommendations of the experts cited above, however, Shrub Oak will be the Student's stay put placement during the pendency of any such due process proceeding.

92. 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.

ORDER

1. The Parents have proven by a preponderance of the evidence that the Seattle School District violated the IDEA and denied the Student FAPE in multiple ways, including: failing to implement the January 2020 IEP from September 2020 through March 15, 2021; failing to implement the March 2021 IEP as amended in November 2021, from November 15, 2021, through March 9, 2022; failing to provide an appropriate BIP from February 3, 2022, through April 23, 2022; and failing to provide an appropriate FBA and appropriate BIP as of April 23, 2022.

2. The District is ORDERED to develop a new IEP for the Student that places him at Shrub Oak International School for at least one year commencing on the effective date of the new IEP. The District is ORDERED to convene an IEP team meeting within fifteen days of the date of this order for the purpose of developing the new IEP.

3. The District is ORDERED to reimburse the Parents for expenses they have incurred to date to unilaterally place the Student at Shrub Oak as follows:

All tuition and fees, including one to one fees, paid by the Parents to Shrub Oak up to the date on which the District becomes responsible for paying such tuition and fees pursuant to the IEP placing the Student at Shrub Oak.

All expenses incurred by the Parents to travel with the Student to Shrub Oak in July of 2022.

All expenses incurred by the Parents to visit the Student at Shrub Oak up to three times between his placement there and the date of this order.

If airline frequent flier miles were used by the Parents to pay for any portion of reimbursable travel, such miles shall be reimbursed by the District at a rate of one cent per mile used.

Reimbursement for these expenses shall be made within 30 days of the District receiving a reasonably detailed accounting of all reimbursable expenses from the Parents. Receipts for past travel shall be provided to the District to the extent the Parents possess or can easily obtain them, but receipts are not required.

4. The District is ORDERED to reimburse the reasonable travel, meals, and lodging expenses (lodging in the vicinity of Shrub Oak is not to exceed four nights per visit) for the Parents to visit the Student four times per year while he is placed at Shrub Oak. Receipts for such travel shall be provided by the Parents.

5. The District is ORDERED to reimburse reasonable expenses incurred for the Student to return to Washington State at the end of his placement at Shrub Oak. This includes expenses for a Parent or other adult to travel to Shrub Oak and accompany the Student home.

6. The District is further ORDERED to reimburse reasonable expenses incurred for up to two trips by the Student to Washington State if Shrub Oak determines the Student needs to return home intermittently as part of a transition plan, at any point in time while he is placed at Shrub Oak. This includes reimbursement for a Parent or other adult to accompany the Student during travel.

7. Reimbursements ordered herein for future travel shall be made within 30 days of the District receiving receipts from the Parents.

8. The District is not required to reimburse the Parents for past or future expenses incurred for the Student's sibling to visit him at Shrub Oak.
9. Shrub Oak shall be the Student's stay put placement.
10. All remedies requested by the Parents have been considered. Any remedies not awarded above are DENIED.

Served on the date of mailing.



Jacqueline H. Becker
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 (90) days after the ALJ has mailed the 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, Legal Services, PO Box 47200, Olympia, WA 98504 7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that true copies of this document were served upon the following as indicated:

Parents

[REDACTED]
[REDACTED]

via E mail

[REDACTED]
[REDACTED]

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Dated January 12, 2023, at Seattle, Washington.

Jazmyn Johnson

Representative
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cc: Administrative Resource Services, OSPI