

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

IN THE MATTER OF

ISSAQUAH SCHOOL DISTRICT

OSPI CAUSE NO. 2019-SE-0151

OAH DOCKET NO. 10-2019-OSPI-00908

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Jacqueline Becker via video conference on June 8 and 12; July 15, 16, 20, 21 and 22; and August 17 through 21, 2020. The Parents¹ of the Student whose education is at issue appeared and were represented by Ryan Ford, attorney at law. The Issaquah School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District were Dr. Dana Bailey, District Executive Director of Special Services, and Joan Lawson, District Director of Secondary Special Education Services.

The Parents filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on October 14, 2019. The Complaint named both the Issaquah School District and the Northshore School District.² The claims against the two districts were assigned different cause numbers by OSPI and different docket numbers by the Office of Administrative Hearings (OAH). The original ALJ assigned to this matter was Anne Senter. The matter was reassigned to ALJ Becker on November 20, 2019. The Parents brought a Motion to Consolidate the two matters on December 2, 2019. The motion was denied on December 19, 2019.

The Parents filed an amended complaint on January 27, 2020, and the request to amend was granted effective February 4, 2020. The District filed a Motion to Dismiss Untimely Claims on March 10, 2020, and the motion was denied on April 7, 2020.

Evidence Relied Upon

Exhibits Admitted:

Parents' Exhibits: AP1-42,³ AP44-46, BP1-89, CP1-15, CP17-23, CP25-67, DP1-14, DP16-

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

² The claim against the Northshore School District is numbered 2019-SE-0152/10-2019-OSPI-00909.

³ The Parents provided exhibits in four binders labelled A, B, C and D. The Parents' exhibits are referred to by binder letter followed by P, number within the binder, and page within the exhibit. For example "AP1 p.3" refers to Parents' exhibit 1 in binder A at page 3.

41, DP43-70.⁴

District's Exhibits: D1,⁵ D4, D7 page 4 only, D8, D15, D16, D22, D24, D35, D38, D43, D45, D46, D49, D50, D52, D59, D60, D61, D66, D69, D70, D71, D72, D73, D75, D76, D78, D85, D86, D87, D92.

Witnesses Heard (in order of appearance):

Dr. Gayle Fay, clinical neuropsychologist
Sonja Petersen, former counselor, Pacific Cascade Middle School
Sara Young, substance use disorder counselor, Friends of Youth
Dr. Marisol Toliver-Sokol, psychiatrist
Jeff La Pointe, Director of Campus Operations, Dartmoor School
Dr. Valda Morgan, special education advocate
Dr. Trampas Rowden, therapist, Solstice Residential Treatment Center
Dr. Dana Bailey, District Executive Director of Special Services
Melanie Bunanno, Assistant Director of Student Services, Issaquah High School
Debbie Romano, District Operations Coordinator
Angela Johnson, Special Education Director and Academic Director, Solstice Residential Treatment Center
Kathleen McConnell, Dean of Students, Cascade Ridge Elementary School
Erin Kwok Tak Hing, language arts teacher, Pacific Cascade Middle School
Douglas Wolff, Assistant Principal, Issaquah High School
Alison Cathro, school nurse, Issaquah High School
Erin Connolly, Assistant Principal, Issaquah High School
Jeanette DeLalla, mental health counselor, Northshore School District
Emily Combellick (formerly Emily Tuttle), counselor, Issaquah High School
AnnaMaria Austin, counselor, Issaquah Middle School
Jeanne Alonge Cogan, special education teacher, Secondary Academy of Success, Northshore School District
Susan Ahrensdorf, math teacher, Issaquah Middle School
Joan Lawson, District Director of Secondary Special Education Services
Kurtis Evans, math teacher, Issaquah High School
Melinda Melcher, school psychologist, Issaquah High School
Darrel Nichols, math teacher, Pacific Cascade Middle School
Christie Santodomingo, science teacher, Issaquah Middle School
Timothy Baynes, former Assistant Principal, Issaquah Middle School
The Student's Father
Dr. Allison Brooks, psychologist, Brooks Powers Group
The Student's Mother
Dr. Daniel LeFebvre, expert witness regarding special education
Jamie Murphy, Academic Director, Solstice Residential Treatment Center

⁴ Several of the Parents' exhibits consist only of a placeholder page that reads "Omitted." These exhibits were admitted but clearly have no probative value. Several other exhibits contain a first page reading "Omitted," followed by other pages containing substance. The "Omitted" pages were disregarded by the ALJ.

⁵ District exhibits are referred to by exhibit and page number. For example, D1 p.2 refers to District exhibit 1 at page 2.

Due Date for Written Decision

The due date for a written decision in this matter was continued to thirty (30) calendar days after the close of record, at the request of the parties, by Order dated November 27, 2019. The record closed with the receipt of post-hearing briefs on October 14, 2020, and the due date for the written decision is November 13, 2020.

ISSUES/REMEDIES

The issues considered at the due process hearing were:

- (1). Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) during the 2016-2017 school year by:
 - a. Failing to meet its Child Find obligation under the IDEA to identify, locate, and evaluate the Student;
 - b. Failing to address the Student's lack of progress in the educational setting; and
 - c. Failing to address the Student's absenteeism;

- (2). Whether the District violated the IDEA and denied the Student a FAPE during the 2017-18 school year by:
 - a. Failing to meet its Child Find obligation under the IDEA to identify, locate, and evaluate the Student beginning on or about February 10, 2018;
 - b. Failing to address the Student's lack of progress in the educational setting; and
 - c. Failing to address the Student's disability related absenteeism;

- (3). Whether the District violated the IDEA and denied the Student a FAPE during the 2018-19 school year by:
 - a. Failing to identify specially designed instruction and related services to address the Student's unique needs and provide her with educational benefit at the time of the District's offer of FAPE;
 - b. Failing to provide a plan that would meet the Student's unique needs when transitioning from Solstice Residential Treatment Center (Solstice) to the District; and
 - c. Failing to provide an appropriate placement for the Student due to her school related anxiety and depression to which the District was a trigger;

- (4). And, whether the Parents are entitled to their requested remedies:
 - a. An order finding that the District denied the Student a FAPE during the 2016-17, 2017-18, and/or 2018-19 school year, including up to September 3, 2019;
 - b. An order finding that the Parents' placement of the Student at Solstice was an appropriate placement and provided the Student with a FAPE from July 24, 2018 to September 3, 2019;

- c. An order for compensatory education for the 2016-17 and/or 2017-18 school year;
- d. An order for the District to reimburse the Parents for tuition and all related expenses for Solstice from July 24, 2018, to September 3, 2019, including expenses the Parents accrued to secure the Student's placement at Solstice prior to July 24, 2018;
- e. An order for the District to reimburse the Parents for the cost of Dr. Fay's October 2016 evaluation of the Student;
- f. The Parents reserve the right to seek attorney's fees and costs incurred; and
- g. Such other remedies as appropriate.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness, and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence 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 may be set forth below regarding specific facts at issue.

Background

1. The Student began attending school in the District in first grade. Tr. 2685 (Mother).⁶ The Student is currently seventeen years old and is in twelfth grade in the Northshore School District (Northshore).
2. The Student began seeing a therapist when she was ten years old and was diagnosed with extreme separation anxiety. Tr. 2473 (Mother).
3. The Student's mother began to notice the Student having academic and social challenges during the 2014-15 school year, when she was in sixth grade at Issaquah Middle School (IMS). The Student was distracted in school, and had become anxious about peer relationships and worried about what people thought of her. The Student struggled to complete her homework. Tr. 2141 (Mother). Toward the end of the school year, the Student had a "falling out" with several friends who were in her orchestra class after they suddenly cut her out of their friend group. *Id.* at 2143, 2151.
4. During the 2015-16 school year the Student was in seventh grade at IMS. The same girls with whom she had experienced conflict the previous year were in the Student's orchestra class, and the conflict resumed. According to the Mother, the girls excluded the Student, laughed at her, and made fun of her for not playing the cello as well as other students. Tr. 2143 (Mother). They also taunted her on social media. *Id.* at 2151. As a result, the Student asked to drop her orchestra class and her Parents agreed. *Id.* at 2144.
5. Shortly thereafter, the Parents took the Student to a counselor named Carla Munger because the Parents felt the Student had been "traumatized" by the conflict with the other girls.

⁶ "Tr." refers to the transcript of the proceeding. Testimony is referenced by page and testifying witness.

The Mother described the Student as experiencing “extreme anxiety.” Tr. 2302, 2688 (Mother). The Student did not continue in therapy for long, however, because she did not connect with the counselor. *Id.*

6. In February of 2016, the Student’s math teacher, Susan Ahrensdorf, sent a message to the IMS counselor, AnnaMaria Austin, stating that the Student’s math skills were very low. Ms. Ahrensdorf further stated, “I think it’s more than just not being on task. By chance, was she ever evaluated or sent to guidance at IVE [the Student’s elementary school]?” AP19. Ms. Austin replied that the Student had never been the subject of a “guidance team”⁷ meeting or a special education referral. *Id.* Ms. Ahrensdorf’s concern was not shared with the Parents. Tr. 2159 (Mother).

7. As the 2015-16 school year progressed, the Student developed anxiety around attending school. She often refused to attend, and when she did go, she sometimes called her Parents and begged them to pick her up early. Tr. 2146 (Mother). At one point in the spring, while the Mother was in a work meeting, the Student called her over 38 times in an effort to reach her. *Id.* at 2167. At times, the Student would not get out of the car when being dropped off at school. *Id.* at 2147-48. The Student complained of frequent stomachaches and would say, in the morning, that she could not go to school because she had not slept at all during the night. *Id.* at 2147. The Student began to feel “stupid” and other students told her she was stupid. She fell behind in classes and did not understand what was going on when she did attend. *Id.* at 2148. During the 2015-16 school year, the Student missed 20 days of school, was tardy 26 times, and her grades dropped. *Id.* at 2146-2147, 2149.

8. The Mother and the Student discussed peer relationship and anxiety issues with District staff members at a meeting in late March of 2016. The meeting was attended by IMS Assistant Principal Timothy Baynes, school counselor Austin, and Christie Santodomingo, the Student’s science teacher. Tr. 2148, 2153, 2477 (Mother). The Student was struggling with peer relationships in science class and wanted either to change her seat or switch classes entirely. Ms. Santodomingo had observed the Student make a rude hand gesture in class and felt it was directed at her, though the Student maintained the gesture was directed at another student, not the teacher. At the meeting, the District staff refused to switch the Student’s science class and did not appear to believe her assertion that the hand gesture was directed at a student. Upon hearing the District’s position, the Student had a “meltdown,” sobbing and “begging them to help her and to move her out of that class.” *Id.* at 2154. As the Student and Mother were leaving the building after the meeting, Ms. Austin came running to catch them and gave the Mother a list of names of therapists and counselors who work with adolescents. She encouraged the Mother to find a counselor to help the Student with anxiety and emotional issues. *Id.* at 2155. The Mother acted on the advice and began to look for a counselor. AP46; Tr. 2156 (Mother). The Parents felt the Student needed help with her mental health, regulation, and coping skills. *Id.* at 2301.

9. The Mother sent an email to Ms. Austin on June 6, 2016, wherein she stated the Student had hidden in the bathroom during her physical education class that day, that the Student was “scared,” and that the Mother felt the Student had some form of “middle school PTSD.”⁸ AP46.

⁷ “The ‘guidance team’ is the District’s building-level process for responding to students who may be struggling with accessing their education for any number of reasons.” BP88 p.2.

⁸ PTSD refers to post traumatic stress disorder.

The Mother described the Student's level of anxiety while attending IMS as "moderate to severe." Tr. 2167 (Mother).

10. During the summer of 2016, the Student began seeing a counselor named Doug McClosky. After a few sessions with the Student, Mr. McClosky recommended she be evaluated for a learning impairment due to the fact that she felt she could not keep up in school and felt she was stupid. Tr. 2156 (Mother). The Student did not stay in counseling for long with Mr. McClosky because she did not connect with him and did not feel comfortable talking with him. *Id.* at 2303.

The 2016-17 School Year

11. The Parents moved residences over the summer of 2016 so the Student could attend a different middle school for eighth grade, and they hoped she would be able to get better grades. Tr. 2480, 2122-23 (Mother, Father).

12. The Parents had access to the District's "Skyward" online portal throughout the Student's time in the District. Skyward shows a student's grades and, for some classes, assignments that have been turned in or are missing. Tr. 2502 (Mother)

13. The Student attended Pacific Cascade Middle School (PCMS) for the 2016-17 school year. Dr. Dana Bailey was the PCMS principal at the time. Tr. 775-76 (Bailey). Dr. Bailey holds bachelor's degrees in education and special education, a master's degree in special education with a focus on severe disabilities, and a Ph.D. in education with a specialization in special education.⁹ *Id.* at 772-74.

14. In October of 2016, the Parents had the Student evaluated by Dr. Gayle Fay. Dr. Fay is a clinical neuropsychologist. She holds a Bachelor of Arts degree in English literature, a Masters of Education Degree in school psychology, and a Ph.D. in pediatric neuropsychology and rehabilitation. BP35; Tr. 140-41 (Fay). According to Dr. Fay's October 2016 evaluation report, the Parents' concerns regarding the Student included: "(1) organizational issues, considerable conflict around homework, (2) very catastrophic rumination/thinking, (3) significant sleep issues, (4) considerable negative self-talk, and (5) frequent absences at school." BP37 p.4. "Catastrophic thinking" means the Student anticipates failure and lack of success. Tr. 81-82 (Fay).

15. Dr. Fay and her staff administered a large battery of tests to the Student over five testing sessions. The Student was noted to struggle with impulsivity and to have significant difficulty on tasks that required auditory attention. BP37 p.6. Based on the Wechsler Intelligence Scale for Children - 5th Edition (WISC-V), Dr. Fay determined the Student's Full Scale Intelligence Quotient (FSIQ) to be 99, which is in the 47th percentile. *Id.* On the Wechsler Individual Achievement Test – 3rd Edition (WIAT-3), the Student scored in the 39th percentile for reading comprehension. On the Gray Oral Reading Test – IV, she earned an oral reading quotient of 82, which is in the 12th percentile. *Id.* at 8. The Gray Oral Reading score equated to the Student, an eighth grader, achieving an accuracy score equivalent to a fifth grader, and a comprehension score equivalent to a fourth grader. *Id.*

⁹ Dr. Bailey received her Ph.D. in 2018; she did not hold that degree while working with the Student. Tr. 774 (Bailey). Dr. Bailey became District Executive Director of Special Services in mid-2019. *Id.* at 775-76.

17. The Student exhibited significant difficulty in the area of attention, particularly auditory attention. BP37 p.11. On the Code Transmission measure of sustained auditory vigilance, the Student performed at “impaired levels.” *Id.* According to Dr. Fay, this suggested “she can be expected to have severe problems with keeping pace with the presentation of information in the classroom setting.” *Id.* The Student also had relatively low auditory comprehension scores, indicating she was likely to have serious issues understanding lectures and instructional explanations. *Id.* at 13.

18. On the Behavior Assessment System for Children – II (BASC-2) self-report, the Student’s scores indicated problems with school, personal adjustment, attitude to teachers, self-reliance and self-esteem. The Student denied experiencing social stress, but identified high levels of anxiety. BP37 pp.13-14. On the School Motivation and Learning Strategies Inventory, the Student demonstrated a lack of “crucial skills” in study strategies, note taking and listening, reading/comprehension, writing/research, test taking, organizational technology, and time management. *Id.* at 16-17.

19. Dr. Fay concluded the Student “more than qualifies for a diagnosis of Attention Deficit Disorder ... that will necessitate 504¹⁰ accommodations.” BP37 p.12. Dr. Fay described the Attention Deficit Disorder (ADD) as “pervasive and disabling.” Tr. 76 (Fay). Dr. Fay diagnosed the Student as having “attention deficit disorder – moderate to severe,” and “specific learning disability – reading, math.” BP37 p.17.

20. Dr. Fay recommended the Student receive “one-to-one coaching in the area of math.” BP37 p.10. By this, Dr. Fay meant “sitting with somebody and having them explain the information...having an opportunity to practice the concept and its applications, and then her academic support person would help her aggregate that so she could ... use the whole variety of different skills to move forward in terms of her mathematical capabilities.” Tr. 86 (Fay). Dr. Fay further explained this recommendation as “an individualized program...where the client is receiving direct instruction from a licensed professional or certified professional and that course of learning is carefully designed to meet the needs of that particular individual, not only within the framework of their ability to progress and move through the content that is presented but also within the framework of their disabling condition.” *Id.* at 92. Dr. Fay also recommended the Student receive academic support in reading, as well as “broad accommodations” to include copies of notes, word banks, additional time on tests, taking tests in a quiet setting, access to a second presentation of information, and access to a calculator and computer. BP37 pp.3, 17.

21. Dr. Fay never referenced a need for special education and did not discuss special education with the Parents. Tr. 93 (Fay). According to Dr. Fay, she is not in a position to

¹⁰ “504” and a “504 plan” refer to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, a federal statute that protects qualified individuals who have disabilities from discrimination based on their disabilities. A person qualifies for a 504 plan if he or she has a physical or mental impairment that substantially limits one or more “major life activities,” such as learning, reading, or communicating. 42 U.S.C. §12102.

“authorize” special education because she is not a school district. She advises the families she works with to discuss their child’s evaluation with their school district. *Id.* at 94, 120-21. Dr. Fay generally recommends that a family meet with the school district to see what support is offered, and if additional help is needed, she is able to suggest outside providers. *Id.* at 142. Dr. Fay has no recollection of talking to the Parents about how to obtain services for the Student. *Id.* at 144.

22. Based on her evaluation, Dr. Fay suspected the Student had a disability that necessitated special education. Tr. 95 (Fay). She believes her evaluation should have put the District on notice that the Student’s ADD indicated the need for an evaluation. *Id.* at 96. After the evaluation was completed, Dr. Fay offered to meet with the District, but the Parents declined and elected to “manage that themselves.” *Id.* at 75.

23. The Parents found it interesting to learn from Dr. Fay that the Student had “slow processing speed” because it explained why some tasks, such as doing homework, were so hard for her. Tr. 2484-85 (Mother).

24. A clinical interview of the Student was conducted by Stacie Keirseay of Dr. Fay’s office on October 20 and 25, 2016. The report of that interview was not provided to the District. Tr. 2503-04 (Mother); D87 p.22.

25. The Mother gave Dr. Fay’s evaluation to the District in October of 2016. Sonja Petersen was the District counselor responsible for the Student during eighth grade. Ms. Peterson holds a Bachelor of Arts degree in psychology and a master’s degree in education, specific to school counseling. Tr. 150, 162 (Peterson). Ms. Petersen recalls the Student seemed anxious about “a lot of things” that year, and there was turmoil at home. *Id.* at 166-67. She noted the Parents were having a hard time getting the Student to attend school and the Student seemed to have challenges with social relationships. *Id.* at 168. The Student had excessive absences and issues with tardiness during the 2016-17 school year: 63.29 days of excused absences, 17.98 days of unexcused absences, and 40 instances of tardiness to various class periods. BP3; Tr. 170 (Peterson).

26. Ms. Petersen attempted to address the Student’s issues by meeting with her, problem solving with her, meeting with the Parents, and meeting with teachers and administrators. Tr. 171 (Peterson). The Student’s grades were very poor, and Ms. Petersen put in place a “tiered step by step plan to see what might be successful.” *Id.* at 172-73. The Student’s physical education (PE) teacher had expressed concerns to Ms. Petersen in September of 2016 regarding the Student’s anxiety and the fact that she had chosen to take a zero for the day rather than participate in class activities. BP7. On October 19, 2016, in an email to the Parents, Ms. Petersen expressed her observation that the Student was “experiencing some real anxiety.” BP60 p. 7.

27. The Mother contends that, on October 21, 2016, Ms. Peterson discussed with her, in the school hallway on the way to a meeting, the difference between a 504 plan and an Individualized Education Program (IEP). DP87 p.2. The Mother contends Ms. Petersen stated an IEP is for students with more severe disabilities, and she did not believe the Student would qualify for one. Tr. 2201-02, 2520 (Mother). The Mother contends she clarified what Ms. Petersen meant by saying, “You mean something like Down’s [sic] Syndrome?” and Ms. Petersen replied, “Yeah, like that.” *Id.* Ms. Petersen does not recall any such conversation. Tr. 222, 439 (Peterson). According to the Mother, this conversation made her feel comfortable that a 504 plan was the best course of action for the Student. *Id.* at 2203 (Mother).

28. The ALJ finds that a brief discussion was held between Ms. Petersen and the Mother in the PCMS hallway in October of 2016, during which Ms. Petersen stated she did not think the Student would qualify for an IEP. The discussion left the Mother with the impression that a 504 plan was the best route by which the District could serve the Student.

29. On October 21, 2016, a guidance team meeting was held to discuss the Student. BP58; BP88 p.2. Prior to the meeting, Ms. Petersen solicited input from teachers and the Parents, and sent a summary of that input via email to the meeting participants. The Parents received the input summary. The Mother's input noted a concern that the Student's "high levels of anxiety and ADD are presenting challenges to being successful with her school work." BP61 p.2. Teacher input included: [Student] is concerned about other students in PE class and refuses to participate; [Student] cannot focus and waits until the last minute to turn in work; [Student] is easily distracted and distracts other students; [Student] is extremely fixated on boys and on the social aspects of school, which interferes with her learning in a "major way;" [Student's] attitude is that school is a place of social interaction and not work; [Student] has an "impressive work avoidance repertoire;" and "[Student] is not focused and does not make an effort." *Id.* at 3. Notably, the Student's math teacher commented, "I feel that she has some large gaps in her math knowledge and this, combined with her lack of initiative, makes learning near impossible at the pace and level of CC8."¹¹ *Id.*

30. The October 21, 2016 meeting focused heavily on Dr. Fay's report, and the Student's ADD. Tr. 2194 (Mother).

31. In follow-up to the October 21, 2016 meeting, Ms. Petersen sent an email confirming an "action plan" for the Student. The action plan consisted of: audio books, finding ways to connect with the Student, helping the Student make decisions, math resources, positive reinforcement, options for first period class, hard copies of notes, breaking work into small chunks, frequent check-ins, preferential seating, and testing in a quiet location. The team agreed to reconvene in four to six weeks to check on interventions and to "officially evaluate [Student] for a 504 plan." BP15 pp.1-2. "Prime Numbers" was noted by Ms. Petersen as an outside math resource because the Parents planned to pursue tutoring assistance from that entity. *Id.*

32. On October 24, 2016, Ms. Petersen informed the Mother that the Student felt excluded by other students, and had spent time in the school office and health room rather than going to class. The Mother replied that she would make sure the Student "delves into that with her counselor." BP12 p.2.

33. Prime Numbers assessed the Student on October 27, 2016, and determined the following: the Student (an eighth grader) demonstrated understanding of approximately 50% of sixth grade math topics, and had not mastered many essential pre-algebra skills and topics that are necessary for success in algebra. BP15 pp. 3-4. Prime Numbers offered tutoring options to the Parents. In response to the information from Prime Numbers, the Parents asked the District for input regarding how to set achievement goals for the Student, and/or whether she should move to a lower grade math class. In response, Dr. Bailey discussed with the Parents the possibility of moving the Student to seventh grade math, but noted that this would present a problem down the road because high school would not be able to provide instruction to the Student regarding eighth

¹¹ "CC8" is Common Core math, grade 8.

grade math concepts. *Id.* at 8; Tr. 1346 (Bailey). The Parents chose to move the Student to seventh grade math. The District suggested the Student could access eighth grade math material in District summer school and/or through a private summer program. *Id.* at 2190.

34. Dr. Bailey did not consider referring the Student for a special education evaluation at this point because the Student had passed seventh grade math, which Dr. Bailey viewed as an indication that the Student was learning, though not excelling. Tr. 1365 (Bailey). Also, Dr. Bailey did not believe the Parents would be interested in adding a “label” of special education to the Student’s “fragile sense of self,” though Dr. Bailey does not recall ever discussing the possibility of special education with the Parents. *Id.* at 1365-66.

35. The Student’s guidance team did not reconvene in four to six weeks. It did not reconvene until the middle of February of 2017. Tr. 184 (Petersen).

36. Ms. Petersen had concerns about the Student during the 2016-17 school year but did not think she should be referred for a special education evaluation. According to Ms. Petersen, tiered interventions are tried first in order to keep a student in his or her least restrictive environment. According to Ms. Petersen, “We don’t jump directly to a special education evaluation,” and the District staff was attempting to distinguish a disability or diagnosis from the social components of middle school. Tr. 187-88 (Petersen). Ms. Petersen was trying to ascertain what was a “normal developmental struggle” for a child the Student’s age, versus a learning disability or mental health concern that needed to be addressed. *Id.* Ms. Petersen felt the Student was having some successes in school in that she was advocating for herself, was communicating well with teachers, and had successfully presented a book report in one of her classes despite having anxiety around doing so. *Id.* at 190.

37. Nonetheless, Ms. Petersen is clear that she suspected the Student had a disability during the 2016-17 school year. Tr. 190-91 (Petersen). In fact, Ms. Petersen testified that she “knew” the Student had a disability and felt it was interfering with the Student’s “academics.”¹² *Id.*

38. On November 2, 2016, Dr. Bailey sent an email to Ms. Petersen that stated, “[W]e see a real and debilitating issue for [Student].” The email went on to say the Principal of IMS reported the Student was “drama central” in seventh grade, and Dr. Bailey noted, “I think her true learning struggles may have been masked by all this drama.” BP64 p.1. When testifying about this email, Dr. Bailey stated:

[I]t was very difficult to unravel what was the starting point and what were contributing factors to her struggles to learn. And sometimes it was hard to get through what she presented first, which was sometimes kind of prickly to get to where really her struggles were.

Tr. 1439 (Bailey).

39. In November of 2016, the Student began seeing Saskia VonMichalofski, a nurse practitioner at River Valley Psychological Services (River Valley), in order to manage her generalized anxiety disorder. BP33 p.2. The Student received therapy and medication

¹² Ms. Petersen testified, “I knew that she had a disability, yes.” When asked if she suspected that disability was interfering with the Student’s “academics,” Ms. Petersen answered that she did. Tr. 190-91 (Petersen).

management at River Valley. *Id.* Her therapist was Vanessa Brown. The Student saw Ms. Brown to address anxiety, low self-esteem, school refusal, feeling judged, and the problems she was experiencing generally. Tr. 2493 (Mother). The Student saw Ms. Brown only a “handful” of times, however. *Id.* at 2494.

40. On December 1, 2016, the Mother emailed Dr. Bailey and Ms. Petersen regarding the Student’s anxiety. The Mother stated:

[M]y fear is that it is possible that [Student] is not emotionally capable of handling public middle school. Do you have any suggestions at all of alternate options or resources? ... I’ve heard there are options to do part or all of the day online or through a private program like Yellow Wood Academy, Brightmont Academy or Pacific Learning. I’ve got calls in to them, but would really appreciate any thoughts or suggestions.

Ms. Petersen replied to the email and stated she had “many of these same issues in her head” and suggested the Parents meet with her. BP23 p. 8-9.

41. On December 2, 2016, the Mother emailed one of the Student’s teachers and asked that the Student’s seat be moved. She stated, “[A]s you know, [Student] suffers from (often irrational) high anxiety which causes her to not focus and, even worse, be unable to attend/participate in situations.” BP76 p.1.

42. In January of 2017, the Student began seeing a new therapist, Dr. Heather Spence. Tr. 2494-95 (Mother).

43. On January 13, 2017, the Mother emailed Ms. Petersen and stated:

[Student] would like to meet with you to talk about what to do. In Science and Social Studies, she feels that she is so behind in understanding the material she can’t catch up. Science is especially a problem because she doesn’t feel like she is keeping up with the math involved.

BP29 p.1.

44. On January 31, 2017, the Student’s PE teacher emailed Ms. Petersen and stated:

I’m concerned about [Student]. She is gone so often from my class that I don’t know where to start to try and catch her up. She has a 12% & to date has not made up her unit test from early Jan. & has missing assignments/projects ... I talked with her and she says she has trouble sleeping so she misses school because of her sleeping habits & her anxiety both [sic] are concerning to me & it appears she is bothered by these things too.

BP80.

45. On February 1, 2017, the Mother emailed Debbie Romano, District Operations Coordinator. The Mother inquired about the Student transferring to a different middle school in the District in order to give her a “fresh start.” BP31 p.2. The Mother stated the Student was

“struggling socially and academically.” She further stated, “[Student] is so overwhelmed with her fears of bullying (some real and some perceived) and academic failure (real, her anxiety has caused excessive absences and she’s crushed at the thought of catching-up), she’s begging me to investigate an in-district transfer ...” *Id.* The Mother requested that Ms. Romano not inform the staff at PCMS of this request.

46. In response to the email, Ms. Romano called the Mother and provided information regarding opportunities within the District, as well as information pertaining to online learning, including the Washington State K12 online tuition-free program. Tr. 859 (Romano).

47. On February 2, 2017, Ms. VonMichalofski wrote a letter regarding the Student. The letter stated the Student’s “challenges with anxiety” had contributed to her missing school, and River Valley was in the process of adjusting her medication dosage. PB33 p.2. The letter went on to state that the Student may continue to have school absences related to her anxiety disorder. *Id.*

48. A second guidance team meeting regarding the Student was held on February 16, 2017, to evaluate the Student’s need for a 504 plan. BP37 p.1. The District allocates a period of 25 minutes for 504 meetings, so the meeting “had to be really condensed” according to Ms. Petersen. Tr. 207-08 (Petersen). At the meeting, the Student’s social studies teacher noted the Student is frequently absent, cannot ever seem to catch up, and “anxiety exacerbates the cycle.” BP37 p.1. The Student’s language arts teacher noted the Student can do the work “when she’s engaged.” The Parents noted the Student is often up all night worrying and experiences physical manifestations of her anxiety. They stated the Student is “under the impression” that she will be repeating eighth grade the following year, and they were looking at options for private schools. The Student’s science teacher noted that the math in science class is “above her head or above her confidence level.” The Dean of Students noted that a plan was needed for when the Student “shuts down” and is “in fight or flight mode.” *Id.* at 2.

49. The team discussed the fact that the Student wanted to repeat eighth grade because she was failing everything and did not have any friends. Tr. 2214 (Mother). However, the Parents did not intend to retain the Student in eighth grade. *Id.*

50. The 504 guidance team developed an action plan for the Student which consisted of, in part, a partial schedule that allowed her to arrive at school at third period and to do math and PE at home. It also allowed for modified assignments, late assignments, S/U grading,¹³ and development of a safety protocol plan for times when the Student was experiencing severe anxiety. BP37 p. 2.

51. On March 10, 2017, Ms. Petersen emailed the Mother and stated, “We haven’t seen [Student] at school for quite a while now. Is everything OK?” BP 39 p. 60. The Mother responded that same day, stating:

We had a terrible couple of weeks. She is really depressed, not even getting out of bed. We’re adjusting meds and [Father] took her to a new doctor today (a naturopath) who will work with her on diet, mindfulness and supplements to

¹³ This stands for “satisfactory or unsatisfactory.”

hopefully improve disposition. We don't know what else to do...so we just keep trying.

Id. Ms. Petersen responded on March 13, 2017, stating, "I'm so sorry things aren't going well right now. I think you are exactly right, though, that you just keep trying and trying again. You just do your best." *Id.* at 58.

52. Ms. Petersen then inquired whether the Student would be attending Issaquah High School (IHS) the following school year because she needed to register and "save a spot." The Mother replied, "We are sure she won't attend IHS next year. Things are still undecided but it will most likely be a private school here or in Texas (where we have a lot of family and she tends to be really happy around) [sic]. We really don't think she is emotionally ready for a big, [sic] HS like IHS." BP39 p.56.

53. On March 17, 2017, the Student placed a telephone call to the District Superintendent's office and either left a message for or spoke with Ms. Romano. Ms. Romano does not recall the substance of the message or conversation, but recalls it was "alarming enough" that she contacted Dr. Bailey. She recalls the Student was upset. Tr. 863-64 (Romano).

54. When Dr. Bailey informed the Parents of this via an email message entitled "alarming phone message," they decided to schedule a meeting. BP43 p.1. Dr. Bailey replied to the Parents in order to finalize the meeting time, and stated, "I know she is struggling. But I'm worried that hat [sic] she feels so desperate to call people she doesn't know. I've assured the super¹⁴ that we are all aware of how she feels and have been meeting throughout the year to meet her needs." *Id.* at 3.

55. The Mother discussed the phone call to the Superintendent with the Student. According to the Mother, the Student had told the Father that she wanted to change schools, and he said that was not possible. The Student did not believe him so she called the Superintendent and left a message with Ms. Romano, asking for a call back. The Mother acknowledged that this was "a wildly inappropriate and desperate thing" to do. BP 43 p. 5.

56. On March 21, 2017, the Mother emailed Ms. Petersen and stated:

[W]e are talking through a huge decision. She just won't go to school. She wants to switch to a different middle school because she believes the kids at PCMS make fun of her, laugh at her, say mean things about her and generally prohibit her from attending. ... Right now, if she can't attend another public school (understandably due to the time of year and not wanting to start over on her 504 plan, et al), we are considering 100% home school for the rest of the year, which will be outsourcing through private tutors.

BP39 p.42.

57. On or around March 21, 2017, the Student was involved in a cyberbullying incident with students from IMS. The Student and others had bullied one or more students at IMS on social

¹⁴ The ALJ assumes this is a reference to the District Superintendent.

media, and the incident caused alarm among the District administrative staff at both IMS and PCMS. BP44.

58. On March 21, 2017, after receiving an email of the same date from the Mother, Ms. Petersen asked Dr. Bailey if she could be included in the meeting Dr. Bailey had scheduled with the Parents to discuss the cyberbullying. Dr. Bailey responded, stating:

For sure. I am egregiously worried about her mental health. The suspicious thinking, calling out for help to random people of authority (as in our superintendent) and creating or adding to a targeted social media site... I think she is having some sort of mental health break and I am really, really worried.

PB39 p.6.

59. Dr. Bailey testified that, at this point, the District was noticing new and different behaviors on the part of the Student, and her behaviors were escalating. Dr. Bailey was concerned because, at this time in the school year, students are registering for, and preparing for, high school. Tr. 1451-52 (Bailey). However, she felt the Parents were working through the Student's struggles with counseling, and the District "was not moving towards a special education referral." *Id.* at 1452.

60.

Id.

61. On March 26, 2017, the Parents emailed Dr. Bailey and Ms. Petersen and stated:

As promised, we've done a ton of talking through [Student's] options and considerations for the rest of his [sic] year. We were going to pull her out 100%, based on the latest social disaster, but would really like to try again next week to make the partial schedule work for a handful of reasons. First, I know it is an effort and a lot to ask, but we'd like to get her 504 plan in place for future considerations. If Sonja and the team and [sic] willing to complete that effort, we'd really appreciate it. Second, we've lined up math and PE options but are finding availability for science, SS and LA a scheduling nightmare[sic]. We're working on it, but don't have it figured out yet. Finally, [Student] feels bad for her mistakes and wants to sort it out with her teachers and peers. This means she wants to show up, and we want to give her one more chance to make good on her intentions. To that end, she's going to give a full effort for one more week. I hope this is OK with you, please let me know and if not we'll make other plans for Tuesday onward.

BP39 p.31.

62. Ms. Petersen did not believe a special education referral was appropriate for the Student at this time despite the struggles she was having. According to Ms. Petersen, the District was attempting interventions, and the fact that the family was likely to move to Texas would constitute

a “big upheaval” for the Student. Ms. Petersen believes this likely decreased the Student’s motivation at school and possibly increased conflict at home. Tr. 224 (Petersen).

63. A formal 504 accommodation plan was put in place for the Student on March 31, 2017. BP37 pp.20-21. It identified anxiety and ADD as “diagnoses/impairments.” The plan’s “impacts” sections reads as follows:

[Student’s] anxiety has had a major impact on 8th grade. She has accrued a significant number of absences that are anxiety-related. Being absent in turn creates additional anxiety about being behind at school, what other will say upon her return, etc., making it hard for her to reengage. [Student] feels a high level of social anxiety in relation to her interactions with her peers. She has the tendency to “get stuck” on something that is causing her anxiety and to be paralyzed by it. In these instances she sometimes seeks help appropriately, but other times she engages in unhealthy coping habits like hiding in the bathroom.

[Student] is easily distracted and struggles with impulsivity. She has the tendency to answer quickly and often does not allow herself enough time to fully process information presented to her. Of particular note, she has significant deficits in auditory attention, so she may struggle to fully comprehend auditory information without further 1-on-1 follow up.

BP37 pp. 20-21.

64. In April of 2017, the Mother and Ms. Petersen exchanged multiple emails. On April 20, 2017, Ms. Petersen inquired of the Parents whether they were still considering home schooling the Student. The Mother responded, “I know her participation in classwork/homework isn’t satisfactory, but as long as she isn’t disruptive we hope she can continue to attend.” BP 39 p. 5. Ms. Petersen replied that she was glad the Student was at school. She stated, “We can deal with this stuff. ... We would welcome keeping her for the remainder of the year if that’s your family’s decision.” BP39 p.3.

65. Later in April of 2017, the Student’s family decided to move to Texas that coming summer. The Mother had gotten a job there and the Student was excited to move closer to her extended family. Tr. 2221-22 (Mother). The Parents wanted the Student to have a “fresh start.” *Id.* at 2228.

66. On May 18, 2017, the Student was expelled from PCMS for violating “Rule of Conduct – Arson,” as defined in the Student Handbook, after she intentionally placed an aluminum wrapper in the cafeteria microwave and turned it on. BP54 p.1, 15. The rule pertaining to arson states, “Knowingly and/or maliciously causing a fire or explosion is prohibited.” *Id.* The emergency expulsion was converted to a short-term suspension of six days after an investigation by Jeff McGowan, PCMS Assistant Principal. *Id.*

67. The Student’s academic performance was very poor during the 2016-17 school year. The Mother recalls the Student was not completing her assignments and did not understand what needed to be done. She was also extremely disorganized. Tr. 2181 (Mother). The Student missed a great deal of school due to anxiety, and she ended up with “Unsatisfactory” grades in all of her classes. *Id.* at 2182.

68. The Student was promoted to ninth grade by the District. Tr. 2215-16 (Mother).

69. The Mother does not believe the District's interventions during the 2016-17 school year were effective for the Student. Tr. 2205 (Mother). The Student did not achieve what the Mother would consider to be success, such as attending class, obtaining passing grades, having positive peer relationships, and/or having positive relationships with teachers. Tr. 2207-08 (Mother).

70. Dr. Bailey testified that approximately ten percent of students in the District receive special education services. The District is "very attentive to not going to special education too quickly, that we really want to have tried all of the tier one interventions and have done them with fidelity for a period of time to see if they were going to work before we went to the next step of a special education referral." Tr. 1506 (Bailey). As to the Student, the District wanted to make certain they had "left no stone unturned" in helping her "find her way" via general education. According to Dr. Bailey, it is not uncommon for it to take a full school year to move through "a high degree of process," examining a student's behavior beyond the surface, and "not going to a special education referral too quickly." *Id.* at 1506-07.

71. According to Dr. Bailey, when a guidance team meeting is held for a student, the course of action to address the student's issues is determined by the team. Dr. Bailey testified during the due process hearing as follows:

Q: (Mr. Ford) And so in this case the Student had a disability. Why wasn't she referred for a special education evaluation to [sic] the guidance team?

A: (Dr. Bailey) She had - when it was known that she had been tested for attention deficit disorder, it went to a guidance team and a 504 process was engaged, so that was the reaction that the - the guidance team took.

Q: Okay. So how do you - how does the guidance team distinguish between whether a Section 504 plan or a special education evaluation is - is required for a given student?

A: I - I think that is a responsive action within the confines of the meeting. So the guidance team is together, including a student and/or Parents, Parents and/or students, and the responsive action is a result of that meeting.

Tr. 1354-55 (Bailey).

Dr. Bailey's follow up to this testimony was as follows:

Q: (ALJ) [W]ould you expect that special ed. as well as 504 options would be talked about at [a guidance team] meeting?

A: (Dr. Bailey) I would expect that for a student who presented with social and emotional struggles, that they would start with a 504 and move through those processes first, and when it was evident that the 504 potential had been tapped out, that they would engage in a discussion about further - stepping it up further.

Q: So special ed. wouldn't necessarily have to be discussed at all at the first meeting; is that your professional opinion?

A: That is my professional opinion, not at the first meeting.

Q: But if the – if the Parents are participants and they don't know the options, how – how does that work? How can they give an opinion if they are not presented with all of the potential options?

A: I think that is a fair question, and at the time in 2016 I can just best answer by saying that is where we started with students who were presenting with social/emotional struggles, and that I always felt like we were working in the positive direction with this particular family.

Id. at 1510-11.

72. The Mother trusted Dr. Bailey during the 2016-17 school year, and felt they had become friends. The Mother felt Dr. Bailey had done everything she could to help the Student. Tr. 2219 (Mother). The Mother believed the Student's ongoing issues were the Parents' fault because they could not get her to attend school regularly. *Id.* at 2205-06.

The 2017-18 School Year

73. The Parents and Student moved to Texas over the summer of 2017. The Parents initially registered the Student at the local public school, Keller High School, which is "enormous" according to the Mother. Tr. 2229 (Mother). On the Keller School District enrollment form, the Parents indicated the Student had been enrolled in "special classes" for math/reading assistance, and for section 504. CP3 p.2. On the first two days of school, the Student hid in the bathroom all day and did not attend any classes. *Id.* On the third day, she refused to get out of the car when being dropped off, and the Parents decided she needed to attend a smaller school. *Id.* at 2228.

74. The Parents took the Student to see the local middle school, Indian Springs Middle School (Indian Springs), which was smaller than Keller High School, and enrolled her in eighth grade. Tr. 2230 (Mother). A 504 meeting was held for the Student at Indian Springs on September 1, 2017. According to the "504 Committee Deliberations" document, the Student "has been diagnosed with Anxiety and ADD/ADHD." CP3 p. 11. Her physical impairments were noted to be "concentrating and thinking." *Id.* A 504 "service plan" was put into place after the meeting. *Id.* at 12.

75. The Student attended Indian Springs for about a week, but then became too anxious to continue to attend. Tr. 2233 (Mother). At this point, the Mother was "grasping at straws and trying to think of anything that might help." *Id.* at 2657.

76. In late September of 2017, the Parents enrolled the Student in an outpatient program in Texas called Mind Above Matter, at the suggestion of a counselor at Indian Springs, because the Student "needed more help." Tr. 2233-34 (Mother). According to the Mother, the Student needed intense therapy because they could not get her out of her room, could not get her to go to school, and could not get her to stop crying. *Id.* The Mind Above Matter program was intended to last four weeks, but, because the Student often refused to attend, it took her six or seven weeks to complete the program. *Id.*

77. Mind Above Matter took place four days per week for about four hours. The program included an hour of individual therapy and at least an hour of group therapy. The “classroom instruction” consisted of students logging in to online learning. Tr. 2548-49 (Mother).

78. After the Student completed the Program at Mind Above Matter, she was enrolled in Fusion Academy (Fusion). Tr. 2234 (Mother). Her enrollment date was October 20, 2017. CP6 p.3. Fusion offered one-on-one learning and an accelerated curriculum that allowed the Student to fit a semester of school work into a shorter period of time so she could be caught up for the second semester. Tr. 2235 (Mother). The Student did well at Fusion. She got up in the morning and made it to class. She enjoyed the material, and the Mother observed the Student’s “academic ability” to be returning. *Id.* at 2238. However, the Student remained depressed and felt isolated. She had no friends other than her family members. *Id.*

79. The Student and Parents moved back to Issaquah in January of 2018. The Mother’s job in Texas had not been a good fit, and the Student was very sad while living in Texas. Tr. 2239 (Mother).

80. The Student enrolled at IHS once the family moved back because the Parents thought she needed a peer group. Tr. 2242 (Mother). On the “Confidential Emergency Health Information” form completed by the Parents, they checked ADHD and Anxiety/Depression under the Medical History question. CP10 p. 1.

81. The Student’s counselor at IHS was Emily Combellick (formerly Tuttle).¹⁵ Ms. Combellick holds a bachelor’s degree in English and a master’s degree in education and school counseling. Tr. 1233-34 (Combellick). After the Student enrolled at IHS, Ms. Combellick conversed with Ms. Petersen briefly regarding the Student. Ms. Peterson mentioned that the Student had a 504 plan, and that she had worked with the Student regarding her schedule and getting support in place. *Id.* at 1237.

82. IHS requested the Student’s records from Fusion Academy. PC12. The unofficial transcript showed the Student had received As in all four of her classes, which were English, algebra, biology, and cultural geography. D50 p.7. Ms. Combellick was aware of this transcript and felt the Student had done “pretty well” at Fusion. Tr. 1263 (Combellick).

83. The Student began to experience problems very shortly after enrolling at IHS. On January 31, 2018, District school nurse, Allison Cathro, emailed Ms. Combellick and stated that the Student was struggling. According to Ms. Cathro, “Former acquaintances are posting on social media and she is feeling judged....I wonder if you would be available to support her further?” CP15 p.3. Ms. Combellick replied, “Yes, she has a history of poor attendance and I’ve been worried about the trend continuing since before she started.” *Id.* at 1. Douglas Wolff,¹⁶ Assistant Principal at IHS, was copied on Ms. Combellick’s reply message.

¹⁵ Ms. Combellick went by the name Emily Tuttle during the time period she worked with the Student. However, she currently goes by the name Emily Combellick and will be referred to as “Ms. Combellick” herein.

¹⁶ Mr. Wolff holds a bachelor’s degree in education and social studies, and a master’s degree in education. Tr. 1074 (Wolff).

84. On February 4, 2018, [REDACTED]

85. On February 6, 2018, [REDACTED]

86. The District has a mechanism by which a student's-----is documented and placed in the student's file. The counselors also keep a cop ntation. Tr. 1159-60 (Connelly).

87. IHS held a 504 meeting regarding the Student prior to adopting a 504 plan for her.¹⁷ At the meeting, the Student's attendance, anxiety, and disciplinary issues were discussed. Tr. 2244 (Mother). Mr. Wolff attended the meeting. The Mother recalls he had a folder of papers, and he commented that the Student had very poor attendance at PCMS and had failed her classes there. He stated that "satisfactory/unsatisfactory" grading was not an option in high school. He asked the Mother why she thought the Student would be successful at IHS and how things would be different from middle school. *Id.* at 2244-45. The Mother described the Student's success at Fusion, and that she had gained some confidence and had matured while in Texas. *Id.* The Mother also reported the Student had started taking Prozac and the Parents had seen an improvement in her depression. The Mother felt that she had to "sell" the Student to IHS at this meeting and had to "make a case for the school to accept her." *Id.* Special education was not mentioned at the meeting. *Id.* No other 504 meetings were held for the Student at IHS. *Id.* at 1278-79 (Combellick).

88. Mr. Wolff does not specifically recall the 504 meeting pertaining to the Student. It was his typical practice to review a student's file prior to attending a 504 meeting, and he recalls seeing Dr. Fay's evaluation in the Student's file. Tr. 1085 (Wolff).

89. IHS put in place a 504 plan for the Student on approximately February 12, 2018. The plan is brief and identifies one "diagnosis/impairment" of "anxiety." CP22 p.2. The plan states, "[Student's] anxiety has contributed to a lot of absences and attendance issues in the past. [Student] and her parents hope that this has improved and that she will be able to attend more regularly moving forward." *Id.*

90. On February 13, 2018, the Mother informed Ms. Combellick the Student was struggling to make it to/through first period. According to the Mother's email, "It is mostly due to sleep issues and the effort to be calm and open minded so early." CP27. The Student planned to request a schedule change so she had an elective during first period, rather than math. *Id.*

¹⁷ Evidence regarding the date of this meeting was not provided, but the 504 plan went into effect on approximately February 12, 2018.

91. On February 14, 2018, the Student's math teacher, Kurtis Evans, emailed Ms. Combellick and stated the Student was considering dropping algebra. On February 16, 2018, he again emailed Ms. Combellick and informed her that the Student had only attended two or three days of class during the semester and he was concerned about her. CP25 p.1.

92. On February 16, 2018, two IHS Students reported to Ms. Combellick that they had seen a bag of drugs in the Student's belongings. The Student was subsequently physically searched by a male District staff member, which she found very upsetting. The Mother emailed Mr. Wolff that afternoon and informed him the Student was "shaken and unsettled by the accusation and resulting search." CP28 p.4. No drugs were found on the Student or in her belongings. Tr. 1092 (Wolff).

93. On February 26, 2018, the Student began seeing a psychiatrist, Dr. Marisol Toliver-Sokol. CP31 p.9; Tr. 371 (Toliver-Soko). Dr. Toliver-Sokol holds a medical degree and a master's degree in clinical research. She completed an adult psychiatry residency, and was Chief Fellow in her child and adolescent psychiatry fellowship at Oregon Health & Science University from 2013 to 2015. CP32 p.1. Dr. Toliver-Sokol has experience in outpatient, inpatient, and residential psychiatric care, and crisis management. *Id.*

94. The Parents brought the Student to Dr. Toliver-Sokol because the Student needed to establish care with a prescribing physician in order to continue receiving Prozac, and the Parents also felt she need therapy following the — — — — Tr. 2248 (Mother). As part of the Student's therapy, the Parents met with Dr. Toliver-Sokol periodically, and discussed the Student's medications, anxiety and depression. *Id.* at 2248-50. The Mother shared information about a "very traumatic" event that happened to the Student during the summer before ninth grade. According to Dr. Toliver-Sokol's notes, the Student [REDACTED] The incident was not reported to the police. CP31 p.10.

95. When the Student first started seeing Dr. Toliver-Sokol, she was "struggling significantly with depression, anxiety, as well as attention and concentration and difficulty with school." Tr. 335 (Toliver-Sokol). At the time, Dr. Toliver-Sokol saw the Student approximately every other week. *Id.* at 336. Dr. Toliver-Sokol's notes indicate the Student had diagnoses of major depressive disorder and insomnia. CP31 p.10.

96. On March 5, 2018, Dr. Toliver-Sokol met with the Student. In her notes from that session, Dr. Toliver-Sokol stated she would like the family to consider creating an "IEP or 504 plan" to help the Student get support in school. She also noted the Student may benefit from a smaller school with more one-on-one interaction. CP31 p.15. Dr. Toliver-Sokol recalls discussing this with the Parents but does not recall when. She recalls the Parents did not seem to understand how an IEP or 504 plan could help the Student in school or how to go about getting such help. Tr. 345-47 (Toliver-Soko). Dr. Toliver-Sokol knew the Student had either an IEP or a 504 plan in place but did not know the details. *Id.* at 345-47, 386. Dr. Toliver-Sokol believes she would have conducted a "rudimentary" discussion with the Parents about the differences between an IEP and a 504 plan. *Id.* at 347. She offered to talk with staff at the District about the Student. In one discussion with the Mother, Dr. Toliver-Sokol observed the Mother "felt like they were getting the runaround from the school, that there wasn't any clear movement in the IEP." *Id.* at 350-52. The Mother does not recall any conversation with Dr. Toliver-Sokol regarding an IEP or 504 plan. *Id.* at 2250 (Mother).

97. The Student's Father shared with Dr. Toliver-Sokol on March 12, 2018, that he was concerned about the Student academically. He felt that, even with accommodations made at school, she would not be able to catch up in her grades. He noted that he has seen her self-esteem drop lower ever since she was first diagnosed with ADHD in middle school. Dr. Toliver-Sokol noted that the Parents had not pursued treatment for the Student's ADHD. CP31 p.19.

98. The Student was also in weekly therapy with Heather Spence during this timeframe. Tr. 336-37 (Toliver-Sokol); CP31 p.30. Ms. Spence did not testify at the hearing.

99. Sometime around March 20, 2018, the Mother, Ms. Combellick, and Erin Connolly¹⁸ held a meeting. Ms. Connolly was an administrative intern at IHS and was filling in for Mr. Wolff for part of the semester while he was on parental leave. Tr. 1141 (Connolly); CP37. At their meeting, the Mother expressed concern about the Student's academic struggles. They discussed the Student's anxiety and the fact that she had performed well and gotten very good grades at the one-on-one school (Fusion) in Texas. *Id.* at 1142-43. Ms. Combellick offered to send out a survey to the Student's teachers to review the efficacy of the 504 plan.¹⁹ *Id.* Ms. Connolly was aware at the time of the meeting that the Student had been diagnosed with ADD. *Id.* at 1146, 1150. The Mother raised the issue that this diagnosis was not part of the Student's 504 plan. *Id.* The guidance team never reconvened to assess the effectiveness of the 504 interventions.

100. Both Ms. Connolly and Ms. Combellick were concerned about the Student's attendance at this point. Tr. 1152 (Combellick). Ms. Connolly would see the Student lingering in the bathroom and was concerned that "she wasn't accessing her education." *Id.* It was difficult for District staff to determine if the 504 plan was working because the Student missed so much class. *Id.*

101. On March 23, 2018, the Student's math teacher emailed Ms. Connolly and Ms. Combellick and stated, "[Student] is failing my class with 9% and is making zero effort to do any work." CP41 p.2.

102. On March 27, 2018, there was an incident in the IHS commons after school in which a group of boys physically restrained the Student and convinced another student to kiss her against her will. Tr. 1187, 2257-58 (Connolly, Mother); CP42. According to the Mother, the Student was traumatized, extremely upset, and felt attacked following the incident. *Id.* at 2257-58 (Mother).

103. On March 30, 2018, IHS assistant principal, Mark Jergens-Zmuda, sent an email to another staff member stating the Student would be making some changes to her academic schedule, and "she will also get an F on her transcript for Photography 6th period." CP44.

104. On April 26, 2018, Ms. Combellick emailed the Mother and reported the feedback she had received from the Student's teachers after the March meeting. The teachers expressed concerns regarding the Student's frequent absences, distraction, missing assignments, and lack of follow-through. CP38.

¹⁸ Ms. Connolly holds a bachelor's degree in education (specifically, in teaching of history), and a master's degree in educational leadership. She also holds a principal certification. Tr. 1138 (Connolly).

¹⁹ Ms. Combellick sent surveys to all of the Student's teachers and requested feedback be provided by March 28, 2018. CP38 p.3

105. On May 15, 2018, the Student was emergency expelled from the District for violating school rules prohibiting use and possession of alcohol and drugs. On May 17, 2018, the District converted the emergency expulsion to a 90-day long-term suspension that could be reduced to a 10-day suspension if the Student obtained a drug/alcohol assessment and followed treatment recommendations. CP63 pp. 1-5. The Student completed the 10-day suspension and returned to school on May 20, 2018, after completing a drug/alcohol assessment as required. *Id.*

106. Sara Young is a substance use disorder counselor at Friends of Youth. Ms. Young holds a Bachelor of Science degree in psychology, and a certificate in chemical dependency. Tr. 297-98 (Young). Friends of Youth provides care, in partnership with the District, to students with mental health issues and substance abuse disorders. *Id.* at 299. The Student went to Friends of Youth for an assessment on May 18, 2018. She returned for a second assessment in July of 2018. She did not receive treatment from Friends of Youth. *Id.* at 301; CP57.

107. As part of the May 18, 2018 assessment, the Student reported that she began drinking alcohol and smoking marijuana when she was 13 years old. CP57 p. 9-10. She also reported snorting Xanax on one occasion, ingesting codeine three times, and huffing from whipped cream bottles approximately ten times. *Id.* at 11. The Student reported she began smoking at age 14 and has “juuled”²⁰ with friends. She also reported that her nicotine use had been increasing and she was experiencing cravings. *Id.* at 14. The Student reported a history of self-harm, including “cutting” approximately once per week. *Id.* at 17. She further reported that all of her friends used drugs or alcohol but she did not feel they had abuse problems. *Id.* at 25. At the time of the assessment, the Student was drinking wine approximately once per week and hard alcohol to the point of being “under the influence” about once per month. She was smoking marijuana approximately once per month. She did not feel that alcohol or marijuana use was a problem for her at the time. The Student was diagnosed with “Nicotine use disorder – moderate” by Ms. Young. *Id.* at 33. The assessment was shared with the District and the Parents. Tr. 319(Young).

108. After the May 2018 assessment, Ms. Young recommended the Student engage in “alcohol/drug information school” and perform check-ins with Ms. Young during school. The Student completed the information school, but was not able to accomplish check-ins. Ms. Young is uncertain as to why. Tr. 302 (Young).

109. On June 13, 2018, an appeal hearing was held at the District’s Administrative Services Center regarding the emergency expulsion of the Student. CP63. Present at the hearing were the Hearing Officer (HO), the Parents, the Student, Mr. Wolff, Ms. Connolly, and Dawn Wallace, District Director of Teaching and Learning. According to the HO’s findings, the Student admitted she was in the restroom with other students who were smoking marijuana on May 15, 2018, but she denied smoking marijuana herself. Other Students present reported that the Student had smoked marijuana. The Parents were seeking through the appeal to have the incident removed from the Student’s discipline record. *Id.* pp. 1-5. At the appeal hearing, the Parents produced evidence of two negative drug tests for the Student. *Id.*

110. In his written findings and conclusions, the HO made a finding that the Student was failing five out of her six classes at IHS. He further found that she “is currently being treated for General Anxiety Disorder,” and, “[T]his condition has had a significant impact on [Student’s] attendance

²⁰ The ALJ assumes this reference refers to what is commonly known as vaping.

this year.” CP63 p.5. The HO concluded by a preponderance of the evidence that the Student had violated District rules regarding use and/or possession of drugs and alcohol. *Id.* at 8. The HO concluded the penalty imposed by the District was fair and reasonable. *Id.* at 10.

111. Mr. Wolff testified that he “probably” reviewed the HO’s written findings and conclusions. Tr. 1095 (Wolff). By the time of the appeal hearing at the District, Mr. Wolff knew the Student was failing five of her classes, knew she had a general anxiety disorder, and knew she was being treated for the disorder. *Id.* at 1096. He believed the anxiety disorder was having a significant impact on the Student’s attendance, but he did not recall the reasons for that belief. *Id.*

112. Mr. Wolff testified the Student was “getting close” to needing a referral for a special education evaluation, but IHS had less than a semester’s worth of data about her and interventions were still “being tried.” Tr. 1100 (Wolff). When asked about the data available for the Student from the previous academic year at PCMS, he testified that “ninth grade is a lot different ... we like to give our ninth graders a fresh start and track data as they come in.” He further described how IHS wants students to be “in the least restrictive environment possible to begin their freshman year, intervene from that point forward and then move to a more restrictive environment if that is appropriate based on how they start.” *Id.* at 1101. According to Mr. Wolff, he “doesn’t spend a lot of time reviewing eighth grade information,” but it would “be relevant once we got to a point where we see significant struggles.” *Id.* at 1103. Mr. Wolff testified that starting at IHS in the second semester could be difficult for a student. *Id.* at 1104.

113. Mr. Wolff offered the following explanation as to why the District did not refer the Student for a special education evaluation during her time at IHS:

I think the bottom line is that I didn’t know her, and, again, assuming least restrictive environment and that the middle school had done work in – in regards to the 504 and least restrict – least restrictive environment and had not determined that a guidance team or special ed referral was necessary at that level, then our assumption going forward is that the 504 is appropriate in terms of least restrictive environment and we are going to try and implement that with fidelity at the high school level prior to considering the guidance team.

Tr. 1105-06 (Wolff).

114. After the appeal hearing, Ms. Connolly reached out to the Student’s teachers to try to “pare down” what the Student needed to do in order to get passing grades and at least some credits. The District planned to enroll the Student in Guided Studies (a general education course) the following school year to allow her to earn back some lost credits because the 504 plan “was not getting the results we wanted to see.” Tr. 1153-54, 1182 (Connolly). Ms. Connolly opined that, at this point, it was clear the Student was not being successful at IHS. *Id.* at 1161-63. Ms. Connolly was “100 percent certain” that the Student’s anxiety was impacting her ability to go to class at times, although there may have been other factors, as well. *Id.* at 1171.

115. Ms. Combellick also did not feel the interventions put in place by the District were successful for the Student. Tr. 1264 (Combellick).

116. The Student failed all of her classes at IHS in the spring 2018 semester. BP2. She was absent from school 40 times. She was either tardy or absent for her first period class 64 times. CP5 p.3.

117. The Parents enrolled the Student in after-school instruction at the Dartmoor School (Dartmoor) on May 3, 2018, but did not inform the District. Tr. 1186, 1331 (Connolly, Combellick); CP48 p.8. Dartmoor is a small private school that provides one-on-one instruction. Tr. 496-497 (LaPointe). Dartmoor is able to make adjustments in instruction methods in order to help students deal with social anxiety, sensory processing issues, and other student-specific needs. The Student enrolled in algebra, biology, English and world history at Dartmoor. CP48 p. 8. She began taking algebra after school on May 24, 2018, and the other courses were to start after IHS finished for the year. CP48; Tr. 485 (LaPointe).

118. Jeff LaPointe²¹ has worked at Dartmoor since 2006 and is currently the director of campus operations. Tr. 463 (LaPointe). When Mr. LaPointe attempted to administer a math assessment to the Student as part of the Dartmoor intake process, the Student was so anxious and distracted that she could not complete the assessment. *Id.* at 469-71.

119. The Student completed academic work only in algebra and world studies at Dartmoor. Her coursework was put on “indefinite hold” on July 19, 2018. CP 46 pp.14-15.

The Summer of 2018

120. The Mother first contacted Solstice on June 18, 2018, in order to gather information. Solstice is a residential treatment center located in Layton, Utah. Tr. 574 (Rowden). It serves biologically female youth ages 14 through 18. The youth who attend Solstice need “behavioral containment,” social/emotional support, and educational support. The census at Solstice is typically 40 to 44 students. *Id.* at 687-88. Solstice is a “nonpublic agency” (NPA) recognized by OSPI.²² DP66 Exh.D.

121. During the June 18, 2018 call, the Solstice admissions secretary informed the Mother that school districts pay the Solstice fees in some situations. The secretary did not provide information regarding how to go about getting a district to pay the fees. Tr. 2255-56 (Mother).

122. The Student overdosed on alcohol on June 20, 2018. She passed out in a park and bystanders called the fire department. The Student was transported to Swedish Issaquah Hospital and the Parents met her there. Tr. 2267-68 (Mother). The Parents then attempted to enroll the Student in a local treatment program called THIRA,²³ but THIRA was unable to take her. *Id.* at 2268. The Mother testified the Parents were becoming “fairly desperate” at this point. *Id.*

²¹ Mr. LaPointe holds a bachelor’s degree in secondary education and integrated social studies. Tr. 462 (LaPointe). He is not a certificated teacher in Washington. *Id.* at 482.

²² A nonpublic agency is a private school that meets and complies with numerous requirements set forth in WAC 392-172A-04095.

²³ No evidence was presented regarding what “THIRA” stands for, or the content of the treatment program.

123. On July 5 or 6, 2018, the Student again overdosed on alcohol. A group of hikers found her passed out on a trailhead near IHS and she was again taken to the Swedish Issaquah emergency department. Tr. 2267-68 (Mother).

124. The Student returned to Friends of Youth on July 13, 2018, because her Parents wanted her to participate in drug/alcohol counselling. CP57 p.4. The Student reported to Ms. Young a significant increase in her use of nicotine, alcohol and marijuana. The Student did not want to decrease her substance use because she “was having fun.” *Id.* She reported blacking out four times in the last two months, and consuming more substances than she intended, stating, “I often accidentally drink too much.” The Student was getting drunk almost every time she used alcohol. She was using marijuana three or four times per week and was experiencing increased tolerance. The Student had also used opiates twice, amphetamines once, and continued to use inhalants periodically. *Id.* at 5. Ms. Young noted the Student’s hands were shaking during the interview.

125. Ms. Young diagnosed the Student with “alcohol use disorder severe” and “cannabis use disorder severe.” CP57 p.5. Ms. Young recommended the Student attend inpatient treatment because, based on the Student’s substance use, her social environment, and how she was feeling about her substance use, the Student fit the “dimension level” for requiring inpatient treatment. *Id.*; Tr. 302 (Young). Because the Student’s substance use had increased, as had her risky behaviors, there was a “sense of urgency” to this recommendation. Tr. 308 (Young). This assessment was shared with the Parents. *Id.* at 320. A list of inpatient treatment centers in Washington State was also provided to them. *Id.* at 324-25.

126. On July 15, 2018, the Student again overdosed on alcohol. She was at a party in the middle of the afternoon at a friend’s house while the friend’s parents were not home. The friend’s mother returned and found the Student passed out on the front lawn. Tr. 2268-69 (Mother). The Parents picked her up and took her to the hospital. *Id.* The medical staff at Swedish Issaquah Hospital informed the Parents that the health care providers would have to make a referral to the authorities for an At Risk Youth petition if the Parents did not take action to address the Student’s substance abuse. *Id.* at 2624.

127. At a July 16, 2018 appointment with the family, Dr. Toliver-Sokol noted the Student continued to “struggle with substance abuse and risky behaviors that put her and her family at mortal risk.” CP31 p. 50. Dr. Toliver-Sokol felt the Student’s behaviors put her at high risk for running away, self-harm and/or [REDACTED] *Id.* at 51. Dr. Toliver-Sokol recommended intensive inpatient care for the Student. Tr. 356 (Toliver-Sokol). She recommended this for multiple reasons, including the Student’s need for: 24/7 supervision, therapeutic intervention, medication intervention, a safe environment removed from her peers, and academic support. *Id.* at 356-57.

128. Dr. Toliver-Sokol was familiar with Solstice from patients who had been placed there. Tr. 394 (Toliver-Sokol). She discussed with the family the possibility of the District paying for the expense of Solstice. *Id.* at 413-417. Dr. Toliver-Sokol specifically recalls discussing with the Parents another patient who had attended Solstice, and that student’s school district covered the expense. This conversation occurred before the Student was placed at Solstice but Dr. Toliver-Sokol does not recall the specific timeframe. *Id.* The Mother does not recall any conversations with Dr. Toliver-Sokol before the Student was placed at Solstice regarding the possibility of the District paying for Solstice. *Id.* at 2252 (Mother).

129. On July 17, 2018, the Parents paid the deposit to secure a spot for the Student at Solstice. Tr. 2269 (Mother). The Mother testified:

So the decision was made as a combination of assurances and confidence from Marisol [Toliver-Sokol], a complete lack of any local support services that we could find that were available and could possibly help us, and mostly just a desperation to save my daughter's life.

Id. It was significant and important to the Parents that Solstice provided 24/7 assistance for coping with anxiety. *Id.* at 2129 (Father). According to the Father, the fact that Solstice also had an academic component played an "enormous part" in the Parents' decision to place her there. *Id.* at 2271 (Mother). The Parents had learned through working with Dr. Toliver-Sokol that the Student's anxiety was driven in large part by her failure in school, and that this problem went as far back as elementary school. They felt her lack of academic success was the root of the Student's problems and needed to be addressed. *Id.* at 2269-71.

130. On August 8, 2018, the Mother wrote an "impact letter" to the Student as required by Solstice. In the letter, the Mother stated that she knew during the Student's time at PCMS that she (the Mother) needed to find someone to give the Student tools to regulate sadness, fear, impulsiveness, and anxiety. D69 p.1. The Mother described moving to Texas as a "Hail Mary pass" wherein the "quarterback who is losing throws the ball into the unknown." *Id.*

The 2018-19 School Year

131. The Student entered Solstice on July 24, 2018. Tr. 2241 (Mother). Dr. Toliver-Sokol opined the Student likely would have died had she not been placed at a residential treatment center. *Id.* at 358 (Toliver-Sokol). Dr. Toliver-Sokol further opined that it was necessary that the Student attend a treatment program that had an academic component. *Id.* at 406.

132. On the Solstice application form, the reason given by the Parents for seeking enrollment was "discovery of ongoing, serious substance abuse." DP68 Exh.E p.1.

133. Dr. Trampas Rowden was the Student's primary therapist for individual and family work at Solstice. Tr. 574 (Rowden). Dr. Rowden holds a bachelor's degree in marriage, family and human development. He holds a master's degree and a Ph.D. in marriage and family therapy. DP68 Exh.A p.1. Dr. Rowden has been a clinical mental health counselor at Solstice since 2010. He is a member of the Outcome Research Team at Solstice which collects treatment progress data for the purpose of tracking treatment impacts of residential treatment center care and service delivery. DP68 Exh.A.

134. Solstice has a clinical team and an academic team that meet weekly, as a multidisciplinary team, to discuss the residents and their progress. Tr. 585 (Rowden). Dr. Rowden was part of the Student's clinical team and worked with the Solstice special education director, as well as the Parents, while he was the Student's counselor. DP68 p.1.

135. The Student's "Master Treatment Plan," developed by Solstice and dated September 3, 2018, identified "major depressive disorder" as a problem. This disorder caused the Student to have a depressed mood most of every day, diminished interest in enjoyable activities, feelings of worthlessness nearly daily, diminished ability to think and concentrate, indecisiveness, and

fatigue. A goal was to acquire and develop emotional regulation skills. DP68 Exh.E p.3. “Social anxiety disorder/social phobia” was a second problem, evidenced by pervasive patterns of worry, avoidance, discomfort with peers, fixation on maladaptive control efforts, and difficulties with mood. *Id.* p. 6. A goal was to develop coping skills, and expand personal strengths and resources to allow the Student to live with increased competence and confidence. *Id.*

136. Other problems identified in the Student’s master treatment plan included: attention-deficit/hyperactivity disorder, predominantly inattentive presentation; specific learning disorder with impairment in reading; specific learning disorder with impairment in mathematics; cannabis use disorder, moderate, in remission upon discharge from controlled environment; alcohol use disorder, severe, in remission upon discharge from controlled environment; and opioid use disorder, mild, in remission upon discharge from controlled environment. DP68 Exh. E. The three substance use disorders had the same interventions, which included: weekly individual therapy; weekly family therapy; weekly group therapy; milieu groups with team one time daily; and quarterly multi-family seminars. *Id.*

137. Solstice provided the Student with substance abuse treatment, trauma-focused equine-assisted therapy, and various forms of group therapy ranging from social skills to leadership development. Tr. 620 (Rowden). Rob Russell, the Student’s licensed substance abuse counselor, conducted individual and group therapy. *Id.* at 684. Dr. Rowden arranged for the Student to work with an outside executive skills coach, at an extra cost to the Parents, because the staff at Solstice determined she would benefit from extra support in the executive skills component of learning. This pertained to everything from time management to prioritization to impulse control. *Id.* at 644. No evidence was presented regarding why the necessary executive skills training could not be provided by the staff at Solstice, including the Student’s special education teacher.

138. The Parents made mandatory visits to Solstice in order to work on relational skills and improved communication as a family. Tr. 592 (Rowden).

139. In Dr. Rowden’s opinion, the Student made steady progress at Solstice and left the program with the tools she needed to be successful in a typical school environment. He opined that the clinical issues the Student faced when she entered Solstice, including substance abuse, were strongly correlated to her lack of success in the academic setting. DP68 p.3. According to Dr. Rowden:

In order to treat [Student’s] substance abuse, it was paramount that [Student’s] underlying disorders be properly treated and [Student] be placed in an appropriate learning environment that was tailored to meet [Student’s] clinical and learning needs. It is my opinion that at the time of her admission to Solstice, [Student’s] disorders and disabilities were significantly contributing factors for why [Student] abused substances. ... [T]he level of care and the therapeutic environment that Solstice RTC provided to [Student] was essential to curbing [Student’s] self-harm, treating and giving [Student] strategies for her social anxiety, depression, trauma, and PTSD, all of which allowed [Student] to reenter into regular society and access a general education setting in the public school system.

DP68 pp.3-4.

140. Angela Johnson has served as the Special Education Director and Academic Director of the academic program at Solstice since November of 2015. DP66 Exh.A. The academic program is called Fernwood Academy (Fernwood). DP66 p.1. Fernwood is owned and operated by Solstice and all the students at Fernwood are residents of Solstice. *Id.* at 1-2. Ms. Johnson holds a Bachelor of Science degree in special education and physical education. She is licensed in Utah to teach general and special education to secondary level students. *Id.* She has never taught in a public school. Tr. 916 (Johnson).

141. Ms. Johnson was the Student's "Study Strategies" teacher at Fernwood. Tr. 878 (Johnson). She reviewed the Student's academic records and Dr. Fay's evaluation when the Student first came to Fernwood. *Id.* at 879, 922. Study Strategies is Fernwood's "designated special education class" in that it is a very small class (containing one to four students) that focuses on skills such as organization, prioritization, and planning. *Id.* at 881; DP66 p.2. The Student was placed in the class after the first quarter at Fernwood because it was evident to the staff that she needed academic support.²⁴ DP66 p. 2.

142. General education classes at Fernwood contain six to twelve students. The Student frequently required one-to-one assistance with her classes at Fernwood, in addition to the classroom instruction, and she obtained this "tutoring" at the lunch period. She continued to require tutoring throughout her time at Fernwood. Tr. 894-95 (Johnson).

143. The academic team at Fernwood works closely with a resident's treatment team and meets with them once per week. Tr. 883-6 (Johnson). According to Ms. Johnson, it was evident the Student's social-emotional needs impeded her learning and she required intensive therapeutic services to be successful academically. DP66 p. 2.

144. Ms. Johnson had extensive opportunities to observe the Student in class and at free times, such as lunch. Tr. 885-893 (Johnson). When the Student first came to Solstice, Ms. Johnson observed that it was difficult to get her to interact. The Student seemed very nervous around teachers and needed Ms. Johnson's help to approach instructors for help. According to Ms. Johnson, "[Student] felt so bad because she felt like she was inconveniencing people and like she wasn't worth it." *Id.* at 888. The Student also seemed very sad and had a hard time engaging with people. She kept herself "very small" and often seemed on the verge of tears. *Id.* at 890-91. If the Student did not understand something, "she would jump right to 'I'm stupid' and she would shut down and not want to do anything." *Id.* at 91-92. The Student often told Ms. Johnson that she felt she was stupid and did not feel "worth it" in the classroom. *Id.*

145. As time went on, the Student became warmer to her peers and developed a voice in the classroom. Tr. 889 (Johnson). She was able to approach teachers for help without Ms. Johnson's assistance. *Id.* at 892. She raised her hand more and was involved in classroom discussions. The Student attended class every day and passed all the classes she took at Fernwood, with the exception of Health. She earned 9.5 high school credits. DP67 Exh.C; Tr. 908 (Johnson).

²⁴ Placement into the Study Strategies class appears to indicate Fernwood's determination that a student requires special education. The class is referred to by Fernwood staff as a "special education" class. According to Ms. Johnson, "If a student comes to Solstice RTC without an IEP, it is our common practice to assess each students' [sic] academic needs during their first quarter...During [Student's] first quarter at Fernwood, it was evident that [Student] required additional academic support" so she was placed in the Study Strategies class. DP66 p.2.

The Special Education Evaluation and IEP

146. On August 16, 2018, the Mother replied to an email message from the District registrar and said the Student would not attend IHS that fall. The Mother stated the Student would have “private instruction.” D70 p.1. The following day, the Mother retracted her email and said the Student would indeed attend IHS that year. D71 p. 2. The Mother did this because she did not know how long the Parents could afford the expense of Solstice. Tr. 2629 (Mother).

147. On August 22, 2018, the Mother emailed Ms. Connolly and Ms. Combellick and stated she would like information regarding “moving the Student to an IEP, as opposed to a 504 plan.” D72.

148. On September 6, 2018, Ms. Connolly emailed the Parents to schedule a guidance team meeting for the Student to discuss future plans “and the potential of a special education evaluation.” DP7 p.3. On September 12, 2018, the Parents emailed Ms. Connolly and informed her that they had placed the Student at Solstice, and were requesting reimbursement from the District. They requested that an initial evaluation of the Student take place in Utah, and informed the District they had hired an attorney. *Id.*

149. On September 25, 2018, the District held a guidance team meeting pertaining to the Student at IHS. The Parents were provided with the Notice of Special Education Procedural Safeguards (Procedural Safeguards) at that time. Tr. 2275-76 (Mother). The prior written notice (PWN) issued after the meeting proposed to initiate an evaluation of the Student for special education eligibility. DP13. The PWN notes, “The District is declining to fund [Student’s] unilateral placement at Solstice RTC unless and until her evaluation team finds her eligible for special education services and an IEP team determines Solstice RTC is necessary for her receipt of a FAPE. Further, as [Student] is currently no longer a resident of the District, she is not entitled to any services from the District.”²⁵ DP13 p.3.

150. The Brooks Powers Group (Brooks Powers) conducted an independent evaluation of the Student in December of 2018, when she was in Washington over a holiday break.²⁶ The evaluation was conducted by Dr. Kate Odom, Psy.D, on December 13 and 14, 2018. D78 p.1. Dr. Odom is a licensed psychologist. She was not available to testify at the due process hearing, so Dr. Allison Brooks appeared from Brooks Powers. Dr. Brooks holds a Ph.D. in psychology and is a licensed clinical psychologist. Tr. 2025 (Brooks). She supervises the Brooks Powers clinical team and supervised Dr. Odom at the time of the Student’s evaluation. *Id.* at 2026.

151. The evaluation conducted by Dr. Odom included a large battery of direct assessments of the Student, as well as caregiver response measures and teacher response measures. D7 pp.1-2. The “history” section of the evaluation summary states the Student was placed at Solstice by her Parents because they “felt she needed a therapeutic placement for her social/emotions needs and that 504 was not meeting her educational needs.” *Id.* at 4.

²⁵ The District took the position that the Student was “no longer a resident of the District” because she was in a residential placement in Utah.

²⁶ Brooks Powers declined to assess the Student in Utah.

152. Dr. Odom's diagnostic impressions of the Student after completing the evaluation included: post traumatic stress disorder; major depressive disorder, recurrent, moderate; social anxiety disorder; and attention deficit/hyperactivity disorder – inattentive type. D78 p. 22.

153. Based on the evaluation, Dr. Odom concluded the Student performed cognitively in the average range across all academic scales. D78 p.21. Trends across the measures, however, indicated she struggled with executive functioning/ADHD, slow processing speed, and significant mental health-related symptoms. She frequently required more time to complete assessment than was allotted or expected for her age. *Id.* The Student had difficulty shifting from one task to the next, identifying effective strategies, organizing and planning her work, and self-monitoring her progress. *Id.* The evaluation summary noted, "As she is trying to cope and mitigate trauma related symptoms, mental health symptoms, and social complexities, she likely will deplete her mental capacity and struggle to complete academic work efficiently and to her potential abilities." *Id.* It further noted, "[Student] is often consumed by thoughts and urges to pursue relationships at all costs, which places her in an extremely vulnerable position." *Id.* at 21-22.

154. Dr. Odom further concluded the Student met the diagnostic criteria for ADHD, but not Specific Learning Disability (SLD), and the ADHD had an adverse educational impact sufficient to make her eligible for specially designed instruction (SDI) in the school setting under the "Other Health Impairment" classification. D78 p.22. According to Dr. Odom, the Student's mental health symptoms and diagnoses should be considered when identifying areas of need and supports, as they are having an "adverse impact" on her ability to access her education." *Id.*

155. Dr. Odom recommended the Student receive "trauma informed instruction," as well as positive behavior interventions and supports. D78 p. 23. "Trauma informed instruction" means that information and training is provided to instructors regarding how to make sense of a student's behavior when that student has experienced trauma. It provides information about approaches and interventions for such students. Tr. 2047 (Brooks).

156. The evaluation report made a number of other recommendations for the Student, her instructors, and her family. D78 pp.22-27. The recommendations are lengthy and detailed, and implementation of the recommendations would require very substantial time and effort on the part of the Student and the educational facility. For example, Dr. Odom recommend that the Student's primary staff receive training in positive behavior intervention and support. It was recommended that all of the Student's "team members" have clearly defined roles and "effective communication pathways" to avoid "gaps." It was recommend that the Student have a "prosocial peer" at school who could provide support, and also an adult available for frequent "check-ins" and to serve as a counselor/support/mentor. It was also recommended the Student have access to skill-building groups, such as the STEPS-A curriculum, which teaches emotional regulation and distress tolerance, as well as the CBITS curriculum, which addresses trauma-related symptoms that interfere with school performance. *Id.*

157. In Dr. Brooks's opinion, most of the evaluation report's recommendations could be delivered in a public school setting. Individual therapy, family therapy, and group counselling were exceptions and would need to be accessed in the community rather than in a school setting. Tr. 2048-49 (Brooks). Dr. Brooks recalls that Dr. Odom believed the Student's needs could be met appropriately in a community-based setting rather than requiring a residential treatment setting. *Id.* at 2067.

158. The Student's case manager in the District was Melinda Melcher, school psychologist. Ms. Melcher holds a bachelor's degree in Spanish and Portuguese literature, and a master's degree in educational psychology. Tr. 1708 (Melcher). She is a credentialed school psychologist. *Id.* at 1709. Ms. Melcher has never met the Student. Based on a review of records, Ms. Melcher agreed with the decision to evaluate the Student for special education eligibility due to the Student's academic performance and behavior in ninth grade at IHS. *Id.* at 1710, 1726-27. She discussed the Brooks Powers evaluation with Dr. Odom and incorporated that evaluation into the District's evaluation of the Student, which she wrote.

159. An evaluation meeting was held on February 6, 2019. Tr. 1772 (Melcher); DP34 p.3. The District's evaluation contained a chronology of information pertaining to the Student during grades one through nine. DP34 pp.6-8. This was available in the District's Skyward information tracking system, and was available to Ms. Combellick and others when the Student reentered the District from Texas and enrolled at IHS. Tr. 1730-31 (Melcher). The available information included grades, absences, and discipline incidents. According to Ms. Melcher, if the District were to see a pattern of problems from previous school years, the District would consider "more robust" interventions for a student at issue. *Id.* at 1736 (Melcher).

160. A significant finding of the evaluation, according to Ms. Melcher, was, "[Student] is a 10th grade student who has a longstanding history of considerable social-emotional challenges characteristic of her diagnoses of Depression, Social Anxiety Disorder, ADHD and PTSD." DP34 p.18.

161. The District's evaluation recounts teacher feedback regarding the 504 plan received in March of 2018 while the Student was at IHS. It notes her teachers commenting that she does not finish her work, is truant, anxious, unfocused, off task, unprepared for class, appears to be struggling with reading, is tardy, and is rude/defiant. DP34 pp. 14-15. Her algebra teacher noted the Student's anxiety is "apparent." Her history teacher noted, "I haven't been very successful in pinning down the problem yet, so I am glad you are drawing attention to things." The Student's English teacher noted that she struggles with "reading tasks, reading comprehension and recall." The teacher further noted the Student had not turned in a single written assignment since joining the class, and the teacher has had to ask her to step out of class for "a bit to refocus on our learning activities." *Id.* The evaluation also recounts teacher input from the fall semester at Solstice, including that the Student performed well on tests and turned in completed assignments on time, but organizing her materials and her "negativity" impacted her grades. *Id.* at 16.

162. The District's evaluation team determined the Student was eligible for special education and related services under the eligibility category of "Health Impairments." DP34 p.8. The evaluation concluded the Student's depression, anxiety, ADHD and PTSD interfered with her progress in general education. It noted she was not acquiring skills at the same rate as same-aged peers, despite interventions. It concluded the Student required SDI in social-emotional, behavior (executive functioning), and math calculation in order to make appropriate progress toward successful school performance. *Id.* Math calculation was identified based on the relatively low calculation score the Student achieved in math fluency, a record of declining grades, and Parent and Student reports, among other factors. The Student was not diagnosed with an SLD in math but the team used professional judgement to identify math as an area in which she needed SDI. Tr. 1772-3 (Melcher); DP34 p.25. Counseling as a related service was also determined to be necessary. DP34 p.9.

163. The Parents moved from Issaquah to Bothell, which is in the Northshore School District, on approximately December 20, 2018. Tr. 2241 (Mother). They felt the Student should not return back to the “toxic environment” she had experienced in Issaquah once she left Solstice. *Id.* at 2282-83. They did not inform the District of their move. At the due process hearing, the Father did not provide a reason for failing to inform the District of the move. He cited attorney-client privilege. Tr. 2124-25 (Father). The Mother testified they did not believe it was necessary to inform the District because the Student had been unenrolled from the District. *Id.* at 2280 (Mother).

164. Dr. Rowden supported the Parent’s decision to move, believing the Student needed a fresh start with a new peer group in order to avoid exposure to the negative influences that were present when she attended IHS. Tr. 2284 (Mother); DP68 p.4.

165. The District held an IEP meeting for the Student on March 14, 2019. When the Parents were asked to update some forms, they provided their new address in Bothell. Upon learning the Parents had moved to Bothell, the District stated it would not provide special education services to the Student and that provision of services was up to the new district, Northshore. Tr. 2287, 1751 (Mother, Melcher).

166. At the March 14, 2019 meeting, the IEP team finalized the Student’s IEP. DP35 pp.3-23. The IEP contains five goals. The math calculation goal pertains to calculating fractions, decimals, and percentages; and the behavior goal pertains to using a planner. The three social-emotional goals pertain to the Student utilizing coping strategies, expressing herself calmly, and advocating for herself in a group or with individual peers. P35 pp.16-17. The IEP service matrix calls for 220 minutes weekly of math SDI to take place in general education, 130 minutes weekly of behavior SDI in special education, 130 minutes weekly of social-emotional SDI in special education, and 60 minutes weekly of counseling in special education. Thus, 82.42% of the Student’s time was to be in general education. *Id.* at 21.

167. The social/emotional “present level of educational performance” section of the IEP was submitted by a District special education teacher who had not met the Student. DP35 p.7. Accommodations recommended for the Student include: teacher check-ins if the Student appears anxious, access to a quiet space at school, 5-minute breaks if she feels overwhelmed, a “point person/trusted adult” for check ins, and intentional pairing with a supportive and pro-social peer. *Id.* The IEP further provides that “support for school personnel” is to include “training in trauma informed practice each semester. *Id.* at 19.

168. In the PWN issued on March 19, 2019, the District proposed to initiate the IEP.²⁷ DP35 p.25. The team recommended the Student transition from Solstice to a comprehensive high school²⁸ in the District, with therapeutic supports. *Id.* at 26. The District team members recommended the Student return immediately to a comprehensive high school. The District members of the team did not consider Solstice to be the Student’s least restrictive environment because the Student had “not had any opportunity to have an IEP with services in place” at the

²⁷ Although the Parents had moved out of the District at this point, the IEP was finalized so it would be available if they moved back, or so it could be utilized by Northshore. Tr. 1631 (Lawson).

²⁸ “Comprehensive high school” refers to a high school that does not specialize in a particular type of program. IHS is a comprehensive high school.

District. Tr. 1753 (Melcher). Dr. Odom had opined that a “robust program” outside of a residential setting could be offered to meet the Student’s needs. *Id.* at 1776.

169. Dr. Rowden disagreed with the recommendation that the Student return immediately to a comprehensive high school. Tr. at 1755 (Melcher); DP68 p.2. The Student had not completed her program at Solstice and there was a high likelihood that her lack of readiness to return would have led to the Student experiencing similar social/emotional and behavioral issues that she had experienced previously while at IHS. DP68 p.2. According to Dr. Rowden, Solstice looks for three things to assess readiness to leave the program: the Student’s readiness to discharge, the family’s readiness to receive the Student and provide support to help sustain the progress that was made, and community-based readiness to provide support to the Student and family. Tr. 654 (Rowden).

170. The Student did not return to the District, and the District did not provide any special education or related services to the Student. The District did not pay, or reimburse the Parents, for any portion of the costs of Solstice.

171. The District asked the Parents to consent to the IEP and sign various forms on March 25, 2019. DP35 p. 39. The Student’s records were requested by Northshore on April 16, 2019. *Id.* at 33. The Parents signed the required forms and consented to the IEP on April 29, 2020. *Id.* at 39.

The 2019-20 School Year

172. The Student was discharged from Solstice and returned to Washington on September 3, 2019. Tr. 2241 (Mother). Dr. Toliver-Sokol would have been concerned if the Student had returned to the District after leaving Solstice because she would have reconnected with peers who were not a positive influence, and the Student had not received the support she needed while she attended IHS in the past. *Id.* at 369 (Toliver-Sokol).

173. According to Dr. Rowden, “A great deal of thought, consideration, analysis, and planning by Solstice RTC and the [family] went into the decision that the Student had done the necessary work and made sufficient progress to return home and access a more typical school environment.” DP86 p.3.

174. The Student entered Secondary Academy for Success (SAS) in Northshore upon her return. SAS is a small alternative school. The Student performed well there and earned good grades. Tr. 2289-91 (Mother). She transferred to Inglemoor, the comprehensive local high school, for second semester. *Id.*

175. Jean Alonge-Cogan is a special education teacher in Northshore. She worked closely with the Student at SAS and reported the Student did “very well” academically. Tr. 1421 (Alonge-Cogan). Northshore implemented the District’s IEP for the Student and she made good progress on the IEP goals. *Id.* at 1431.

176. The Student was doing very well at the time of the due process hearing. According to Dr. Toliver-Sokol, “It is like night and day.” Tr. 366 (Toliver-Sokol). The Student’s motivation, drive, and interest in school have improved. She is still working on mood and anxiety issues, but that is to be expected according to Dr. Toliver-Sokol. *Id.*

177. The Parents view this due process action against the District as “our last recourse and best hope to possibly ever retire,” according to an email sent to Dr. Rowden by the Mother in November of 2019. D85 p.1

178. The Parents have incurred and paid \$204,562.55 in expenses for which they seek reimbursement as relief in this action. DP70. Those expenses include, among other things, tuition at Solstice, travel to and from Utah/Solstice, extra services at Solstice, and services provided by Dr. Fay. Tr. 2871-84 (Mother). Specifically, the Parents seek reimbursement as follows:

\$3,099.91 for Dr. Fay’s services from June to November of 2016
\$1,230.16 for the executive functioning coach recommended by the Solstice staff
\$7,071.33 for travel expenses incurred in 2018
\$10,803.65 for travel expenses incurred in 2019
\$74,997.50 for Solstice tuition, fees, and other expenses incurred in 2018
\$107,350.00 for Solstice tuition, fees, and other expenses incurred in 2019

DP70.

CONCLUSIONS OF LAW

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.

3. When there is an extensive hearing record, such as in the present case (2721 pages of hearing transcript that includes testimony from thirty-two witnesses, and over 150 exhibits), “the ALJ is not required to mention every detail when discussing the record. . . .” *Mary Struble v. Fallbrook Union High Sch. Dist.*, 2011 U.S. Dist. LEXIS 7866 (S.D. Cal. 2011). Thus, only the testimony and exhibits that support findings of fact necessary to reach conclusions of law are discussed above.

The IDEA and FAPE

4. 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).

5. A "free appropriate public education" (FAPE) consists of provision 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. In order for a school district to provide a FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Id.* at 458 U.S. at 200-201.

6. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

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 . . .

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

7. Procedural violations of the IDEA amount to a denial of FAPE 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 decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

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

8. Thus, not every procedural violation of the IDEA is sufficient to support a finding that the child in question was denied FAPE. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1129 (9th Cir. 2003)(quoting *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 887, 892 (9th Cir. 2001)).

Whether the District violated the IDEA and denied the Student a FAPE during the 2016-2017 school year by: (a) failing to meet its Child Find obligation under the IDEA to identify, locate, and evaluate the Student; (b) failing to address the Student's lack of progress in the educational setting; and (c) failing to address the Student's absenteeism

9. The Parents contend the District denied the Student FAPE during the 2016-17 school year, during which she attended PCMS, by: failing to identify and evaluate her to determine whether she needed special education and related services, failing to address her lack of educational progress, and failing to address her absenteeism.

10. The District contends this claim is untimely in that the 2016-17 school year falls outside the two-year statute of limitations within which Parents must bring IDEA claims, and therefore the Parents should not prevail on this claim.²⁹

11. The Washington regulation concerning the IDEA statute of limitations provides, in pertinent part:

The due process hearing request must be made within two years of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

- (a) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process hearing request; or
- (b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

WAC 392-172A-05080(2).

²⁹ The Complaint in this matter was filed on October 14, 2019.

12. The Ninth Circuit Court of Appeals addressed the IDEA statute of limitations³⁰ in *Avila v. Spokane School District 81*, 852 F.3d 936 (9th Cir. 2017). In *Avila*, the parents asked the school district to evaluate their child for special education services based on the child's behavioral issues. The school district conducted an evaluation in December 2006 and concluded the child was not eligible for special education. A later reevaluation in 2008 determined the child was, in fact, eligible for special education. The child was again reevaluated by the school district in early 2010. The parents disagreed with the results of that reevaluation, and on April 26, 2010, requested a due process hearing. One of the parents' claims was that the school district denied the child FAPE by failing to identify the child as eligible for special education as far back as the child's initial evaluation in 2006. The ALJ ruled, in part, that the Avilas' claims preceding the 2008 reevaluation were time-barred by the statute of limitations. On appeal, the district court agreed with the ALJ, and barred the Avilas' claims arising before April 26, 2008, two years before they requested a hearing. The Ninth Circuit, however, adopted a different analysis.

13. The Ninth Circuit held that the "discovery rule" applies, and the IDEA's statute of limitations requires courts to bar only claims brought more than two years after the parents knew or should have known about the actions forming the basis of their complaint. *Avila*, 852 F.3d at 945. The "knew or should have known" (KOSHK) inquiry is an element of the discovery rule, meaning that "the statute of limitations is triggered when 'a plaintiff discovers, or reasonably could have discovered, his claim.'" *Id.* at 940 (citing *O'Connor v. Boeing N. Am., Inc.*, 311 F.3d 1139, 1147 (9th Cir. 2002)). The court acknowledged that the Avilas' awareness of evaluations of their child did not necessarily mean they KOSHK of the basis of their claim against the school district. 852 F.3d at 944. The Ninth Circuit remanded the matter to the district court for a determination of when the Avilas KOSHK about the alleged action(s) that formed the basis of their complaint. The district court entered its decision on remand in *Avila v. Spokane School District 81*, 2018 U.S. Dist. LEXIS 14152, 118 LRP 3933 (E.D. Wash. 2018), *aff'd*, 744 Fed. Appx. 506 (9th Cir. 2018), and found that three separate evaluations of the Avilas' child occurred between October of 2007 and April of 2008, including a special education evaluation conducted at the parents' request. The evaluations diagnosed the child with Asperger's Syndrome and autism. The court held that, as a matter of law, by no later than April of 2008, the Avilas KOSHK of the injury caused to their child by the school district's failure to find him eligible for special education in 2006. 2018 U.S. Dist. LEXIS 14152 *23.

14. As the Ninth Circuit explained, other circuits have held:

[T]he "knew or had reason to know date" stems from when parents know or have reason to know of an alleged denial of a free appropriate public education under the IDEA, not necessarily when the parents became aware that the district acted or failed to act. *See, e.g., Somoza v. N.Y. City Dep't of Educ.*, 538 F.3d 106, 114 (2d Cir. 2008) (holding that the "knew or should have known" date occurred when parent viewed a child's rapid improvement in a new program); *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1288 (11th Cir. 2008) (holding the "knew or should have known date" occurred after a new evaluation and declining to hold that "famil[ies] should be blamed for not being experts about learning disabilities").

³⁰ Although the *Avila* Court considered the statute of limitations under the federal IDEA, WAC 392-172A-05080 is substantially similar to the federal statute of limitations and is subject to the same legal interpretation as its federal counterpart with respect to when a claim accrues.

854 F. 3d at 944-45.

15. These cases demonstrate that, once parents believe or reasonably should have come to believe, not just that their child is doing poorly in school, but that the school has denied the child FAPE, the parents have two years to take action by filing a due process complaint. However, parents cannot simply assert they were unaware that a school district was denying FAPE. Rather, parents must exercise “due diligence” in discovering critical facts. *O’Connor v. Boeing N. Am., Inc.*, 311 F.3d at 1147; *Klein v. City of Beverly Hills*, 865 F.3d 1276, 1278 (9th Cir. 2017).

16. As the district court articulated in *Avila* on remand from the Ninth Circuit, it is often difficult for a court, from its retrospective position, to determine the date on which a parent KOSHK about the alleged actions that form the basis of their complaint. 2018 U.S. Dist. LEXIS 14152 *21.

On the one hand, parents should not be “blamed for not being experts about learning disabilities.” *Draper v. Atlanta Indep. Sch. Sys.*, 518 F. 3d 1275, 1288 (11th Cir. 2008). On the other hand, statutes of limitations “serve the policies of repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and defendant’s potential liabilities.” *Young v. United States*, 535 U.S. 43, 49, 122 S. Ct. 1036, 152 L. Ed. 2d. 79 (2002).

Avila at *21-22.

17. In the present case, the Parents contend they did not realize the Student had been denied FAPE by the District until after they placed her at Solstice in 2018. However, it is abundantly clear from the record that the Parents KOSHK the District was failing their child and knew of the actions forming the basis of their complaint before October 14, 2017 (which is two years prior to the October 14, 2019 filing date of this action). As early as the 2015-16 school year, the Parents noted the Student had fallen behind in her classes and did not understand what was going on when she did attend. That year, the District advised the Parents to find a counselor to help the Student deal with anxiety, but did nothing else. The Parents felt the need to move their family residence over the summer of 2016 in order to give the Student a fresh start, and took her to be evaluated by Dr. Fay that fall. Dr. Fay’s evaluation report clearly stated the Student has ADD and SLDs in reading and math. Although Dr. Fay recommended one-to-one coaching, the District did not provide it. Ms. Petersen expressed to the Parents in the fall of 2016 that the Student was “experiencing some real anxiety,” and teachers reported at the guidance team meeting in October of 2016 that the Student could not focus. The Student was subsequently moved down to seventh grade math and the Parents pursued outside tutoring. The Student frequently spent time in the office or health room rather than attending class. The Parents knew she suffered from high and “often irrational” anxiety which impaired her ability to focus on her schoolwork. By December of 2016, the Parents were concerned the Student “could not handle” public middle school and Dr. Bailey expressed agreement with the concern. The Parents looked into transferring the Student to another school within the District because the Student was “overwhelmed with fears of academic failure and bullying.” When the Student herself called the District Superintendent to talk about transferring schools, the Mother acknowledged that this was a “desperate thing to do.” The Mother did not believe the District’s interventions during the 2016-17 school year were effective, and it is quite clear from the record that they were not. The Student’s grades were all “unsatisfactory” that year. The Parents withdrew her from the District and moved to Texas, a move the Mother later described as a “Hail Mary.” The Student continued to refuse to attend

school in Texas, which left the Parents “grasping at straws to think of anything that might help.” They ended up enrolling her in the Mind Above Matter program, not in a traditional school, because the Parents believed she needed “intense therapy” in order to be able to leave her bedroom and attend school. These ongoing circumstances over the course of the 2016-17 school year and into the fall of 2017 clearly demonstrate the Student’s extreme anxiety, school avoidance, and lack of academic progress. Given these circumstances, a reasonable parent would have realized the District had not provided the Student with FAPE.

18. The Parents’ lack of knowledge regarding the purpose of a 504 plan versus the purpose of an IEP, and its attendant provision of special education services, is understandable and would have been reasonable, to a point. However, eventually it became incumbent on the Parents to exercise due diligence and insist their child receive an appropriate education. It was not reasonable to think that an entire school year of unsuccessful 504 accommodations was appropriate or acceptable. It was not reasonable to rely on Ms. Petersen’s remarks in a hallway conversation regarding whether the Student would qualify for an IEP without at some point pursuing the issue further and more intentionally. It was not reasonable to need a “Hail Mary” and be left “grasping at straws” to find an effective way to deliver an appropriate education to the Student, and yet not recognize that the District had failed to do so. It is concluded the Parents KOSHK of their claim against the District by the time the Student was enrolled in Mind Above Matter in September of 2017 at the *very* latest. A reasonable parent exercising due diligence would have known that the District was failing his or her child by the time she received unsatisfactory grades in every class. The degree to which the Parents allege they were unaware of the District’s failures is not reasonable, and they did not exercise the due diligence that a reasonable parent would have exercised to discover the necessary facts that form the basis of their complaint.

19. “[A]lthough a child’s right to special education under the IDEA does not turn on parental vigilance, parental vigilance is vital to the preservation and enforcement of that right.” *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 625 (3rd Cir. 2015)(citations omitted). Parents may not knowingly sit on their rights or attempt to sweep both timely and expired claims into a single claim brought years later. *Id.*

20. It is concluded that WAC 392-172A-05080(2) bars any of the Parents’ claims that date back more than two years prior to the filing of this action unless an exception to the statute of limitations is established.

21. The first exception to the two-year statute of limitations set forth in WAC 392-172A-05080(2) provides that the limitation does not apply if the parent was prevented from filing a due process hearing request due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request. No such representations were made in this case. At no time did the District tell the Parents during the 2016-17 school year that the Student’s anxiety and ADD were no longer impacting her ability to access her education. Rather, it remained obvious to the Parents up until the time they moved to Texas, and beyond, that the Student was struggling academically and was reaching the point of desperation. The record and, in particular, the Mother’s testimony demonstrate the Parents were acutely aware of these struggles. It is therefore concluded that the District did not represent to the Parents that the issues which form the basis of this action had been resolved. Consequently, the first exception to the statute of limitations does not apply.

22. The second exception to the two-year statute of limitations set forth in WAC 392-172A-05080(2) provides that the limitation does not apply if a parent was prevented from filing a due process hearing request due to the school district withholding information that was required under this chapter to be provided to the parent. The Parents allege they were not timely provided with the required Procedural Safeguards because the District failed to meet its Child Find obligations. Parents' Post-Hearing Brief at 46.

23. School districts are required to provide a copy of the Procedural Safeguards one time per school year to parents of a student eligible for special education; and upon initial referral, upon a parent's request for evaluation, and upon a parent's request for the Procedural Safeguards (as well as under other circumstances that do not apply here). WAC 392-172A-05015(1). As found above, in this case the District provided the Parents with the Procedural Safeguards on September 25, 2018, at the time the District proposed to initiate an evaluation of the Student for special education eligibility. The plain wording of the WAC does not support the Parents' argument that they should have received the Procedural Safeguards earlier than they did because none of the requisite circumstances that require provision of the Procedural Safeguards had occurred.

24. It is concluded that WAC 392-172A-05080(2) bars all of the Parents' claims that date back more than two years prior to the filing of this action. The Parents' claim that the District denied the Student FAPE during the 2016-17 school year when it failed to timely identify and evaluate the Student's eligibility for special education services, failed to address the Student's lack of progress, and failed to address the Student's absenteeism is barred and will not be addressed herein.

Whether the District violated the IDEA and denied the Student a FAPE during the 2017-2018 school year by: (a) failing to meet its Child Find obligation under the IDEA to identify, locate, and evaluate the Student beginning on or about February 10, 2018; (b) failing to address the Student's lack of progress in the educational setting; and (c) failing to address the Student's disability related absenteeism

25. The IDEA mandates that school districts shall conduct "Child Find" activities "calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability." WAC 392-172A-02040(1). The IDEA further mandates that school districts shall have policies and procedures in effect that describe the methods used to conduct Child Find activities. Methods used may include, but are not limited to, activities such as:

Using internal district child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school districts to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

WAC 392-172A-02040(3)(f).

26. The issue presented here is whether the Student was "suspected" of having a disability prior to August 22, 2018, the date on which the Parents requested a special education evaluation. Such a "suspicion" would have triggered the District's obligation to identify and refer the Student for evaluation for eligibility to receive special education and related services.

27. A disability is “suspected” when a school district “has notice that the child has displayed symptoms of that disability.” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016).³¹ The *Timothy O.* court found the Paso Robles school district’s decision not to evaluate the student at issue for autism as part of his initial evaluation was “directly contrary to the provisions of the IDEA and our precedent, which establish that if a school district is on notice that a child may have a particular disorder, it *must* assess that child for the disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment.” *Id.* at 1121 (emphasis in original). See *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App’x 666, 667 (9th Cir. 2018) (“The duty to evaluate a student arises when disability is ‘suspected,’ or ‘when the district has notice that the child has displayed symptoms of that disability’”).

28. A school district may not take a passive approach and wait for a parent to refer a student for evaluation. Rather, a district is obligated to locate and identify IDEA-eligible students. *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1183-84 (9th Cir. 2010). Moreover, a district is obligated to procure its own evaluation; any failure of the parents to turn over portions of a specialist’s report “cannot excuse the district’s failure to procure the same information for itself.” *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1523 (9th Cir. 1994).

29. WAC 392-172A-01035, entitled “Child with a disability or student eligible for special education,” states, “Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories...” The provision goes on to list a number of categories, including “emotional/behavioral disability,” and “other health impairment.” The provision states, at subsection 2(e)(i):

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

³¹ The District argues that the holding in *Timothy O.* is limited to students with autism and does not control in the present case. District Post-Hearing Brief at 31-32. The ALJ declines to adopt the District’s narrow interpretation of *Timothy O.* The District does not cite any cases interpreting *Timothy O.* to pertain only to students with autism. However, in *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App’x 666 (9th Cir. 2018), the Ninth Circuit addressed a situation in which a student had been hospitalized for [REDACTED], and reiterated its holding in *Timothy O.*, stating, “The duty to evaluate a student arises when disability is ‘suspected’ or ‘when the district has notice that the child has displayed symptoms of that disability.’” *Id.* at 667. No mention is made of autism by the *J.K.* court. Rather, the court notes that a child with a serious emotional disturbance falls within the definition of “child with a disability,” and further notes the district court may have erred below in finding that the school district did not violate its child find obligation as it pertained to the [REDACTED]. Similarly, in *S.P. v. E. Whittier City Sch. Dist.*, 735 Fed. App’x 320, 323 (9th Cir. 2018), the Ninth Circuit relied on *Timothy O.* when finding the school district did not adequately assess a student with a hearing impairment. *E.g., Garcia v. Capistrano Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 231164 *47 (C. D. Cal. 2019) (relying on *Timothy O.* in a case pertaining to traumatic brain injury); *Tamalpais Union High Sch. Dist. v. D.W.*, 271 F. Supp. 1152, 1159 (N.D. Cal. 2017) (“The Court finds that the ALJ did not err in relying on *Timothy O.* and finding that Tamalpais had a duty to evaluate D.W. for mental health-related disabilities”).

- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

Further, WAC 392-172A-01035(2)(j) provides:

- (j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:
 - (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
 - (ii) Adversely affects a student's educational performance.

30. The Parents in the present case did not request a special education evaluation of the Student at any point during the 2017-18 school year. However, they contend the District should have suspected the Student had a disability during the semester she spent at IHS, at the latest, and should have referred her for an evaluation. The District contends it did not have enough information indicating the need to refer the Student for an evaluation. The District's position is that the Student's transfer to IHS in the second semester made it difficult to assess her potential need for a referral, as did the Student's suspension in May of 2018.

31. A preponderance of the evidence supports the Parents' contention. At the time the Student reenrolled in the District, her past history was readily available in the Skyward portal,³² making her attendance, grades, and discipline records accessible to IHS staff. At the Student's 504 meeting, Mr. Wolff was aware of the Student's history of very poor attendance, unsatisfactory grades, discipline issues and anxiety. He reviewed her file prior to the meeting and had access to Dr. Fay's evaluation, as well as any other materials added to the Student's file by staff at IMS and PCMS. Ms. Combellick spoke with Ms. Petersen about the Student, but only briefly. A conversation of any substance with Ms. Petersen would have revealed that Ms. Petersen not only suspected, but *knew* the Student had a disability and felt it interfered with her academic performance at PCMS. Although Mr. Wolff was concerned about the Student's past attendance and grades, he never contacted Dr. Bailey to obtain information about the Student. From a review of the records up through ninth grade, Ms. Melcher, who never met the Student, was able to conclude, "[Student] has a longstanding history of considerable social-emotional challenges characteristic of her diagnoses of Depression, Social Anxiety Disorder, ADHD and PTSD."

32. Moreover, almost immediately upon entering IHS, the Student experienced problems and Ms. Combellick was worried about her attendance. The Student [REDACTED] and required

³² Ms. Melcher accessed this information when writing the Student's evaluation report in 2019.

hospitalization, and, as a result, Ms. Combellick spoke with a mental health counselor about the Student.³³ The Student's math teacher expressed concern about the Student's attendance and performance in mid-February. Ms. Connelly observed the Student lingering in the bathroom and was concerned that "she wasn't accessing her education." When the Mother met with District staff on or around March 20, 2018, she expressed concern regarding the Student's academic performance, but the only action taken by the District was to send out surveys to her teachers. Teacher input provided in response to the surveys noted the Student's consistent lack of focus and lack of preparedness, anxiety that was "apparent," existence of "a problem," struggles with reading, and failure to turn in a single assignment in English class. Ms. Combellick and Ms. Connolly knew the Student had received A's in her classes at Fusion, where she received one-on-one instruction, but that she was doing poorly in most of her classes in the District. By March 30, 2018, IHS staff knew the Student was failing math, English and photography.

33. Mr. Wolff admitted that information from the Student's eighth grade year would have been relevant "once we got to a point where we see significant struggles." Mr. Wolff ultimately believed the student was not referred for an evaluation because "he didn't know her" and her middle school had not determined that a special education referral was necessary. Ms. Connolly and Ms. Combellick knew by end of the school year that the 504 plan interventions were not successful and at this point Ms. Connolly was "certain" the Student's anxiety was affecting her attendance. Nonetheless, the only intervention the District planned to implement the following school year was a Guided Studies class, which is a general education class.

34. It is concluded that the District should have suspected the Student had a disability and should have referred her for a special education evaluation by March 30, 2018, at the very latest. Consequently, it is concluded that the District violated its Child Find obligation when it failed to identify the Student as a child with a suspected disability who may be in need of special education services, and failed to refer her for an evaluation.

35. A Child Find violation is a procedural violation of the IDEA and the ALJ must determine if the violation led to a denial of FAPE. See *Timothy O.*, 822 F.3d at 1124. As set forth above, procedural violations of the IDEA amount to a denial of FAPE 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 decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

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

36. To succeed on a claim that a child was denied FAPE, the aggrieved party need not definitively show that the child's educational placement would have been different absent the procedural violation. *Timothy O.*, 833 F.3d at 1124 (citation omitted). However, in the present

case, the Student qualified for special education services when she was evaluated in December of 2018. By that point, she had received interventions at Solstice for over four months. Given the longstanding nature of her ADD and anxiety, a preponderance of the evidence indicates the Student very likely would have qualified for special education services had the Child Find violation not occurred and had she been evaluated during the 2017-18 school year. Moreover, even if the evaluation team had declined to evaluate the Student for some reason after she was referred, the Parents would have received a PWN and Procedural Safeguards that would have helped guide their choices going forward.

37. It is concluded that the District violated the IDEA, and the Student was denied FAPE and was deprived of educational benefits, when the District failed to refer her for a special education evaluation during the 2017-18 school year.

Whether Solstice was a proper placement for the Student

38. 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).

39. The IDEA authorizes reimbursement for private services when a public school fails to provide FAPE and a private placement is proper, regardless of whether the student previously received special education services from the public school. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484 (2009). In *Forest Grove*, the student at issue was evaluated by the school district and determined not to qualify for special education services. Because the student continued to experience problems in school, his parents unilaterally enrolled him in a private academy and notified the school district after the placement. The hearing officer in the case determined the district "failed to meet its obligations under the IDEA in not identifying respondent as a student eligible for special education." The hearing officer further found the district did not offer the student FAPE and the private placement was appropriate, and ordered the district to reimburse the student's parents for the cost of the private school. 557 U.S. at 234-35. The U.S. Supreme Court upheld this decision. In doing so, it stated, "[W]hen a child requires special-education services, a school district's failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under the IDEA as a failure to provide an adequate IEP." 557 U.S. at 238-39. The Court went on to hold that the provisions of the IDEA do not mandate a different result. Notably, the Court addressed a Child Find violation situation in *dicta*, stating, "A reading of the [IDEA] that left parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress' acknowledgement of the paramount importance of properly identifying each child eligible for services ... It would be particularly strange for the [IDEA] to provide a remedy, as all agree it does, when a school district offers a child inadequate special education services, but to leave parents without relief in the more egregious situation in which the school district unreasonably denies a child access to such services altogether." 557 U.S. at 245.

40. In the present case, it is concluded above that the District's Child Find violation deprived the Student of FAPE. Therefore, the first prong of the *Florence County* test is met.

41. With regard to the second prong of the test, in order for a private placement to be “proper under the IDEA,” parents must demonstrate that it “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 1159-1160. 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 Educ.*, 2018 U.S. Dist. LEXIS 92407 (D. Haw. 2018).

42. The District contends Solstice was not a proper placement for the Student, in part because some of the teachers were not properly certificated under Utah law, and because no academic goals were developed for the Student. District Post-Hearing Brief at 41-42. These types of assertions were found to be unpersuasive by the Supreme Court in *Florence County*. The *Florence County* Court determined, “Trident’s [the private school] deficiencies, according to the school district, were that it employed at least two faculty members who were not state certified and that it did not develop IEP’s.” 510 U.S. at 11-16. The Court rejected these arguments, concluding that the private school’s education was “appropriate” and the parents were entitled to reimbursement of tuition and other costs.

43. The District further contends that residential placement at Solstice was not proper because it was not required for academic reasons, and the Student was placed there primarily to undergo substance abuse treatment. The Ninth Circuit has made clear that a residential placement is justified under the IDEA when it is “necessary for educational purposes,” rather than as “a response to medical, social, or emotional problems ... quite apart from the learning process.” *Ashland Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1010 (9th Cir. 2009) (quoting *Clovis Unified School Dist. v. California Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir. 1990)). In *Clovis*, the court determined, “Where, as here, a child requires six hours per day of intensive psychotherapy, such services would appear ‘medical’ in that they address a medical crisis.” 903 F.2d 645. Similarly, in *Ashland Sch. Dist. v. Parents of Student E.H.*, 587 F.3d 1175 (9th Cir. 2009), the court found the student’s educational and medical issues were not intertwined. In that case, the student had been hospitalized for threatening to harm his family and was “in no condition to devote much time or effort to schoolwork” during the first six months he spent at the residential facility. 587 F.3d at 1185.

44. In contrast, the Ninth Circuit found that a residential placement was appropriate in *County of San Diego v. Cal. Special Educ. Hearing Officer*, 93 F.3d 1458 (9th Cir. 1996). In that case, the student was hospitalized for violent outbursts related to preparing a school science report, and had been assigned little or no homework because it was regarded as too stressful for her. The court determined residential placement was necessary because the student’s “primary problems” were “educationally related.” 93 F.3d at 1468.

45. Similarly, in a recent Ninth Circuit case, *Edmonds Sch. Dist. v. A.T.*, 780 Fed. Appx. 491 (9th Cir. 2019), the student at issue was placed in a private residential placement (Provo Canyon School) unilaterally by his parents. In the two years leading up to his placement at Provo, his

grades dropped dramatically and he committed more than twenty disciplinary offences. Despite this, the school district did not reevaluate the student, change his IEP, or offer a residential placement. The district argued that “truancy rendered him unable to take advantage of the offered educational opportunities, thereby excusing its failure to offer a reasonably calculated IEP.” 780 Fed. Appx. at 494. This argument was rejected by the ALJ, the district court and the Ninth Circuit. The school district also challenged whether the placement was “proper,” arguing the student’s mental health had deteriorated so significantly that he “could only benefit from serious medical intervention, so any placement must be understood as a medical one.” The Ninth Circuit disagreed, stating, “Students who require residential placement to obtain an educational benefit are often experiencing some acute health crisis at the time they are placed – the severity of their condition is precisely why they need residential treatment. If we adopted the district’s approach, it is difficult to imagine how any private residential placement would be reimbursable under the IDEA.” 780 Fed. Appx. at 495. Moreover, the court found that Provo was an educational, rather than medical, placement, because it is an accredited educational institution with a full day school and regular classroom settings, its instructors are employed by the facility, and most are certified special education teachers.

46. In the present case, a preponderance of the evidence supports the conclusion that the Student’s residential placement was necessary for educational purposes, and not a response to medical, social, or emotional problems that were “quite apart from the learning process.” It is abundantly clear that the Parents made the decision to place the Student at Solstice because of her debilitating substance abuse over the summer of 2018, and their fear that she might die without immediate intervention. However, it is also clear that the conditions leading to the Student’s substance abuse were inextricably intertwined with her anxiety and her negative educational experiences. As early as the 2015-16 school year, the Student felt “stupid” and other students told her she was stupid. In the fall of 2016, Dr. Fay concluded the Student could be expected to have severe problems keeping pace with the presentation of information in the classroom setting and was likely to have serious issues understanding lectures and instructional explanations. At the time, the Mother noted, and the District knew, the Student’s high levels of anxiety and ADD were presenting challenges with her school work. In early 2017, the Student informed her PE teacher that she had trouble sleeping and missed school because of her sleep habits and anxiety. At the same time, the Student’s social studies teacher noted the Student was frequently absent, could not ever seem to catch up, and “anxiety exacerbated the cycle.” The Student’s 504 plan at the time provided, “Student’s anxiety has had a major impact on 8th grade. She has accrued a significant number of absences that are anxiety-related.” While the Student was in Texas, her anxiety prohibited her from attending more than a few days of public school, and she had to be placed in a one-on-one setting in order to successfully access an education. Teachers at IHS observed that the Student could not focus, exhibited obvious anxiety, and struggled with reading and math. By the time the Student was expelled from IHS in 2018, she was failing five out of her six classes, and a hearing officer as well as the IHS assistant principal concluded her general anxiety disorder was having a significant impact on her attendance and, consequently, her grades.

47. Even after she was placed at Solstice, the Student often told her special education teacher that she felt she was stupid and did not feel “worth it” in the classroom. According to the Solstice teacher, it was evident the Student’s social-emotional needs impeded her learning and she required intensive therapeutic services to be successful academically. Dr. Odom noted in the District’s evaluation of the Student in late 2018, “As she is trying to cope and mitigate trauma related symptoms, mental health symptoms, and social complexities, she likely will deplete her

mental capacity and struggle to complete academic work efficiently and to her potential abilities.” Clearly, the Student’s perpetual truancy was related to her disability; her mental health needs and the related collapse into substance abuse were not segregable from her educational needs.

48. A parental placement can be appropriate even if it does not meet the state standards that apply to education provided by a school district or other public agency. WAC 392-172A-04115. 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).

49. In the present case, a preponderance of the evidence demonstrates the placement at Solstice was proper. The instruction provided to the Student was reasonably calculated to meet her academic needs, and was supported by related necessary services. Fernwood, the academic program at Solstice, is an NPA recognized by OSPI. Solstice employs its teaching staff, and provides daily classes in a relatively typical school setting for residents. The Student was able to earn 9.5 high school credits in the academic year she attended Fernwood. She obtained one-to-one math instruction as needed. Once the Student left Fernwood, she did “very well” in Northshore public schools where she earned good grades and was able to transfer to the comprehensive high school after one semester at a smaller school.

50. It is concluded that Solstice was a proper placement for the Student, and tuition reimbursement is appropriate, although it is limited as discussed below.

Whether the Parents’ move to Northshore relieved the District of its obligation to provide FAPE to the Student

51. The District contends the Parents’ relocation to Northshore ended the District’s responsibility to the Student and relieved it of any obligation it may have had to provide FAPE to the Student and to reimburse the Solstice costs.

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

53. Provisions contained in WAC Title 392, which is entitled “Public Instruction, Superintendent of,” address student residency. WAC 392-137-115 pertains to nonresident attendance and provides:

[T]he term “student residence” means the physical location of a student’s principal abode – i.e. the home, house, apartment, facility, structure, or location, etc. – where the student lives the majority of the time...The student’s

³⁴ See WAC 392-172A-02040 (child find activities shall extend to students “residing within the school district boundaries”).

principal abode may be different than the principal abode of the student's parent(s).

According to that provision, the following shall be considered when determining a student's residence: the mailing address of the student may be different than the student's principal abode, the lack of a mailing address for a student does not preclude residency, and whether the student is expected to reside at the address for twenty consecutive days or more. *Id.*

54. This definition of student residence has been incorporated into WAC 392-172A and applies to the IDEA pursuant to WAC 392-172A-01160, which provides, "residency or resident student has the same meaning as is defined in WAC 392-172A-115."

55. When a student eligible for special education services no longer resides in a school district because his or her parents have unilaterally enrolled the student in an out-of-state residential facility, the district's obligations to the student under the IDEA terminate *if the district was providing FAPE when the Student was removed from the state.* *J.S. v. Shoreline*, 220 F. Supp. 2d at 1190-91 (emphasis added); WAC 392-172A-04115(1). Reimbursement for a private placement "is only available if the child is denied FAPE at the time of withdrawal." *Id.* Such is the circumstance in the present case in that the District was not providing FAPE at the time the Student was unilaterally placed at Solstice. The District subsequently evaluated the Student and offered her an IEP, which the District contends was an offer of FAPE, in March of 2019. However, by that time, the Parents had moved to Northshore.

56. Thus, the issue presented is whether a district that was failing to provide FAPE to a student at the time she was unilaterally placed in an out-of-state facility continues to be obligated to provide FAPE if the student's parents subsequently move out of the district. The ALJ concludes the answer to this inquiry is "no." After the Parents moved, there was insufficient nexus to the Student to continue to hold the District responsible for the ongoing provision of FAPE. The District's obligation to serve the Student ended when her Parents moved to Northshore.

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

57. The ALJ must next consider whether the equities of this case weigh in favor of an award of tuition reimbursement and/or other equitable relief to the Parents. Compensatory education is an appropriate remedy when a school district has failed to provide FAPE to a student with a disability. "Compensatory education is an equitable remedy that seeks to make up for 'educational services the child should have received in the first place,' and 'aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA.'" *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir 2011)(quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)). Private school tuition reimbursement can be a form of compensatory education. *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009).

58. The District argues that equitable factors warrant a reduction or outright denial of reimbursement to the Parents. According to the District, the Parents have acted with "unclean hands." District Post-Hearing Brief at 43-44. The Ninth Circuit addressed a scenario similar to the present case in a later iteration of *Forest Grove*, namely *Forest Grove Sch. Dist. v. T.A.*, 638

F.3d 1234 (9th Cir. 2011).³⁵ In that case, 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, the ALJ must consider “all relevant factors.” *Forest Grove*, 557 U.S. 247.

The Ninth Circuit has recognized that the following are among “all relevant factors in determining whether to grant reimbursement and the amount of the reimbursement”: notice provided to the school district prior to unilateral private placement; “the existence of other, more suitable placements[;] the effort expended by the parent[s] in securing alternative placements”; “the general cooperative or uncooperative position of the school district”; and whether the student’s parents chose the private placement for reasons unrelated to the student’s disabilities.

J.T. v. Dep’t of Educ., *10, citing *Forest Grove v. T.A.*, 523 F.3d 1078, 1088-89 (9th Cir. 2008). Academic progress or lack thereof at the private placement is also a relevant factor. *Id.*

59. In *J.T.*, the court determined the day treatment center in which the parents had enrolled the student, which included cooking classes and “dolphin experiences,” was not necessary for him to receive academic benefits. The court further determined that the student’s parent had failed to fully cooperate with the district and had delayed certain evaluations; that the student’s mental health needs were not so severe as to require a day treatment program; and that the student exhibited new behavioral problems at the day center. However, the court awarded reimbursement of 25% of the expenses associated with the placement, in part because, had the district not denied the student FAPE in the first place, the parents may not have found it necessary to place the student at the day program.

60. In the present case, the District contends the Parents have “unclean hands” because they were less than forthright about the Student’s struggles outside of school. This contention is not persuasive. Little evidence is cited by the District to support this argument, and there is no evidence the District would have behaved any differently had it known more about the Student’s issues and behaviors outside school. The District knew about her [redacted] that required hospitalization and saw fit to do essentially nothing in response. The District repeatedly heard from the Parents and the Student’s teachers about the degree to which her anxiety was impacting her attendance and academic performance, yet the IHS staff did nothing more than provide a 504 plan that was never reviewed and proved to be ineffective. The District received the Student’s May 2018 assessment from Friends of Youth, which described her substance abuse and self-harm. The assessment did not appear to be of significance to the District. Thus, this contention is found to be unpersuasive and does not weigh against reimbursement to the Parents.

61. There was little evidence presented regarding the existence of placements other than Solstice that may have been more suitable for the Student. The Parents attempted to enroll the Student in THIRA, a local program, but no evidence regarding the content or suitability of that program was provided. Moreover, as determined above, Solstice was a suitable placement for the Student. The fact that the Parents ultimately acted with urgency to place their child in a safe

³⁵ This case was an appeal from the district court’s decision issued after remand to the lower courts by the U.S. Supreme Court in *Forest Grove*, 557 U.S. 230.

setting that could accommodate her immediately does not weigh against an award of equitable relief.

62. The next consideration to be weighed is whether the District's position was generally cooperative or uncooperative. The District was cooperative when the Parents notified District staff of the Student's placement at Solstice and requested a special education evaluation. The District proceeded with the evaluation even though it arguably could have taken the position that the Student was no longer a resident of the District. The District developed an IEP and was prepared to implement it until the Parents revealed they had relocated to Northshore. Thus, the District's cooperative position after the Student's placement at Solstice weighs in its favor as the equities are balanced.

63. As discussed above, the Parents chose to place the Student at Solstice for multiple reasons and the placement was necessary for educational purposes. It cannot be said that the reasons the Parents chose Solstice were "unrelated to the Student's disabilities," so the reasons for the placement do not weigh against equitable relief.

64. The final factor delineated by the *J.T.* and *Forest Grove* courts is academic progress, or lack thereof, at the private placement. The evidence is clear that the Student made academic progress at Solstice, earned high school credits, and was able to return to a public school when she completed the program. Therefore, it is concluded that this factor weighs in favor of equitable relief.

65. The District raises an additional equitable consideration. It argues the Parents notified the District of the Student's placement at Solstice and initiated the IEP process solely for the purpose of recovering their expenditures, and the fact that they failed to inform the District when they moved to Northshore demonstrates their lack of genuine participation in the process. In *Ashland Sch. Dist. v. E.H.*, the parents notified their child's school district that they were dissatisfied with the educational services it had provided, and requested reimbursement for the cost of his residential placement, over seven months after they placed the child in the residential facility. The Ninth Circuit accepted the district court's conclusion that the parents' participation in the IEP process after this notification "was not genuine, but rather was done solely as a prerequisite to seeking reimbursement." 587 F.3d at 1186. The court went on to uphold the district court's denial of tuition reimbursement, for multiple reasons.

66. In the present case, the Parents did not inform the District they had placed the Student at Solstice until one and a half months after doing so. It is clear the Parents notified the District, at least in part, in order to seek reimbursement of the Solstice expenses, based on their expressed concern over the high cost. A few months later, after the evaluation process had been initiated, the Parents decided to move but did not inform the District. In fact, the Student's evaluation occurred less than a week before the Parents moved to Northshore. While the Parents' reason for moving was valid (to avoid the Student returning to her unhealthy peer group at IHS), their concealment of the move does not display a "genuine participation in the IEP process" as contemplated by the court in *Ashland v. E.H.* Further, the Parents have described this hearing process as "our last recourse and best hope to possibly ever retire," indicating an intense interest in obtaining reimbursement. Consequently, it is concluded the Parents' participation in the evaluation and IEP process was not genuine, and this weighs against an award of equitable relief.

67. The ALJ has weighed the equities described above, and after carefully considering the facts and the law, concludes as follows: The Parents are entitled to reimbursement of tuition and other related expenses associated with Solstice and the provision of related services due to the District's failure to provide the Student with FAPE, but that entitlement is limited to the time period during which the Parents resided in the District. Equitable considerations weigh in favor of such reimbursement. The ALJ has discretion to award compensatory education in the form of additional tuition reimbursement for costs incurred by the Parents after they moved out of the District for the denial of FAPE when the Student attended school in the District.³⁶ Equitable factors weigh in favor of such an award in the amount of 25% of the Solstice-related expenses incurred by the Parents after they moved out of the District.

Whether the District violated the IDEA and denied the Student FAPE during the 2018-19 school year by: failing to identify SDI and related services to address the Student's unique needs and provide her with educational benefit at the time of the District's offer of FAPE; failing to provide a plan that would meet the Student's unique needs when transitioning from Solstice to the District; and failing to provide an appropriate placement for the Student

68. The Parents allege the IEP offered by the District in March of 2019 was not reasonably calculated to offer the Student FAPE for several reasons. They contend the IEP failed to identify SDI and related services to address the Student's unique needs and enable her to make educational progress. They further contend the IEP failed to provide a plan for the Student's transition from Solstice to the District. Finally, the Parents contend the IEP's proposed placement of the Student at IHS was not appropriate.

69. These issues need not be reached because the District had no obligation to provide the Student with FAPE after the Parents moved out of the District in December of 2018, as set forth above.

Whether the Parents are entitled to their requested remedies or other relief

70. The Parents are entitled to reimbursement for the expenses of Solstice, and their associated travel expenses, for the time period of July 23, 2018, the date on which the family travelled to Utah in order to place the Student at Solstice, to December 31, 2018, the end of the month in which the Parents moved out of the District. The reimbursement award is as follows:

Reimbursement for Solstice expenses incurred by the Parents from July 23 through December 31, 2018, including fees, tuition, and other associated costs, in the amount of \$74,997.50.

Reimbursement for travel expenses incurred by the Parents from July 23 through December 31, 2018, in the amount of \$7,071.33.

71. The Parents are further entitled to an award of compensatory education in the form of reimbursement for 25% of the Solstice expenses they incurred in 2019, including fees, tuition, and other associated costs, in the amount of \$29,538.41.

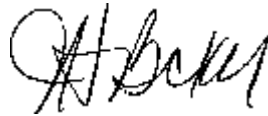
³⁶ An out-of-district move does not prevent a claim for compensatory education. *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 497 (3rd Cir. 2012) ("To comply with the IDEA, a school district no longer responsible for educating a child must still be held responsible for its past transgressions").

72. 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 Issaquah School District violated the IDEA and denied the Student FAPE by failing to meet its Child Find obligation.
2. The District is ORDERED to reimburse the Parents for private school tuition, associated costs, and travel expenses, in the amount of \$111,607.24.
3. The Parents are not entitled to relief for claims dating back prior to two years before the filing of this action, so reimbursement for Northwest Neuropsychology expenses is DENIED.
4. 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 days after the ALJ has mailed this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

DECLARATION OF SERVICE

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

Parents
c/o Ford Law Firm PLLC
3815 Othello St. Ste. 100, #368
Seattle, WA 98118

Dr. Dana Bailey, Executive Director of Special Services
Issaquah School District
5150 220th Avenue SE
Issaquah, WA 98029

Ryan Ford, Attorney at Law
Ford Law Firm PLLC
3815 Othello St. Ste. 100, #368
Seattle, WA 98118

Carlos Chavez, Attorney at Law
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

Dated November 13, 2020 at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI