

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

IN THE MATTER OF

OSPI CAUSE NO. 2021-SE-0007

OAH DOCKET NO. 01-2021-OSPI-01244

NORTHSHORE SCHOOL DISTRICT

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

A due process hearing in this matter was held before Administrative Law Judge (ALJ) Pamela Meotti by video conference on April 20 through 23 and 26, 2021. The Parents of the Student whose education is at issue¹ appeared² and were represented by Whitney Hill and Lara Hruska, attorneys at law. The Northshore School District (District) was represented by Carlos Chavez, attorney at law. Also present was Julia Trembath-Neuberger, District Director of Special Education. The following is hereby entered:

STATEMENT OF THE CASE

Procedural History

The Parents filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on January 25, 2021. OSPI assigned Cause No. 2021-SE-0007 and forwarded the Complaint to the Office of Administrative Hearings (OAH), which assigned the matter to ALJ Pamela Meotti. The District filed a response on February 3, 2021. ALJ Meotti issued a prehearing order on March 9, 2021.

Decision Due Date

The due date for a written decision in this case was extended at the District's request to thirty (30) days after the record of the hearing closes. See Prehearing Order dated March 9, 2021. The hearing ended on April 26, 2021, and the record closed on June 7, 2021, when the parties

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

² The Mother appeared throughout the hearing. The Father was present for portions of the second day of the hearing. T274; 347-48, 461, 570-71.

timely submitted post-hearing briefs. Accordingly, the due date for a written decision in this case is July 7, 2021.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parents Exhibits: P1 through P15; P16A; P17A; P19 through P36.³

District Exhibits: D1 through D11; D13; D14; D16 through D21; D23; D24; D26 through D30; D33 through D36.

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

James Workman, Special Education and English Teacher, Turning Winds Academic Institute (Turning Winds)

Eliza Grey, Psychiatric Nurse Practitioner, Turning Winds

Ariel Rock, Mental Health Therapist, Turning Winds

Elizabeth Methot, District Counselor

Colin Eggers, District Counselor

Owen Baisden, CEO, Turning Winds

Christine Fillman, District Math Teacher

Julia Trembath-Neuberger, District Director of Special Education

Jacque Ter-Veen District School Psychologist

The Mother

Constance Guy, Licensed Mental Health Counselor

Kenneth Muscatel, PhD, Neuropsychologist

Paul Narancic, District Counselor

Mary Warren, Educational Consultant

Abigail Jenkins, PhD, Clinical Psychologist

Desiree Dutt, District School Psychologist

Jeanette Delalla, District Mental Health Specialist

³ Parents Exhibits 16A and 17A contain audio recordings of voicemail messages. The Parents withdrew Exhibits 16B and 17B, which contained transcripts of those messages,

ISSUES

The issues for the due process hearing are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) since December 2019 by:
 - 1) failing to meet its Child Find obligations to identify and evaluate the Student in December 2019, after the District became aware of the Student's significant social emotional deficits;
 - 2) failing to meet its Child Find obligations from January to August 2020, when the Parents provided outside diagnoses and repeatedly asked for a special education evaluation and that request was either denied or discouraged by the District;
 - 3) failing to timely complete or unnecessarily delaying a special education evaluation after receiving consent to evaluate from the Parents in August 2020, thereby causing an undue delay in special education eligibility;
 - 4) unnecessarily delaying special education eligibility by performing its own independent neuropsychological evaluation after receiving sufficient data to determine eligibility in August 2020;
 - 5) failing to offer an Individualized Education Program (IEP) to the Student in December 2020 that included an educational placement in the Student's least restrictive environment;
 - 6) failing to consider recent evaluative data when determining an educational placement for the Student in December 2020; and
 - 7) whether the private evaluations and services obtained for the Student between January 2020 to present⁴ were appropriate for her.

- b. And, whether the Parents are entitled to their requested remedies:

⁴ "To present" means the date of filing of the complaint.

- 1) Declaratory relief that the District denied the Student a FAPE;
- 2) Declaratory relief that Turning Winds has been and remains an appropriate educational placement for the Student;
- 3) Compensatory special education and related services for the Student to allow her to obtain the educational benefit that she would have received but for the District's violations of the IDEA and denial of FAPE;
- 4) An annual IEP for the 2020-2021 school year that includes a prospective placement in the Student's least restrictive environment;
- 5) An order requiring the District to reimburse the Parents for private evaluations and services they obtained for the Student between January 2020 and present; and
- 6) Other equitable remedies, as appropriate.

See Prehearing Order dated March 9, 2021.

FINDINGS OF FACT

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

Hearsay Testimony

1. The Father did not testify at the hearing.⁵ T570-71. Instead, the Mother testified based on information she obtained from him.⁶ For example, the Father told the Mother about several

⁵ Citations to the hearing transcript are to T. followed by the page number(s) on which the testimony appears. For example, a citation to T661 is a citation to page 661 of the transcript.

⁶ The Father was listed a witness and appeared for a portion of the second day of the hearing, but the Parents represented that he was unavailable to testify due to work. T571. The Father does not work on Fridays and it is unclear why he was not available to testify on Friday, April 23, 2021. T1059. The Parents made no attempt to obtain the Father's testimony when he appeared on the second day. I find the Parents have not established the Father was unavailable to testify.

phone calls and a meeting he attended with District staff. Although the Mother did not participate in these calls or the meeting, and did not have first-hand knowledge of them, the Parents opted to rely on her hearsay testimony rather than the Father's testimony. T572. The Mother also testified based on information the Student told her. For example, she testified about events that occurred in school based on what the Student described. Additionally, the Student wanted her voice to be heard during the hearing and her unsworn personal statement was taken by the Parents' attorneys and reduced to writing. P19.⁷

2. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement.⁸ WAC 388-02-0475(3). While hearsay evidence would not ordinarily be admissible in Superior Court, it can be admitted in an administrative hearing so long as "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). An ALJ may not base a finding exclusively on hearsay evidence unless the ALJ finds that the parties had the opportunity to question or contradict it. WAC 388-02-0475(3); RCW 34.05.461(4).

3. Here, the District did not have an opportunity to cross-examine the Father or the Student.⁹ Additionally, the Student's statement was unsworn and made for the purpose of this litigation. Accordingly, I did not make any findings of fact based exclusively on the Mother's hearsay testimony or the Student's unsworn statement.

⁷ Citation to the exhibits of record are by the party ("P" for the Parent; "D" for the District) and exhibit and page numbers. For example, a citation to P20p1 is to the Parents' Exhibit 20 at page 1.

⁸ The hearsay rule is "grounded in the notion that untrustworthy evidence should not be presented to the triers of fact. Out-of-court statements are traditionally excluded because they lack the conventional indicia of reliability: they are usually not made under oath or other circumstances that impress the speaker with the solemnity of his statements; the declarant's word is not subject to cross-examination; and he is not available in order that his demeanor and credibility may be assessed by the jury." See *Chambers v. Mississippi*, 410 U.S. 284, 298, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

⁹ The Parents' counsel suggested that the District's right to cross-examine the Father would be satisfied by cross-examining the Mother. T570-71. She also argued that the District's right to cross-examine the Student would be satisfied by cross-examining her therapist, arguing that "the statement is directly taken from the Student's own words that she has given to her therapist in the course of therapy. . . . Counsel is free to cross-examine the therapist about the nature of the [REDACTED], rather than putting the Student on the stand herself." T196-97. Even if the Parents had offered authority to support this proposition, they have not established that cross-examination of the Mother or the therapist would offer the District any meaningful opportunity for cross-examination, given that both had only second-hand knowledge of the events in question.

Background

4. During the 2017-2018 (6th grade) and 2018-2019 (7th grade) school years, the Student resided with her family in Bellevue, Washington. The Student received mostly “A” grades in all classes with a few “B” grades. D1pp1-8; T554.

5. In the fall of 2018, the Mother [REDACTED] [REDACTED] . 724; 816-17. The Bellevue School District developed a plan for the Student’s return to school, which consisted of the counselor observing the Student periodically and the Student checking in with the counselor, which the Mother believed to be sufficient. T819-20.

6. The Student also started [REDACTED] [REDACTED] . T558, 817-18, 1025

2019-2020 School Year

7. The Student and her family subsequently moved to the Northshore School District (District). During the 2019-2020 school year, the Student attended 8th grade at Canyon Park Middle School (Canyon Park) in the District. D2p1.

8. The Student joined the cross-country team and made friends. T556. During the first term, which ended on November 1, 2019, the Student was enrolled in “high cap” classes¹⁰ and achieved all A grades. All teacher comments were positive, indicating she was a pleasure to work with, had a positive attitude, and was responsible, capable and hardworking. D2p1; T303-304; 446-47.

9. In November 2019, the Student reported to Elizabeth Methot,¹¹ the Student’s school counselor, [REDACTED] [REDACTED] T255-56. The record does not contain additional information about this incident.

¹⁰ Students must take a test to be placed in “high cap” or challenge level courses. T304. Algebra is an accelerated math placement for 8th grade. T304.

¹¹ Ms. Methot has a master’s degree in school counseling and has been employed by the District as a school counselor at Canyon Park for nineteen years. T252.

10. Around Thanksgiving, the Mother noticed that the Student [REDACTED]. The Mother scheduled an intake meeting with a local agency regarding counseling for the Student. T558-59.

11. On December 5, 2019, the Student's math teacher, Christine Fillman, [REDACTED]. T438-40. Ms. Fillman had no other concerns about the Student, who was "a very good student." T444; 449. The Student got along with everyone and Ms. Fillman never noticed her becoming anxious in class. T445; P33p19. Students in Ms. Fillman's class worked in groups of four, and although the Student was introverted and preferred to work alone, she came around to working with people. T444.

12. By email, Ms. Fillman asked Ms. Methot to check in with the Student. P1p1; T438-40. Ms. Methot was absent that day so Paul Narancic,¹² another counselor at Canyon Park, met with the Student. He left a voicemail for the Mother asking for a return call and indicating the Student [REDACTED]. P16A. Mr. Narancic could not recall if he received a return call. T800-801. The Mother asked the Father to return Mr. Narancic's call and testified that the Father told her about the conversation. T560-63. I make no findings of fact on the basis of the Mother's hearsay testimony about a return call because she has no first-hand knowledge of it, Mr. Narancic has no recollection of it, the Father did not testify at the hearing.

13. During the hearing, the Parents submitted the Student's unsworn personal statement, which included the allegation that Mr. Narancic was [REDACTED] until the Student asked several times. P19p1; T194. The Student's statement does not support a finding of fact on this issue because it was not made under oath, was made for the purpose of litigation, and was not subject to cross-examination during the hearing.

14. Additionally, the Mother testified that the Student told her Mr. Narancic was [REDACTED]. T564. The Mother did not attend the meeting and has no direct knowledge of what occurred. Her hearsay testimony is based on information from the Student and is not supported by other evidence in the record. Mr. Narancic denied engaging in these actions. T797. Moreover, the Parents did not complain about Mr. Narancic or request to work with a different counselor at the time, which undermines the Mother's testimony that she thought his behavior was inappropriate. T826. The record does not contain

¹² Mr. Narancic has a master's degree in school counseling and has been employed by the District as a school counselor at Canyon Park for twenty-five years. T791.

sufficient reliable evidence to support a finding that Mr. Narancic was [REDACTED]
[REDACTED] The Mother's hearsay testimony is not adopted as a finding of fact.

15. [REDACTED]
[REDACTED]
[REDACTED] . T260-62; 798.

16. During the District's winter break, the Parents were concerned because the Student [REDACTED] . T1040-41. They did not notify the District of this incident. T1041.

January 2020

17. In early January 2020, the Student told the Parents [REDACTED]
[REDACTED] P4p4. This was a very difficult and traumatic time for the Student. T566.

18. On January 8, 2020, the Student was up late texting friends about her belief she had been [REDACTED] . T567. The Student wanted to go to school on January 9, 2020, and the Parents were concerned but ultimately allowed her to do so because they felt school could help her calm down. T1052-53. Mr. Narancic received a message from the Father but the record does not indicate what the Father stated. T567; P17A

19. On January 9, 2020, the Student's friends notified Mr. Narancic they were concerned about her. P17A; T804. They reported the Student [REDACTED]
[REDACTED] . Mr. Narancic immediately called the Father and left a message relaying the friends' concerns and asking for a return call. P17A; T804. Prior to receiving Mr. Narancic's message, the Parents were already aware that the Student's [REDACTED]
[REDACTED] because they had questioned the Student about this on January 8, 2020. T831. The Father did not notify the Mother about Mr. Narancic's voicemail. T575, 830, 1054.

20. Mr. Narancic could not recall whether the Father returned his call. T805. The Mother testified that the Father told her he returned the call and that he told her what he discussed

with Mr. Narancic. T570-72. She acknowledged that she did not know the details of the conversation but could only “speak to what my husband described as the flavor of the conversation.” T573. I make no findings of fact based on the Mother’s hearsay testimony.

21. The Mother arrived home on January 9, 2020, at approximately 4:20 p.m. Friends were visiting, which was against the rules, so the Student told them to leave and went to her room. The Mother went to the Student’s room and asked to check the Student’s phone. The Student was texting numbers to someone and the Mother eventually figured out that the numbers

[REDACTED] T574-76, 830-32, 1056.

22. The Student was [REDACTED] T576. On Saturday, January 11, 2020, the Student emailed four teachers concerning classwork. The emails stated the Student [REDACTED] and would likely be there the following week. D3 through D6. None of the emails stated why the Student was [REDACTED].” D4p1.

23. SCH provided the Parents a second copy of discharge paperwork to give to the District and recommended that the Student return to school as quickly as possible so that she would not be in an unstructured environment. T578-79, 832.

24. Several days after discharge from SCH, the Student started participating in [REDACTED] T580, 588, 595. The Student was working with Ms. Guy to address the Student’s new belief that she had been [REDACTED] T591, 600.

Meeting to Return to School

25. On or about January 21, 2020, the Student and the Father attended a reentry meeting with Mr. Narancic, Ms. Methot and Jeanette Delalla,¹³ a District mental health specialist who had an unpaid internship in school counseling at the time. The group discussed a plan to

¹³ Ms. Delalla has a dual master’s degree in art therapy and counseling. She is a licensed mental health counselor in Washington, has a certificate in school counseling in Washington, and has been employed by the District as a mental health specialist since 2012. T1094-95, 1104. During the 2019-2020 school year, Ms. Delalla was working as a District mental health specialist and she also had an unpaid internship in school counseling. T1096; 1105. She attended the meeting as part of her internship. T1096.

ensure the Student's safe return to school (safety plan). T267, 305, 579, 807-808, 1096-97. The Student was not assessed [REDACTED] at that time because she had just been released from SCH, the Parents stated she was ready to return to school, and the Student wanted to go to class. T1106.

26. Ms. Methot observed tension between the Father and the Student and believed she heard the Student tell him she might not be safe at school. T272, 305, 318, 321. When the group discussed the issue, however, the Student "was guaranteeing" the group she would be safe at school and Ms. Methot felt confident in this response. T269, 321. As a safety plan, the group agreed that Ms. Methot would check in with the Student each week by pulling the Student out of class to meet with her. T269, 275-77. The Student was eager to get back to class and left the reentry meeting. T269; 272; 320-21.

27. During the hearing, the Mother testified that the Student thought the safety plan was stupid and that the meeting was useless and a waste of time. T579. The Student told the Mother she did not like Ms. Methot and did not think what she offered was helpful. T580. The Parents gave up on Ms. Methot and Mr. Narancic because they "didn't have any faith in them." T834-86. The Parents did not inform the District of the Student's opinion or their concerns about the counselors. They did not express concerns about the safety plan or suggest an alternative plan. T579-80; 834-37, 1057.

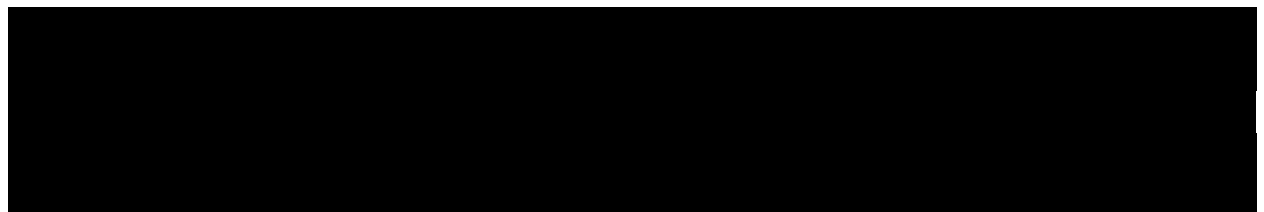
28. During the reentry meeting, the District learned from the Father that the Student had [REDACTED]. T267, 277, 307. Ms. Delalla testified that she prepared a release of information related to the counselor and forwarded it to Ms. Methot to send to the Parents. T1097. Ms. Methot, however, testified that Ms. Delalla emailed the release to the Parents. T307, 318. The Mother did not recall receiving the release and it is not in the hearing exhibits. T583. Based on this evidence, I find that the District prepared a release of information for the counselor but did not actually send it to the Parents.

29. There was conflicting hearing testimony as to whether the Father provided the District with discharge paperwork from SCH. The hearing record does not contain any such paperwork. Ms. Methot recalled that she asked the Father for the discharge plan during the reentry meeting but he did not provide it. She could not tell if the Father did not have the discharge plan or was reluctant to share it. T267-68. Ms. Delalla also recalled that the Father was asked for the discharge plan during the reentry meeting. He had some papers with him, which she thought could be the discharge plan, but she did not recall him handing those papers to anyone and did not receive any paperwork directly. T1098, 1107-08. Mr. Narancic did not know if the Father brought any paperwork to the reentry meeting. T808. The Mother testified

that the Father told her he left the discharge papers at the front desk. T832-33. Her hearsay testimony is based on information from the Father and is not supported by other evidence in the record. Based on this evidence, I find that the Father was asked by District staff for the SCH discharge plan at the reentry meeting but did not provide it to them. Additionally, the record does not contain sufficient reliable evidence to support a finding that the Father left a copy of the paper-work at the front desk.

Parents' Efforts to Ensure the Student's Safety At Home

30. SCH provided training to the Parents on how to make their home safe for the Student. The record does not contain evidence of what SCH recommended. The Parents purchased a



after Winter Break. T1044. They did not notify the District or discuss these concerns during the reentry meeting or in the months thereafter. T1044. The Parents were also concerned that the Student was using her phone at school despite a policy prohibiting such use, but they did not make the District aware of these concerns. T1045.

31. The Father did not work on Fridays and arranged to be home on Wednesdays as well to supervise the Student. T581-82. The remaining days of the week, the Student arrived home around 3:15 p.m. and was home alone until 4:20 to 4:45 p.m. when the Mother arrived home from work. T824-25; 1059. The Mother encouraged the Student to attend Diversity and Equity Club and Art Club after school because she felt "school was a safer place than home," and she "wanted her to be under supervision as much as possible." T583-84.

32. At some point, however, the Mother became concerned because the Student told her an after-school club was cancelled when it was not. T584-85. Participation in after-school clubs is voluntary and students are not required to attend and are not reported for failure to attend. T300. The Mother also believed that the Student [REDACTED]. T584-85, 838. The Mother's belief was based on what the Student told her and is not supported by other evidence in the record. This evidence is not sufficient to support a finding that the Student was, in fact, [REDACTED]. The Parents did not notify the clubs' leaders or the District of any concerns related to after-school clubs. T309; 1046-47.

Suspected Disability

33. Ms. Methot first suspected the Student had a disability when she learned of her diagnosis of [REDACTED] at the reentry meeting on January 21, 2020. T287, 478. Neither Ms. Methot nor Mr. Narancic saw any sign the Student's [REDACTED] was having any impact on her education, and neither believed the Student needed an individualized education program (IEP) at that time. T287-88, 306, 811-813. For the first semester of the 2019-2020 school year, which ended on January 24, 2020, the Student received "A" grades in all subjects. All teacher comments were complimentary, noting that she was a pleasure to work with in class, responsible, capable, a hard worker, a positive influence on others, imaginative and creative, and enthusiastic. D7p1. In reviewing the Student's records, Ms. Methot saw that she had great attendance and top marks in advanced classes. T811-12. She had positive engagement with teachers, a strong desire to be at school and in class, and no disciplinary or behavior issues at school. T288, 296-97. When Ms. Methot observed the Student in class with her peers and her teacher, the Student seemed to be having a good time and was appropriately engaged. T320. Ms. Methot did not have concerns about the Student socially and did not believe she required any social/emotional support. T319-20.

34. At hearing, Julia Trembath-Neuberger,¹⁴ the District's Director of Special Education, testified about District policy as follows. "If anyone suspects a disability, they should contact either the guidance team¹⁵ or the school psychologist and start the process . . . for a referral to special education.¹⁶ T464. She further explained: "If a Student has a disability but no educational need, they would go to a 504 [plan] and receive services – accommodations that way. If a student – a team suspects a disability and suspects that they need an IEP, then we have a process that we follow for that, including going to the school psychologist and the guidance team and, you know, starting that process." T488-89. Ms. Methot testified that parents typically make special education referrals and the guidance team decides whether a student's suspected disability is impacting their education. T285. In this case, Ms. Methot suspected the Student might have a disability but she did not see any educational impact and did not believe it was necessary to contact the school psychologist regarding an evaluation. T285, 287-88. There is no evidence in the record that Ms. Methot notified the other members

¹⁴ Ms. Trembath-Neuberger has a bachelor's degree in teaching and a master's degree in teaching students with behavior disorders. She has also completed doctoral coursework in special education and educational leadership. She has been employed by the District for eight years, as Director of Special Education for three years, and as an Assistant Director of Special Education for five years. T463.

¹⁵ A guidance team is comprised of school counselors, administrators, a school nurse, and a school psychologist. T302.

¹⁶ The record does not indicate whether the District has a written policy regarding referrals.

of the Student's guidance team that she suspected the Student had a disability or that the Student's guidance team was involved in determining whether they suspected the Student could require special education. Because the Student was receiving outside counseling, Ms. Methot believed her role was to ensure that the Student was safe at school and she felt that the check-in process was effective for that purpose. T277.

February 2020

35. On February 10, 2020, the Student called a crisis hotline not related to the District following an exchange with her Parents and was transported to the hospital. T650; 839. She was released that same day because she was not deemed to be an immediate threat to herself or others. D33p4; T603; 650. At home, the Student continued to say things such as "if I have to do this, then I'm just going to kill myself," and to text friends that she wished she were dead. The Parents did not notify the District about any of this behavior. T1048-50.

36. On February 12, 2020, the Student responded to a check-in email from Ms. Methot. She stated she was "doing okay but was in the hospital again over the weekend. Things aren't going very well with my family." D8p1. Ms. Methot responded that the Student was welcome to come by her office and offered to call the Student out of class if she preferred. D8p1. Ms. Methot did not call the Student directly because she knew the Student was already working with an outside counselor. T278. The following day, the Student emailed Ms. Methot to ask if she could take two languages the following year at Bothell High School (BHS). D9p2. Ms. Methot did not see any sign of emotional distress in the Student's email. T308.

37. After implementing the safety plan for approximately three weeks, Ms. Methot met the Student for a check-in and learned the Student felt she was missing things in class during the check-in. The Student wanted to get back to class. Therefore, Ms. Methot informed the Student they could have email check-ins in the future. T276.

Escalating Behaviors at Home

38. Via email on March 2, 2020, the Mother told Ms. Methot that the previous evening, the Parents [REDACTED]

[REDACTED] Can you guide us as to the appropriate thing to do in this situation? We know the student's first name, but not his last?" D10p1. Ms. Methot thought the Mother wanted to speak with the other student's family, so she provided the student's name. T309. The Mother was disappointed because she

was looking for Ms. Methot to contact the student or his family. T646. The email did not ask Ms. Methot to take any action regarding the Student.

39. The Parents also emailed Ms. Guy to let her know about the incident. D33p6. In Ms. Guy's opinion, the Student was unable to focus on her schooling because she was more [REDACTED] which was impacting her ability to participate in the school environment. T591, 597. Ms. Guy felt that there were times the Student probably was not "being completely genuine," but believed it was important to take what she was saying at face value and to ask clarifying questions. T597-98. I give no weight to Ms. Guy's opinion concerning the Student's ability to focus at school or her behavior at school because Ms. Guy acknowledged that the Student could be exaggerating and Ms. Guy has never reviewed any of the Student's educational records, observed the Student in a school setting, or spoken with anyone from the District. T597.

40. During February and March 2020, the Student and her Parents participated in approximately five family therapy sessions focused on setting expectations and boundaries for the Student at home. D33p1; T599; 603-04. With the Student's permission, Ms. Guy advised the Parents she was concerned the Student's [REDACTED] [REDACTED] "...". T609. She also advised the Parents to speak to the District. T610. Neither the Parents nor Ms. Guy notified the District of these concerns, however, and there is no evidence in the record that the District was otherwise aware of them. Ms. Methot did not know of the Student [REDACTED] [REDACTED] T296. To Ms. Methot's knowledge, the Student did her school work and complied with school rules and expectations. The Student did not have a disciplinary history and there was no teacher feedback regarding anything inappropriate. T297.

School Closure in March 2020

41. In early March 2020, District schools closed due to the COVID-19 pandemic. T1041; P33p10; D11p2. At that point, the Student was leaving her home after the Parents fell asleep approximately three to four times per week. T599-600, 612. The Student's home situation was difficult because she was at home more due to the school closure, and the Parents had imposed multiple restrictions. T652. The Student was "trying everything to see what would ruffle our feathers," and told the Parents [REDACTED]

[REDACTED]

and believed the Student was [REDACTED]. T647, 652. They felt they needed to do something. T652.

42. Ms. Guy became concerned that the Student required more care than she could provide. Around mid-March 2020, Ms. Guy recommended a partial hospitalization program at Thira Health in Bellevue, Washington. T606; 842, 1058. She thought this highly-structured program would be appropriate because the Student would participate in it for nine hours each day, for 28 days, and would receive intensive skills coaching along with family therapy on the weekends. T607. Around that time, the Mother started researching on the internet to find programs that could offer a higher level of care, including a wilderness program called Star Guides Wilderness Therapy (Star Guides) in Utah. T842-43; 1058.

43. There was conflicting testimony at the hearing as to why the Student did not attend Thira. Ms. Guy testified the Mother told her the Parents' insurance would not cover the program and they were looking at out-of-state options. T606, 611. The Mother testified she called Thira several times and the Student participated in an intake meeting at Thira via Zoom videoconferencing. T651, 841-42. Initially, the Mother testified that the Thira representative concluded the program was not a good fit and the Student needed a higher level of care. T651. Subsequently, the Mother stated that "part of the reasoning was that their services were currently . . . reduced because of COVID. So they didn't feel like they could offer her what she needed. But also . . . [it] could have also been because she needed something more than they normally offer to . . . I'm not sure about the difference between those two." T1062. The Parents did not provide any written documents about the Student to Thira during the intake process, and the Mother testified that she did not receive any paperwork from Thira. T1062. I give more weight to Ms. Guy's testimony that the Parents were interested in out-of-state options rather than Thira, and less weight to the Mother's testimony that a Thira representative said the program was not appropriate. First, Ms. Guy's testimony is consistent with the Mother's own testimony that she was researching programs, including the out-of-state Star Guides program. Second, there is no evidence in the record that Ms. Guy had any reason to fabricate her testimony. Finally, the Mother offered inconsistent testimony and few details about the intake process with Thira. I therefore find that the Parents did not seriously consider the Thira program because it was not covered by their insurance and they were looking at out-of-state options. The record does not contain sufficient evidence to make a finding that a Thira representative believed the Thira program was inappropriate for the Student.

Emails with Collin Eggers

44. On March 12, 2020, the Mother sent an email to Collin Eggers, a counselor at Bothell High School (BHS), which the Student would likely attend for the 2020-2021 school year. The Mother asked questions about the Student's chosen courses and explained that the Student "was recently diagnosed with [REDACTED] outside of school 2x a week." D11pp3-4.

45. Mr. Eggers asked if the Student had supports in place at Canyon Park, such as an IEP or 504 plan. D11p3; T354-55. The Mother responded that the Student did not have an IEP or 504 plan and stated, "I had heard that there may be some [REDACTED] that she might benefit from. Is that the case?" D11p2. Mr. Eggers informed the Mother that [REDACTED] who "runs a group once a week after school," which was an optional opportunity for students. D11p1. Ms. Delalla testified at hearing that the District contracts with [REDACTED] providers to work with students who do not have IEPs. T1100. The Mother did not include anyone from Canyon Park in this email exchange. T840-41.

Star Guides Wilderness Therapy

46. On or about April 5, 2020, the Mother called Star Guides. [REDACTED]

[REDACTED] T653.

47. On April 14, 2020, the Student was transported to Utah and started attending Star Guides. T653; 657. Via email that day, the Parents informed the Canyon Park registrar, Jill Mildenhall, that the Student would not be attending school for the remainder of the year. T310, 844. Ms. Mildenhall forwarded the email to Ms. Methot. In her response, Ms. Methot noted that the Student "has significant issues that have interfered with school," by which she meant the Student was having significant personal issues outside of school. She was concerned that missing the final two months of school would cause an attendance issue. P14p1; T311-12. The Parents' hearing exhibits did not include the Parents' email to Ms. Mildenhall, but did include the subsequent exchange between Ms. Mildenhall and Ms. Methot. Accordingly, there is no documentary evidence of the Parents' email to the District. During the hearing, Ms. Methot testified that the Parents' email stated the Student was attending the wilderness program because things had deteriorated at home. T294; 311-12. The Mother testified that the email said that Student's [REDACTED] over the last

several weeks and that the Parents had decided to enroll her in a Wilderness program. T1059-60. There is no evidence in the record that the Parents informed the District that they placed the Student at Star Guides to meet her educational needs or that they were asking the District to pay for Star Guides.

Evaluation Request and Response

48. On May 25, 2020, the Parents sent an email to Ms. Methot and Sebastian Ziz, the Principal of Canyon Park, requesting the Student be evaluated for an IEP. P2p1; D24p3. The request stated that “[o]nce [the Student was] away from the structure that the regular school day provided, her ability to self-regulate was severely compromised,” which led the Parents to enroll her in wilderness therapy through Star Guides. P2p1.

49. On May 29, 2020, Desiree Dutt,¹⁷ the school psychologist at Canyon Park, contacted the Parents via email regarding the evaluation request. She asked for information about the Student and dates when the Parents were available to meet and informed the Parents that “according to OSPI we have 25 school days to review the request and determine next steps.” D13pp2-3; T1069-70.

The Parents’ Educational Consultant

50. On May 29, 2020, the Parents contacted an educational consultant named Mary Warren,¹⁸ whom they identified through online research. T871, 848; P24. The Parents retained Ms. Warren to identify up to three residential facilities for the Student and received an invoice for this service on June 2, 2020. T871; 883; P36p1. At the beginning of the consultation process, Ms. Warren and the Parents discussed the possibility of the District funding the Student’s placement at a residential facility. T875-76. Based on the testimony of Ms. Warren and the Mother, and the exhibits in the record, I find that the Parents first considered having the Student attend a residential facility on June 2, 2020.

¹⁷ Ms. Dutt has a master’s degree in school psychology and is a nationally certified school psychologist. She has been employed by the District as a school psychologist for four years. T1067-68.

¹⁸ Ms. Warren completed a year-long program called Academy for Life Coach Training in 1998. She does not have any college or other education experience. T856; 863. Ms. Warren reviews schools; she is “in the industry,” and frequently visits and vets different schools. She is not a member of any industry trade groups or associations. T868. Sometimes schools contact Ms. Warren seeking to be reviewed. T884-85.

Meeting to Discuss Evaluation Request

51. On June 2, 2020, the Parents met with Ms. Dutt via Zoom video conference. The Parents did not mention that they were working with Ms. Warren because they “didn’t think it was any of her business.” T849. Ms. Dutt sent an email immediately after the meeting. She acknowledged the Parents wanted to have a plan in place for the Student at the start of the 2020-2021 school year and stated she would contact them in mid-August. D14pp2-3. Ms. Dutt believed the meeting started the 25-day timeline for the guidance team to determine whether to move forward with the Parents’ evaluation request and estimated the timeline would end in mid-August. T1081-82; 1087-88. Ms. Dutt also provided the Parents with a release of information to allow District counselors to communicate with the Student’s counselors. T1088-90.

52. At hearing, the Mother testified that “the District’s overall response was not to evaluate for an IEP,” and that the Parents had been “denied an IEP.” T659, 668. She recognized that the District never said “We deny your request . . . but essentially they didn’t evaluate. So I guess they did.” T661. Despite the Mother’s testimony that she interpreted Ms. Dutt’s June 2, 2020, email to mean that the Student would not be evaluated, she did not raise concerns in subsequent emails. T889-90. When the Mother responded to Ms. Dutt via email on June 3, 2020, she attached a signed release of information and emphasized that she wanted a plan in place by the end of the school year. She also listed in her email the type of the supports the Parents envisioned: a meeting with the counselor before school commenced for the year; regular check-ins with the counselor; freedom for the Student to go to the counselor’s office if she was feeling overwhelmed; and participation in [REDACTED]. D14p2. Moreover, Ms. Dutt testified that she did not inform the Parents that she was denying their request for a special education evaluation and would not have done so because the District had twenty-five days to decide whether to evaluate. T1072, 1089-90. This testimony is consistent with Ms. Dutt’s email stating the District had twenty-five days to decide whether to evaluate, and her email indicating she would be in touch with the Parents in mid-August. Moreover, Ms. Dutt believed that Julia Trembath-Neuberger,¹⁹ the District’s Director of Special Education, would be assuming responsibility for the evaluation request since the Student no longer attended Canyon Park. T1080.²⁰ Based on this evidence, I find that Ms. Dutt did not inform the Parents that their evaluation request was denied.

¹⁹ Ms. Trembath-Neuberger has a bachelor’s degree in teaching and a master’s degree in teaching students with behavior disorders. She has also completed doctoral coursework in special education and educational leadership. She has been employed by the District for eight years, as Director of Special Education for three years, and as an Assistant Director of Special Education for five years. T463.

²⁰ Ms. Dutt did not contact Ms. Trembath-Neuberger directly because she believed that the counselor and principal would do so. Typically, the director of special education is not involved in the early stages of the

504 Plan

53. Via email on June 4, 2020, the Parents asked Ms. Dutt and Ms. Methot how to get a 504 plan in place prior to the start of the school year. D14p1. The Parents did not request an IEP at this point. T662, 892.

54. Via email on June 9, 2020, Ms. Methot informed the Parents that guidance team members supported the creation of a 504 plan with the accommodations the Parents had requested: access to the school counselor as needed; regularly scheduled counselor check-ins; [REDACTED]; and access to a quiet space in the counseling office if the Student needed a break. Once the Student started attending BHS, the plan could be modified by BHS staff as necessary to meet her needs. D17p3. Ms. Methot believed a 504 plan would meet the Student's needs. T294. The Parents indicated that they would run the proposed accommodations by the Student and her therapists at Star Guides for input. D17p3.

Educational Consultant Intake Form

55. On June 11, 2020, the Parents filled out an intake assessment for Ms. Warren. D16; T893. The Parents responded to the following questions on the form as follows:

Question (Q). What is the primary reason for considering a therapeutic boarding school or program?

Response (R). We want to support our daughter to be the best person she can be.

Q. What are the secondary reasons?

R. Graduating wilderness therapy after [approximately] 4 months in August 2020. Previous behaviors include [REDACTED]

Q. [REDACTED]

R. [REDACTED]

Q. How is your child doing in school? Describe progress and grades.

R. Straight A's in Highly Capable Program.

evaluation process. T1080-82. However, Ms. Trembath-Neuberger did not recall anyone contacting her about the Student prior to August 2020, when she received an email from the Parents. T465.

Q. Past and Current Attitude Towards School and Teachers

R. [A]daptive; is motivated to get As in school and is very capable.

Q. [REDACTED]

R. [REDACTED]

D16pp1-3, 6.

56. The intake form further indicated that the Student made friends easily and had “2-3 [REDACTED] D16pp2, 7. The intake form does not indicate that the Student was having any academic, behavioral, attendance, or other issues at school.

Private Evaluation

57. In late May or early June 2020, the Parents contacted Abigail Jenkins,²¹ PhD, to conduct an evaluation of the Student. T1036; 664-65, 981-82, 908-909. The Mother testified that she found Dr. Jenkins online, through Star Guides, and from other parents. T908, 980. The Parents did not notify the District they were working with Ms. Warren to identify residential placements or that they had hired Dr. Jenkins to evaluate the Student. T315, 326-27, 849.

58. Within the past two years, Dr. Jenkins has evaluated seven or eight students whose families have worked with Ms. Warren and she has recommended residential placement for all but one of those students. T880-81; T1013. Dr. Jenkins primarily works with students in wilderness and residential programs. T934, 974. She has not worked as a school psychologist or as a certificated teacher and is not familiar with the term specially designed instruction (SDI). T933, 1003-04, 1014-15. She regularly assesses children and young adults for cognitive, academic, and executive functioning difficulties. T933.

Adjustments to the 504 Plan

59. On June 12, 2020, the Parents informed Ms. Methot via email that the Student did not believe she required anything more than the proposed 504 plan provided. The Parents asked Ms. Methot to change references to “BHS” to “high school” because they anticipated the

²¹ Dr. Jenkins has a bachelor’s degree and a master’s degree in psychology and a PhD in clinical psychology. She is a licensed psychologist in Utah, Idaho, and Oregon. P32.

Student would attend Innovation Lab High School (Innovation)²² instead of “BHS.” The Parents did not request any substantive changes or express any concerns about the 504 plan at that time. D17p2. Ms. Methot checked with the principal and counselor at Innovation and adjusted the 504 plan as requested by the Parents. T313; 322-23. Ms. Methot sent the completed 504 plan to the Parents on June 17, 2020. D17p1. At this point, the Parents had not informed the District that they were considering a residential placement for the Student. T325-27.

Progress Report

60. The second semester of the 2019-2020 school year ended on June 22, 2020. D18p1. The District adjusted its grading system during the COVID-19 pandemic to reflect how often and to what extent students at Canyon Park engaged in remote learning activities. Accordingly, the Student received grades of “PRS” in most of her classes, indicating she had engaged in remote learning.²³ T493; 441, D18p1; D19p1. The Student received a letter grade in Algebra because it was a credit-bearing high-school level course. Ms. Fillman initially gave the Student a “B” but subsequently raised the grade to “A” after the Student completed work she had not performed when she was in the Star Guides program. D29; T442, 476, 493. Following this change, the Student had all “A” grades for the 2019-2020 school year. T476, 492-93, 503.

Dr. Jenkins’s Evaluation

61. Dr. Jenkins met with the Student on June 29, 2020, when the Student was in Utah participating in Star Guides. D34p1; T956, 1015.

62. As part of the evaluation, Dr. Jenkins conducted a clinical interview with the Student, reviewed an adolescent history form filled out by the Student and a Parent History Form (Exhibit D21), and interviewed the Student’s therapists at Star Guides. P4p1; T894, 996. On the Parent History Form, the Parents stated they wanted to use the testing to inform the Student’s “next treatment” and asked “Does [the Student] need more work on self-love at a TBS [therapeutic boarding school] or RTC [residential treatment center]?” T898, 1027; D21p5. The Parents also indicated that they had no concerns about the Student’s academic history, which Dr. Jenkins defined as any “learning problems, behavior problems, truancy, suspension/expulsions, etc.). D21p3.

²² Innovation is a new high school with approximately 400 students that was “designed to be a more innovative, creative, flexible, connected to the real world, problem-solving type of education.” T313-14.

²³ The record does not spell out precisely what “PRS” stands for. T493.

63. Dr. Jenkins did not review any of the Student's educational records from the District or speak with anyone from the District. T983-84; P4p1. She "wasn't so concerned about her academic history or ability It was much more [REDACTED]." T985.

64. Dr. Jenkins's understanding of the Student's behaviors was premised on information from the Student and the Parents. T985-86. During the hearing, Dr. Jenkins testified that she believed the Student reported [REDACTED] was happening at home. T986. Dr. Jenkins's report, however, did not list [REDACTED] despite Dr. Jenkins's testimony that she would include all risky behavior she was aware of in her report. T985-86; P4p3, pp4-5, p20. Dr. Jenkins did not speak with Ms. Guy or with anyone from SCH. T990.

65. Based on Dr. Jenkins's report, the Mother believed that the Student [REDACTED] at school on one occasion between January 21, 2020, and mid-March 2020. T645; 1041-42. This led the Parents to believe the school had not been supervising the Student properly because she was able to [REDACTED]. T1050-51. At the time of the hearing, the Mother believed the Student was [REDACTED] T648. These beliefs were based on what the Student told her and the contents of Dr. Jenkins's report. As noted above, Dr. Jenkins's report did not actually refer to any [REDACTED] happening at school. It also did not refer to the Student [REDACTED]. The record does not contain sufficient reliable evidence to support a finding that the Student was [REDACTED]. Nor is there any evidence that the District was aware of any such behavior.

66. The Student told Dr. Jenkins she was ready to go home but Dr. Jenkins did not believe she was ready to do so. Dr. Jenkins takes such reports with "a grain of salt" because students typically have many reasons for wanting to go home. T992, 1017.

67. Dr. Jenkins administered multiple assessments including: the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V); the Wechsler Individual Achievement Test – Third Edition (WIAT-III); the Delis-Kaplan Executive Function System (D-KEFS); the Behavior Rating Inventory of Executive Function (BRIEF); the Connors Rating Scales, Third Edition (Connors 3); the Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A); the Millon Adolescent Clinical Inventory (MACI); the Beck Depressive Inventory - Second Edition (BDI-II); the Teenage

Sentence Completion Test (TASC); and the [REDACTED]
[REDACTED] P4pp1, 7-14.

68. Dr. Jenkins diagnosed the Student with [REDACTED]
[REDACTED]
[REDACTED] It also reflected that the Student's symptoms became more severe at times, at which point she might [REDACTED]. T939, 1000; P4p22. The Student was not in the [REDACTED]
[REDACTED] during the past two weeks. T999, 1016; P4p16.

69. Dr. Jenkins also diagnosed the Student with [REDACTED], noting she reported worrying a lot about what others thought, about pleasing others, and wanting to perform well in school. T941-42. In Dr. Jenkins's view, the Student exhibited an unhealthy level of anxiety and worry about her performance in school. T944. Her report stated that the Student's grades had remained excellent despite recent emotional and behavioral issues, and that the Student had never had any behavioral or disciplinary issues at school. P4p4.

70. Dr. Jenkins also diagnosed the Student with [REDACTED]
[REDACTED] but does not clearly meet the full criteria for a more definable diagnosis. T947. The first diagnosis stemmed from the Student describing as traumatic a number of events in her life. T949. The unspecified [REDACTED]
[REDACTED] and felt compelled to engage in these behaviors despite not wanting to or feeling badly afterwards. T950.

71. Dr. Jenkins also diagnosed the Student with [REDACTED]
[REDACTED]
[REDACTED]. T952.

72. Dr. Jenkins did not feel confident that the Student met criteria for any type of [REDACTED]
[REDACTED]. T954; P4p22.

73. Dr. Jenkins opined that Star Guides was an appropriate place for the Student therapeutically, [REDACTED]. T961-63; P4p21. Students in the Star Guides program typically participate in [REDACTED] every day and are highly supervised. T959.

74. In her report, Dr. Jenkins recommended that the Student be placed in a longer-term residential therapeutic program, noting that she remained [REDACTED] in a relatively short period of time. T964-65.

75. Dr. Jenkins also recommended a program that provided a lot of therapeutic support. P4p21. She explained during the hearing that all programs have academic programming, but the ratio of therapeutic programming to academics can vary. Dr. Jenkins was not worried about the Student's academic abilities but was primarily focused on her [REDACTED] and the idea that she would benefit from more intensive and frequent support. T966-67. She also felt that it was important for the Student to have opportunities to be challenged socially and academically by being exposed to a variety of people so that she could practice the skills she was developing. T1004.

76. Dr. Jenkins strongly recommended that the Student be evaluated by a psychiatrist to determine if medications could be helpful to her. T1002; P4p21. She also recommended ongoing individual, group, and family therapy. P4p2.

77. Dr. Jenkins did not include a recommendation in her report as to whether the Student would qualify for special education because she is not a school psychologist. She focuses "more primarily on the [REDACTED] piece." T1004.

78. On or about July 17, 2020, Dr. Jenkins completed her report and provided a copy to the Parents. T1033; 984.

79. On July 26, 2020, the Parents emailed Dr. Jenkins to ask questions and to correct minor inaccuracies in the evaluation report. D23pp1-2, T895. The Parents questioned whether the Student was "consciously exaggerating for attention" and noted that with respect to [REDACTED], "it seems like she could have exaggerated on the test . . ." D23pp1-2; T897.

80. During the hearing, Dr. Jenkins explained that the Student said [REDACTED] per se. Additionally, Dr. Jenkins considered the Student's [REDACTED], to be minimal for someone her age. T987. Although the Student did not meet criteria for having a [REDACTED] [REDACTED] is a very common behavior that occurs for a variety of reasons. T978-79.

July 2020 Meeting with Dr. Jenkins

81. On or about July 31, 2020, the Parents met with Dr. Jenkins, Ms. Warren, and the Student's two therapists from Star Guides to discuss Dr. Jenkins's evaluation (July 31 meeting). T666, 1033. During the hearing, the Mother testified this was the first time she considered a residential treatment facility for the Student. T667. According to the Mother, the Parents were not seriously considering residential treatment when they engaged Ms. Warren to identify three residential facilities on June 2, 2020. The Mother testified they were waiting for the results of Dr. Jenkins's report and all options were open until the feedback meeting when Dr. Jenkins, Ms. Warren, and Star Guides staff all recommended a residential placement. T1028, 1036. The Mother considered the July 31 meeting to be the turning point for deciding on residential treatment. T1032. At that point, the Mother "acted very quickly to reinstate the IEP" by emailing Ms. Neuberger. T1028. She testified that the Parents had decided the Student was either going to a residential facility or Innovation. T1035.

82. On August 2, 2020, Dr. Jenkins issued a revised report. T1034.

Email Regarding Independent Evaluation

83. Via email on August 4, 2020, the Mother notified Ms. Trembath-Neuberger that the Parents had decided to enroll the Student at Innovation rather than BHS and the Parents had obtained an independent evaluation by Dr. Jenkins, who strongly recommended a residential therapeutic program for the Student. The email stated that the Parents "just started searching for a residential treatment program" and were inquiring about the District covering the costs of that program. P5p1; T466, 668, 899. I do not find the statement the Parents had "just started searching" to be credible because as previously found, the Parents first considered having the Student attend a residential facility on June 2, 2020, when they hired Ms. Warren to identify three residential placement options.

84. Ms. Trembath-Neuberger responded by August 5 or 6, 2020, and asked the Parents for a copy of Dr. Jenkins's report. T668. Ms. Trembath-Neuberger contacted Alexandra Sassaman, a school psychologist at Innovation, to begin the initial evaluation process. T466; 490. The District reviewed Dr. Jenkins's evaluation, but had no knowledge of Dr. Jenkins or experience with her and wanted an additional perspective. T466-67; 494. Additionally, Dr. Jenkins's evaluation was conducted when the Student was in a wilderness setting and the District required social/emotional information related to the school setting. T467-69, 470. For these reasons, the District hired Dalton Young, a clinical forensic psychologist, to evaluate the Student. T466-67.

85. On August 7, 2020, the Parents participated in a Zoom meeting with Ms. Sassaman to discuss proceeding with a special education evaluation.²⁴ D24pp1, 5. Also on August 7, 2020, the Parents consented to the initial evaluation of the Student via email.²⁵ D24p6; D26p3.

86. On August 7, 2020, one of the Student's therapists at Star Guides emailed the Mother to inform her that a District evaluator had contacted her. P6p1. Around this time, Ms. Sassaman also contacted Ms. Fillman and Ms. Methot to obtain information about the Student as part of the evaluation. T266; 442-43, P33pp11-12.

Residential Placement

87. Ms. Warren recommended three residential schools to the Parents – Turning Winds in Montana, and two schools in Utah. T910. Turning Winds is a long-term residential treatment facility for adolescents ages 13 through 18. T374. The Parents retained Ms. Warren to identify residential placements and she did not consider or recommend any placements for the Student that were non-residential. T871-72, 886, 1037. Ms. Warren recommended Turning Winds because it is a small program with small class sizes that offered individual and group therapy in addition to academics. T886, 861-62, 877. Ms. Warren has placed 25 to 30 students at Turning Winds. T867. She has visited the campus four or five times, and last visited in 2018 or 2019. T868. Ms. Warren last reviewed publicly available reports and information concerning Turning Winds about two years ago. T869. She relies on Turning Winds to let her know if there are any state licensing issues or complaints. T869-70. She believed

²⁴ There is no evidence in the record that the District responded to the Parents' initial evaluation request. As discussed previously, Ms. Dutt told the Parents she would contact them in mid-August, when the timeline for deciding whether to evaluate expired. The District responded to the Parents' second evaluation request and decided to proceed with an evaluation on August 7, 2020.

²⁵ The record does not contain a signed copy of the consent form. On August 20, 2020, the District developed a new consent form. Compare D26p1 with D24p6. There is no dispute that the Parents consented to the evaluation.

the teachers and therapists at Turning Winds had state level teaching certificates and state licenses, respectively, but had not checked public records to confirm that and relied on Turning Winds to “let her know.” T878. Dr. Jenkins is not familiar with Turning Winds and did not know if it met the recommendations in her report. T965.

88. The Parents decided on Turning Winds without visiting it. It was closest to home, “mostly nature based,” had a “small family feel,” and Ms. Warren highly recommended it. T673. Turning Winds was also the most cost-effective option, and would be a change of environment, since the Student had already been in Utah. T673, 910. Additionally, Ms. Warren called the admissions team and helped the Parents fill out the Turning Winds application, although she has never met the Student. T674, 878-79, 882. According to Owen Baisden,²⁶ the CEO of Turning Winds, the program is designed to last one year and parents are told this during the admission process. T374, 409-10; 425.

89. On August 11, 2020, the Parents notified the District that they intended to place the Student at Turning Winds on August 27, 2020, and they intended for the placement to be at public expense. P7p1. After the Parents informed Ms. Trembath-Neuberger that the Student would not be attending Innovation, Jacque Ter-Veen,²⁷ another District school psychologist, was asked to lead the District’s evaluation. T491-92.

Leaving Star Guides

90. The Student participated in the Star Guides program in Utah until August 24, 2020. T657. The record contains little information about Star Guides and the extent of its academic programming. No one from Star Guides testified at the hearing. Although Dr. Jenkins was familiar with Star Guides because she regularly assesses students in their program, she did not know if Star Guides had an academic program. T957, 998. The Mother received a transcript indicating the Student received grades of “A” in English, Health, and PE. There is no information in the record about these courses, other than the Mother’s testimony that the Student wrote an autobiography. T697. The Mother testified that Star Guides has an

²⁶ Mr. Baisden and his father and brothers share ownership of Turning Winds, which is a for-profit company. When the company was founded in January 2002, Mr. Baisden was twenty-two or twenty-three years old. T375, 390. Mr. Baisden obtained a master’s degree in education in 2018, but has no teaching experience. P28; P29; T395. Mr. Baisden acknowledged that the Montana Department of Health and Human Services Quality Assurance Division (Department) inspected Turning Winds’ facilities in the summer of 2020 and identified deficiencies. In November 2020, the Department identified several repeat deficiencies but Mr. Baisden could not recall what they were. T392-93.

²⁷ Ms. Ter-Veen has a bachelor’s degree in psychology and a master’s degree in school psychology. She is a certificated school psychologist employed by the District. T519.

accreditation link with White River Academy, which issued the transcript, but there is no further evidence about that affiliation. P8; T655. The credits from Star Guides are not on the Student's Canyon Park transcript, and the Parents never provided any paperwork regarding credits from Star Guides to the District. T844. The limited information in the record is not sufficient to support a finding as to the extent of any academic programming at Star Guides.

Turning Winds

91. The Student started 9th Grade at Turning Winds on August 27, 2020. T690. One quarter of the students at Turning Winds come from wilderness programs. T376. Every student at Turning Winds has some behavioral issue. T627. At the time of the hearing, Turning Winds had 28 male residents and 12 female residents. T627. The female students are “very separated” from the males. T635; P13p15.

92. At Turning Winds, the Student received academic instruction between 9:00 and 1:00 each day, with one hour of physical conditioning after lunch, followed by therapy. T63, 83. The Student participated in 1 to 1.5 hours of individual therapy per week. T629. She participated in group therapy a minimum of 3 hours per day between Monday and Friday, and an hour on Saturday. T629. The Student also engaged in addiction therapy as part of group therapy and in family therapy for 1.5 hours per week. T636-37. The Student has access to a [REDACTED] at all times at Turning Winds. T189; T115-16.

93. Students are assessed for [REDACTED] when they arrive and subsequently “as needed.” If Turning Winds staff believe a student is going to act on [REDACTED]. T392.

94. Students are always supervised at Turning Winds. There are cameras in every room. [REDACTED], are not allowed in the classroom. T42-43.

95. The Student was assigned a therapist, Heidi Ruffed,²⁸ when she arrived at Turning Winds but the Parents felt that she did not “resonate with teens.” T218, 690. The Student was not taking any [REDACTED] in October 2020. T904. Ms. Ruffed wanted the Student [REDACTED] T1028; 761-63.

²⁸ Ms. Ruffed did not testify at the hearing and the record does not establish her credentials.

District Evaluator

96. The District contracted with Delton Young, a clinical forensic psychologist, to evaluate the Student. T468. On September 14, 2020, Ms. Trembath-Neuberger asked the Parents for information from Star Guides and the Parents provided a release of information for therapists at Star Guides. P10. The Mother notified Star Guides that the District “wanted a second opinion.” D35p1. The Mother agreed and felt “it is great to have a second opinion.” T669-70.

97. On September 21, 2020, Dr. Young informed Ms. Trembath-Neuberger that he was “booked for a few weeks.” P10p1. On September 30, 2020, Dr. Young indicated he had time to do the evaluation from October 13 to 19, 2020. His email noted that Dr. Jenkins had done a thorough evaluation and “there’s really not much more testing that makes sense.” His email further stated “there is some risk of over-reliance upon testing and not enough attention to mental status, dev. history and family issues, etc.” P11p1.

98. In late September or early October, the Mother asked Ms. Trembath-Neuberger “if we could do a neuropsych evaluation” to determine if the Student had Autism Spectrum Disorder (ASD). T671-72. The District agreed to this request and contacted Kenneth Muscatel,²⁹ PhD., on or about October 9, 2020, to conduct the evaluation in place of Dr. Young. T471, 503. P12p1. The Parents agreed to extend the evaluation due date from October 21, 2020 to November 30, 2020. D27p1; P33p4; T905.

Evaluation by Dr. Muscatel

99. The District asked Dr. Muscatel to evaluate the Student in the areas of social/emotional and behavioral and ASD. T471; P13p2. By October 12, 2020, Dr. Muscatel had begun work on the evaluation. P13p1. Although the District wanted Dr. Muscatel to consider the educational impact of the Student’s disability in the school setting, his actions were limited by the COVID-19 pandemic and the fact that the Student was out of state. He conducted remote interviews of the Parents, the Student, and Ms. Rufhed, and reviewed Dr. Jenkins’s raw testing data³⁰ and report. P13pp1-2; T469, 472, 495, 734-36, 752-53. He was not given the Student’s educational records and did not review them. T740; 759. Dr. Muscatel

²⁹ Dr. Muscatel has a PhD in clinical psychology. He is a neuropsychologist and a forensic psychologist and has been a licensed psychologist in Washington since 1981. P20p3. He does not perform special education evaluations on a regular basis and participates in making educational recommendations, such as placement recommendations, to a limited extent. T732-33. Dr. Muscatel last attended an IEP meeting seven or eight years ago. T769.

³⁰ Dr. Muscatel testified that Dr. Jenkins could share the raw data with him directly and did so, whereas she would not be able to release raw data to a school or with an attorney without a court order. T752.

ultimately recommended against further testing because Dr. Jenkins had recently completed her evaluation and he considered the testing comprehensive and reliable. T735-36. Although Dr. Muscatel did not think additional testing was necessary, he considered the interviews he conducted and his review of Dr. Jenkins's data and report to be necessary. T757.

A New Therapist

100. In mid-November 2020, the Student was assigned a new therapist, Ariel Rock, at Turning Winds.³¹ T218, 228, 690. The Student and Ms. Rock "connected pretty fast," but it took two months for Ms. Rock to develop a trusting relationship with the Student. T185. Ms. Rock reviewed transition documents completed by Star Guides, which recommended continued focus on addressing her [REDACTED] when she attended Canyon Park on one occasion. T636; T205.

Evaluation Deadline and Muscatel Report

101. On November 24, 2020, Ms. Ter-Veen informed the Parents that they expected to receive Dr. Muscatel's report on November 30 or 31, 2020. She asked to extend the evaluation deadline of November 30, 2020, to ensure that the team had time to review the results and prepare a draft evaluation report. D30p2. The Parents asked if it was possible to meet December 4, 2020, but did not agree to the extension. D30p1; P33p34. In Ms. Trembath-Neuberger's opinion, the evaluation would have been completed earlier if the District had not switched evaluators in response to the Parents' request. T474.

102. Dr. Muscatel completed his report on November 30, 2020. P13p1; T472. The eligibility team meeting was scheduled for December 7, 2020. P33p1.

103. Dr. Muscatel's report incorporated the data collected by Dr. Jenkins's report along with information from interviews he conducted. When interviewed, the Student told Dr. Muscatel she had been placed in Star Guides to better herself and to be able to go home and lead a happy, healthy life. P13p3. She also thought her family sent her to Star Guides because they [REDACTED]. P13p4. The report does not indicate that any of

³¹ Ms. Rock has a master's degree in clinical mental health counseling. P30. She has been employed by Turning Winds as a clinical and mental health therapist since May 2019. T181, 215. At the time of the hearing, Ms. Rock was not licensed by the state of Montana to provide mental health therapy. T216, 404.

this behavior occurred in a school setting. Dr. Muscatel explained during the hearing that many of the Student's difficulties occurred outside of the school day and "it is the unstructured hours that cause the problems." T747-48, 785. The Parents, when interviewed, told Dr. Muscatel they did not know if they could provide a safe and secure home environment for the Student. If she returned home, they said, she would need to stay at home, under direct observation, with no phone or internet access. P13p18.

104. Dr. Muscatel did not believe the Student had ASD and thought if she did, it would be mild. He therefore did not see any for additional neuropsychological testing. T736, 64; P13p33.

105. Dr. Muscatel agreed with Dr. Jenkins's diagnoses of the Student. P13pp33-35. He felt the Student presented a complex diagnostic profile, noting she was young and in developmental transition, which made clear diagnosis difficult. T737, 778-79; P13p33. He was concerned that an [REDACTED] could also be an issue. P13p33; T767.

106. Dr. Muscatel concluded that based on the Student's emotional and behavioral problems, she "qualified for a special education/special services designation." P13p34. Dr. Muscatel believed that the Student's emotional and behavioral problems would impact her ability to perform effectively in a school environment and "presumed that would meet the test for an IEP designation." T766-67. He did not recommend any special education services in his report, however, because "she didn't really need educational special education services." T767; P20p2¶7. With respect to special education, Dr. Muscatel did not have academic concerns but did have behavioral and emotional concerns. T776. Overall, he was "less concerned about specially designed instruction." Rather, his concern was that the Student's "overall environment needed to be contained and controlled, otherwise the likelihood of her decompensating and declining back to the same place she was before was pretty high." T783.

107. Dr. Muscatel's report did not include a recommendation as to placement. T768-69, 775. His report notes that the Student would require assistance and services when she returned to the District but does not specify what assistance or services she would require. P13p34. During the hearing and in his declaration, Dr. Muscatel opined that the Student was making progress at Turning Winds, and that it was an appropriate placement because it provided the services and the structured 24/7 environment she needed. T745, 768, 772-75, 780; P20p2.

108. Dr. Muscatel also recommended that the Student receive a thorough psychiatric medication assessment. T767.

109. After reviewing Dr. Muscatel's report, which did not provide specific school-based recommendations or placement recommendations, the District did not see any need to invite him to the meeting on December 7, 2020. T496, 530-31; 533-34; 753-54; P13p34.

Eligibility Meeting

110. On December 7, 2020, the Student's evaluation team met to review the evaluation and to determine whether she was eligible for special education and related services. P33p1. Attendees included the Parents; Mr. Baisden; Ms. Trembath-Neuberger; Ms. Ter-Veen; Alex Worn, a special education teacher at BHS; and Richard Brown, assistant principal at BHS. P33pp7, 30. Deana Allaway, a nurse at Canyon Park, and Ms. Sassaman contributed to the report but did not attend the meeting. P33p7.

111. The District provided the Parents with a draft evaluation report. T693. At hearing, the Mother testified that she did not believe some of the information in the report was accurate but the Parents had not previously raised those concerns. T498, 693-95. P33p19.

112. The team based its eligibility decision on the reports from Dr. Jenkins and Dr. Muscatel, as well as staff interviews and all the information reflected in the evaluation report. T473, 475, 523-28.

113. The evaluation report included observations from the Student's English, Math, and Science teachers at Turning Winds. P33pp27-28. All three teachers recognized the Student's intelligence and academic ability, noting that she was capable, smart, an independent worker, respectful, disciplined, and had a positive attitude. P33pp27-28. The English teacher noted that "with a little work, she could write for a living." P33p28. The teachers also noted her maturity. The Science teacher observed that the Student "socially lacks self-confidence," and observed she did not feed into the "drama" of her girl peer group." The Math teacher observed that the Student separates herself socially. The English teacher noted "students often leak some of their thoughts and desires in their writing. [The Student] has not written anything disconcerting in her schoolwork. In fact, I haven't read anything that would indicate why she is staying at a therapeutic boarding school." P33p28.

114. The team determined that the Student met eligibility criteria to receive special education services under the disability category of Other Health Impairments, noting her diagnoses of:

[REDACTED]

. P33p4; T526-27. The team concluded these health impairments

“adversely impact [the Student] and/or with a high degree of professional certainty will affect her educational performance” without SDI in social/emotional skills and support from a [REDACTED] as a related service. P33p5.

115. The team had some difficulty determining whether the Student’s disability had an impact on the Student’s education and whether she required SDI. T508-509; 525-26, 528, 538-39. The team had “a lot of data that would indicate that [the Student] was doing amazing in school, academically, and that there really weren’t any significant concerns in the school settingWhere, I think, I felt we had some way to get the Student some support was that, under the [other] health impairments category, we did not have to show that she had been significantly adversely impacted in her studying, but that there was a high likelihood that her health impairment would impact her.” T526. Because the Student was performing so well in school, Ms. Trembath-Neuberger was not certain that the Student would have been found eligible without the data from Dr. Jenkins’s and Dr. Muscatel’s reports. T475.

116. During the hearing, Ms. Ter-Veen explained that the Student’s disability did not have an adverse educational impact when the Student attended school in the District because “she had great grades. She was connecting to peers. She seemed like she was doing very well.” The team considered the Parents’ report that the Student was [REDACTED]. Additionally, the team considered the assessments of the Student, which “helped to clarify the extent of [the Student’s] challenges.” The team felt that “in good conscience, looking at that health impairment category, I felt like we had enough to say that it was likely to cause an adverse impact that I couldn’t see not providing the social/emotional support and the [REDACTED].” T538-40. Although the team had not yet seen any adverse educational impact, the team decided to “err on the side of the Student and find her eligible.” T528, 538-39.

IEP Meeting

117. An IEP meeting was scheduled for December 17, 2020 (December IEP meeting). P34p1. Alex Worn, a District special education teacher who specializes in behavior and social emotional needs, drafted an IEP for the Student which was sent to the Parents on December 11, 2020. P15p1; T479, 906. The draft proposed placement in the District’s Aspire program at BHS, which would allow her to participate in general education with support from a behavior social/emotional program to ensure her safety. T479-80; T1100, 1103.

118. On December 17, 2020, the Parents provided input regarding the IEP. P15p2. They did not like the Aspire program and provided a list of what they were looking for in the

Student's educational program. The Parents thought Aspire was inappropriate because the Student needed supervision at all times, including in the bathroom, and could not be in a general education program. T696-98. They thought the study skills class was "laughable" because the Student "got A's in everything and is super high IQ and has no trouble doing her work." T698.

119. The Parents opined that the Student's placement needed to provide:

- supports to build on the momentum gained at Star Guides and Turning Winds
- a challenging academic program
- consistent access to a pro-social peer group and no or limited access to peers who engage in risky behaviors
- in-person learning
- a combination of academics and behavioral therapy to build self-confidence
- regular meetings with a mental health specialist and access when needed otherwise
- a high level of supervision during the school day
- access to trained adults to coach her throughout the day on social/emotional challenges.

P15p2. The Parents believed the Student's needs were best met at Turning Winds because she has people she trusts there and is opening up to them. In their view, leaving Turning Winds would be a "major disruption." T692. The Parents also attached a letter from Ms. Rock in support of placement at Turning Winds. T511. She believed that placement at Turning Winds was important because removing the Student from Turning Winds too early would reverse the gains she had made. P15p3

120. Attendees at the December IEP meeting included the Parents; Mr. Baisden; Ms. Rock; Ms. Trembath-Neuberger; Mr. Worn; Chae Seo, a general education teacher; Mr. Brown; and Ms. Delalla.³² The Student attended part of the meeting. P34p3; T1115.

121. Mr. Worn reviewed the Student's IEP goals, supports, and accommodations. T1103. The IEP included three social/emotional goals and provided 1200 minutes per week of social/emotional SDI and related services from a [REDACTED]. P34pp7-8, 11.

122. Mr. Worn also discussed the Aspire Program. T1103. Ms. Delalla attended because she works with the Aspire program, which supports students who struggle with

³² The IEP does not reflect Ms. Delalla's attendance at the meeting. P34p3.

social/emotional behavioral issues. Aspire offers students small class size and a study skills class that provides a quiet place to do their work. T1109-10. The Student could also participate in advanced classes as part of Aspire, which would serve her need for academic rigor. T1117. As part of Aspire, Ms. Delalla co-leads social skills groups, provides individual direct support for students as specified in their IEPs, and is available on campus if a student has a problem or needs immediate assistance. T1098. When she provides direct support to students through their IEPs, Ms. Delalla uses a variety of approaches, including DBT. T1100-1101. When a student transitions from a hospital program or similar program, Aspire is very flexible in terms of meeting the student's needs. T1110. Ms. Delalla supports students who have a variety of needs, including [REDACTED]. T1101-02.

123. Given the Parents' opposition to Aspire, the team considered a variety of placement options, including a therapeutic placement at Overlake Specialty School, which serves students with social/emotional behavioral needs. T485-86. The team felt this placement, which was not residential, would be appropriate because Overlake has therapists on-site every day to support students. Ms. Trembath-Neuberger has had many students attend Overlake and has visited many times. T481-82. The Mother thought Overlake was "totally inappropriate" because she had worked there for nine months as a teaching assistant during the 2017-2018 school year. T547-48. In her view, students at Overlake were not motivated and it would not offer the Student an academically challenging environment. T501, 700.

124. The team also considered placement at Dartmoor, a one-to-one program that has some general education students. T481-84. The team felt this placement would be appropriate and also provided many of the features the Parents had listed in their input. Dartmoor provided a challenging academic program and could also monitor the Student to ensure her safety and help her to build coping skills. T482, 484, 500. Additionally, Dartmoor was offering in-person education and the Student would have access to general education peers when she was not in class. T484, 500. The one-to-one program would ensure that she had a high level of supervision. T500. Although Dartmoor does not have a licensed therapist on-site, the Student's IEP would provide mental health support from Ms. Delalla at Dartmoor, and she would also receive an hour with a behavior therapist. T483; 500, T1103-04. The Student could contact Ms. Delalla on her cell phone or by email if she had an urgent matter. T1111. The Mother did not believe Dartmoor offered the Student enough opportunities to practice her social skills or an appropriate group of students, and felt "[w]e are going to have to be doing more on our own because that situation is not going to be adequate." T704-705.

125. The Student's IEP provided that she could choose to participate in any extracurricular activities at BHS. P34p12. Additionally, community-based supports outside the IEP process

could provide additional support to the Student and her family if they felt she required support in the community. These “wraparound” programs identify family and student needs and develop supports to serve them. T1112-16. The team did not specifically discuss these community supports. T1116.

126. The Parents wanted the Student to attend Turning Winds. T487, 506, 702-03, 705. Mr. Baisden and Ms. Rock also recommended Turning Winds as an appropriate placement. T212, 387-89; 487, 618-19. Mr. Baisden knows the Student but he has limited involvement with her at Turning Winds. T387. At the time of the IEP meeting, Ms. Rock had been working with the Student for about a month. T228.

127. The team ultimately decided that Dartmoor was the least restrictive setting that met the Student’s educational needs and provided the supports she required. T487-88; P34p15. Turning Winds, as a residential facility with 24-hour care, was more restrictive than the day treatment options considered by the team. T509.

128. During the hearing, Dr. Jenkins opined that a residential treatment program, where the Student would reside for six to twelve months, was more appropriate than a therapeutic day program, where the Student would return home in the evenings and on weekends. T968. Dr. Jenkins believed a residential treatment program was more appropriate because the Student was engaging in problematic behaviors at home and having problematic relationships with peers, and a therapeutic day program would not address these needs. Additionally, she felt that because the majority of Student’s [REDACTED] were occurring “at home or outside of the school setting,” the Student required continuous supervision to prevent those behaviors or to intervene if they occurred. T969.

Continued Placement at Turning Winds

129. At the time of hearing, the Student was still attending Turning Winds and had been there for eight months. T231; 690; D36.

130. Turning Winds hired James Workman as an English teacher and Special Education teacher on November 20, 2020. T33; 58. The Student was placed in his English class in January 2021. T59, 67. Mr. Workman is the only special education teacher at Turning Winds and he manages and implements IEPs for all students who have them. T39, 65; P27p2¶9. When the Student started at Turning Winds, it had one part-time special education teacher, Terry Herman. T399. There is no evidence in the record that Ms. Herman ever had any responsibilities related to the Student.

131. Although Mr. Workman was in charge of implementing all IEPs at Turning Winds, he did not believe the Student had an IEP. T67.

132. There was conflicting testimony during the hearing concerning how many students have IEPs at Turning Winds. Mr. Baisden's declaration indicated that one-half to one-third of students have IEPs in place, whereas he testified that three-quarters of Turning Winds' students have 504 plans or IEPs. Compare P29¶12 with T384. Mr. Workman testified that one quarter of students have IEPs or 504 plans. T40; P29. The accuracy of his account is tempered, however, by the fact that he was not aware that the Student in this case had an IEP. On balance, the record does not contain sufficient reliable evidence to make a finding as to how many students have IEPs at Turning Winds.

133. At times, Mr. Workman saw the Student becoming antsy or starting to fidget, which he interpreted as signs of anxiety. He would offer her a break at that point. T45. When Mr. Workman sees a student in his class is anxious or stressed, he offers them extra time to do a task or a chance to take a break by walking, meditating, standing up, moving their desk, or "whatever it takes." T40-42. Ms. Rock believed that the goals in the Student's December 2020 IEP were appropriate and being implemented at Turning Winds by encouraging her to take breaks or use a fidgeter and by intervening to prevent escalated behavior. P34pp7-8.; T640-41.

134. Turning Winds does not use the term specially designed instruction as defined by the IDEA, and neither Mr. Baisden nor Ms. Rock was familiar with its meaning under the IDEA. T403-404; 632-33. Mr. Workman believed he was providing SDI to the Student "holistically. I accommodate to each and every student in the class, even the kids that are considered general education, because they are all at different levels and they all have different learning styles. So I accommodate that." T70. Mr. Baisden testified that the Student is receiving 1,200 minutes weekly of social/emotional instruction designed and overseen by Mr. Workman, and implemented by Mr. Workman and the Student's other teachers and therapist. T431-32; P29¶10. I give no weight to this testimony because Mr. Workman was not even aware that the Student had an IEP. Additionally, when asked if he was providing social/emotional instruction to the Student, Mr. Workman merely reiterated that if students are stressed or anxious, he offers them a chance to get up, get a drink of water, walk around the room, take a break by meditating or engaging in some other activity. T85-86. Ms. Rock testified that Mr. Workman and other teachers keep her apprised of what is going on in their classrooms, and she discusses what is being addressed in therapy. T632. Notably, she did not testify that Mr. Workman was designing social/emotional instruction for her to implement. Based on the testimony of Mr. Workman and Ms. Rock, I find that Turning Winds was providing the Student with breaks and accommodations when she needed them. However, there is no evidence in

the record that Mr. Workman or Ms. Herman designed and oversaw the implementation of any SDI or any social/emotional instruction for the Student. T85-86; 432-33.

135. Each Student at Turning Winds has a “master treatment plan,” overseen by their therapist, that defines their clinical needs and goals and also contains an academic plan. T144-45. The Student’s treatment plan, which addressed the Student’s [REDACTED]

[REDACTED] T186-87. Mr. Baisden has not seen the Student’s master treatment plan and it is not part of the hearing record. T412. Mr. Workman knows the Student has goals and plans, but he did not know what they are, or what the Student needs to do to be discharged from Turning Winds. T81-82. Although the Student had been at Turning Winds for eight months at the time of the hearing, in Ms. Rock’s opinion she was just starting to get “into the nitty gritty” of her issues. T192, 203-04, 231. Ms. Rock felt the Student was making progress at Turning Winds but still required an additional five months (late September 2021) before she would be ready for discharge. T209; 621.

136. A student’s academic plan at Turning Winds is based on a review of a student’s transcript. Turning Winds sometimes contacts a student’s school district to determine their educational needs but did not do so regarding this Student. T377. The Student’s education plan is contained in Exhibit P9. The Student is performing very well at Turning Winds. T692. In Mr. Workman’s opinion, the Student “loves a challenge.” T72. When asked if she performs well because she is scared or anxious about anything, Mr. Workman replied, “I think she is performing well because she, as a human being, wants to do well.” T73.

137. Eliza Grey, a psychiatric nurse practitioner at Turning Winds, is in charge of medication management at Turning Winds. T98-99; 109. Between August 2020 and December 2020, Ms. Grey saw the Student once per week for approximately 30 to 60 minutes. T169. The Student was then transferred to Dr. Gordon, the medical director at Turning Winds. Dr. Gordon

[REDACTED]
T138; 143, 905. There is no evidence in the record that the Student took [REDACTED]
[REDACTED]. The Student stopped [REDACTED]
[REDACTED]. T905.

138. Ms. Grey observed that the Student was “very anxious.” T120. Ms. Grey has seen evidence of the Student [REDACTED]

[REDACTED]. Ms. Grey has heard the Student discuss [REDACTED], but she is not certain how often and she cannot recall the last time it

happened. T165-66. Ms. Grey cannot recall placing the Student on [REDACTED]. T166.

139. To Ms. Rock's knowledge, the Student [REDACTED], in mid-November and in December 2020, after which Ms. Rock conducted a [REDACTED] [REDACTED] T188, 638. When asked [REDACTED], Ms. Rock responded "maybe," and could not say for certain. T191-92.

140. Although the Turning Winds invoice reflects a cost of \$30,600, the Parents paid \$25,160.00 because their insurance contributed toward the total. P36p4; T911-12. The Parents paid \$40,900 for the Star Guides program, and are trying to recover the costs of that program from their insurance company. T913-14; P36p5.

141. Turning Winds is not currently approved as a nonpublic agency (NPA) in Washington State. P29¶3. The NPA process takes six to eight weeks. T509.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Because the Parents are seeking relief, they bear the burden of proof in this case. 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, 4, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

3. Under the IDEA, a school district must provide “a free and appropriate public education” (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200-201, 102 S. Ct. 3034 (1982).

4. In *Rowley*, the United States 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 206-07 (footnotes omitted).

5. The first inquiry is whether the District has complied with the procedures established by the IDEA. *Id.* at 206-07. Procedural safeguards are essential under the IDEA, particularly those that protect the parents’ right to be involved in the development of their child’s educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

6. The next question is whether the District has violated the substantive requirements of the IDEA. The Supreme Court recently clarified the substantive portion of the *Rowley* test as 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.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335 (2017). Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances” *Id.* at 1000.

7. The Ninth Circuit has explained the *Endrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can make progress in the general education curriculum . . . taking into account the progress of his non-disabled peers, and the child’s potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 138 S. Ct. 556 (2017) (citations omitted; internal quotation marks omitted). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

ISSUES AND REMEDIES

Issue 1) Whether the District violated the IDEA and denied the Student a FAPE since December 2019 by failing to meet its child find obligations to identify and evaluate the Student in December 2019, after the District became aware of the Student’s significant social emotional deficits.

Issue 2) Whether the District violated the IDEA and denied the Student a FAPE since December 2019 by failing to meet its child find obligations from January to August 2020, when the Parents provided outside diagnoses and repeatedly asked for a special education evaluation and that request was either denied or discouraged by the District.

8. The Parents’ first two issues allege that the District failed to meet its “child find” obligations. The Parents contend that the District’s child find obligation was triggered in December 2019, when the District “became aware that [the Student] was struggling with significant social emotional deficits,” and again in January 2020, when the Parents notified the District the Student had been [REDACTED]. They argue that the District continued to fail to identify and evaluate the Student from February 2020 to August 2020. PB19-23.³³ The District contends that the child find duty “is conditioned upon the presence

³³ “PB” refers to the Parents’ closing brief. For example, PB10 refers to page 10 of the Parents’ Closing brief. “DB” refers to the District’s closing brief.

of both a suspected disability and a potential need for SDI,” and that there was no reason to suspect a potential need for SDI in this case. (emphasis in original.) DB21.

9. The IDEA requires school districts to 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).

10. As set forth in *E.S. v. Conejo Valley Unified Sch. Dist.*, 2018 U.S. Dist. LEXIS 126251 (C.D. Cal. July 27, 2018), a school district’s child find obligation requires school districts:

to develop a method to identify, locate, and evaluate students with disabilities who are in need of special education services. *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1221 (9th Cir. 2016). [C]laims based on a local educational agency’s failure to meet the child find requirement are cognizable under the IDEA. *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1185 (9th Cir. 2010). The Ninth Circuit instructs that a duty to evaluate arises when a disability is deemed suspected:

[A] disability is suspected, and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. In *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir. 1996), for example, we held that the informed suspicions of parents, who may have consulted outside experts, trigger the requirement to assess, even if the school district disagrees with the parent’s suspicions because [t]he identification [and assessment] of children who have disabilities should be a cooperative and consultative process. *Id.* at 802. Once either the school district or the parents suspect disability, we held, a test must be performed so that parents can receive notification of, and have the opportunity to contest, conclusions regarding their children. *Id.*

Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1119-20 (9th Cir. 2016), cert. denied, 137 S. Ct. 1578, 197 L. Ed. 2d 704 (2017); see also *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.) (quoting *Timothy O.*, 822 F.3d at 1119); *S.B. v. San Mateo Foster City Sch. Dist.*, 2017 U.S. Dist. LEXIS 217440, 2017 WL 4856868, at *13 (N.D. Cal. April 11, 2017)

(A school district's child find duty is triggered when it has reason to suspect a child has a disability, and reason to suspect the child may need special education services to address that disability.) (citing *Dep't of Educ. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (P. Haw. 2001)). Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not exclusively in hindsight. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993)). However, some consideration of subsequent events may be permissible if the additional data provide[s] significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9th Cir. 2011) (quoting *Adams*, 195 F.3d at 1149).

E.S. v. Conejo Valley Unified Sch. Dist., 2018 U.S. Dist. LEXIS 126251 (C.D. Cal. 2018)(internal quotation marks omitted.).

11. The Parents contend that the District had reason to suspect that the Student might have a disability in December 2019, and had a duty to evaluate at that time. They contend that although the Student ultimately was found eligible for special education under the Other Health Impairment category, the category of emotional/behavioral disability would have been more appropriate for the District to suspect in December 2019. PB15.

12. WAC 392-172A-01035 defines emotional/behavioral disability as follows:

(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.

(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.

(Emphasis added.)

13. The first issue is whether the District had reason to suspect the Student of having an emotional/behavioral disability in December 2019. In this case, the District learned that the Student was [REDACTED] in early December 2019. After Ms. Fillman notified Ms. Methot that she had [REDACTED], Mr. Narancic promptly met with the Student, who reported she had a [REDACTED]. Mr. Narancic notified the Parents, who already knew the Student was [REDACTED]. [REDACTED]. Moreover, it is clear from the testimony of Mr. Narancic, Ms. Methot, Ms. Rock, and Dr. Jenkins that [REDACTED] in peer groups, and can occur for a variety of reasons. The Parents argue that the Student was also “showing concerning behaviors at home,” such as [REDACTED]. Notably, however, the Parents did not tell the District about any of these other behaviors and have not established that the District was or should have been aware of them in December 2019. To the contrary, the Student did not have any behavioral or disciplinary issues at school, continually achieved excellent grades, made friends, and had good attendance. There is no evidence that the Student was showing signs of anxiety in school in December 2019. The evidence does not establish that the Student was exhibiting any of the behaviors characteristic of an emotional/behavioral disability over a long period of time and to a marked degree that adversely affected her educational performance. WAC 392-172A-01035(3)(i)

14. Although the Parents contend that evidence that the Student preferred working alone, and was introverted and shy support a finding that she was anxious, Ms. Fillman expressly testified that she did not see signs of anxiety at school. Additionally, the Parents’ contention that the Student’s discomfort with another student on the bus establishes her difficulty with peer relationships is not persuasive. Moreover, it is contradicted by other evidence in the record, such as the Mother’s testimony that the Student made friends. Considering the evidence as a whole, the Parents have not established by a preponderance of the evidence that the District had reason to suspect that the Student had an emotional/behavioral disability or any other qualifying disability in December 2019.

15. For all of these reasons, it is concluded that the District did not violate its child find obligations in December 2019.

16. The Parents next contend that events in January 2020 further triggered the District's child find obligation because the District was aware of the Student's [REDACTED]. The Student's counselor acknowledged that she suspected the Student had a disability on January 21, 2020, when she learned that the Student had been diagnosed with [REDACTED]. At that point, the District was aware of the Student's history of [REDACTED]. The District was also aware that the Student told her friends she [REDACTED]. The Parents have not established by a preponderance of the evidence that the District was aware of any additional issues at that time. While the Parents contend that the Student was struggling with additional issues at home, they did not discuss those issues with the District and they did not provide the District with discharge paperwork from SCH at the reentry meeting.

17. Although the Student's counselor suspected the Student had a disability on January 21, 2020, she did not refer the case for an evaluation because she did not see any educational impact and did not suspect that the Student had a need for special education.³⁴ The District argues that its "duty to identify and evaluate a child for special education services is conditioned upon the presence of both a suspected disability and a potential need for SDI." DB21 (emphasis in original). See WAC 392-172A-02040(2) (Child find activities must be "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). Here, the District contends that it did not violate its child find duties because the evidence does not establish the presence of a potential need for SDI.

18. The law in this area is not clear. In 2014, the Ninth Circuit Court of Appeals recognized:

We have not yet articulated a test for when the child find obligation is triggered. The parties and the district court rely upon a test articulated by a Hawaii district

³⁴ Under the IDEA, special education is "specially designed instruction" to meet the unique needs of a child with a disability. 34 C.F.R. § 300.39(a)(1). "Specially designed instruction" means:

adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

³⁴ C.F.R. § 300.39(b)(3).

court. See *Dept. of Educ., Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190 (D. Haw. 2001) ("[T]he child-find duty is triggered when the [district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.") (internal quotation marks omitted). The Sixth and Third Circuits have promulgated tests that differ significantly from the *Cari Rae* standard. See *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (noting that "Child Find does not demand that schools conduct a formal evaluation of every struggling student"); *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 314 (6th Cir. 2007) (holding that the individual claiming a child find violation must demonstrate "that school officials overlooked clear signs of disability and were negligent in failing to order testing or that there was no rational justification for not deciding to evaluate").

G.M. v. Saddleback Valley Unified Sch. Dist., 583 F. App'x 702, 703-04 n.1 (9th Cir. 2014); see also *P.B. v. Thorp Sch. Dist.*, 2021 U.S. Dist. LEXIS 59845 (E.D. Wash. 2021) (noting some District Courts have relied on standard articulated in *Cari Rae*).

19. In 2016, the Ninth Circuit issued its decision in *Timothy O.*, which stands for the proposition that a disability is suspected, and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. *Timothy O.*, 822 F.3d at 1119-20. In that case, a staff member informally observed the student and advised that no additional testing was necessary. The court held that "if a school district is on notice that a child may have a particular disorder, it *must* assess that child for that disorder, regardless of the subjective views of its staff members concerning the likely outcome of an assessment." *Id.* at 1121.

20. Whether a district must also have a reason to suspect the child may need special education services to address that disability was not at issue in *Timothy O.*, and this precise issue has not been decided. Subsequently, district courts within the Ninth Circuit have used varied language in setting out the applicable standard. Compare *S.B. v. San Mateo Foster City Sch. Dist.*, 2017 U.S. Dist. LEXIS 217440 *40 (N.D. Cal. Apr. 11, 2017) (child find duty triggered when District has reason to suspect child has a disability and reason to suspect child may need special education to address that disability) with *A.P. v. Pasadena Unified Sch. Dist.*, 2021 U.S. Dist. LEXIS 42440 *17 (C.D. Cal. Jan. 26, 2021)(child find duty triggered when there is knowledge of, or reason to suspect a disability). None of these cases has addressed the discrepancy between how the standard is worded.

21. It is not necessary to resolve this issue here. Under the *Timothy O.* standard, there is no question that the Student should have been referred for an assessment on January 21,

2020, or shortly thereafter, because District staff acknowledged they suspected a disability at the reentry meeting upon learning of the Student's diagnosis of [REDACTED]. Even under a standard that also requires a reason to suspect a child may need special education, the decision as to whether an assessment was necessary should not have been based on the subjective views of a single staff member. In an additional holding in *Timothy O.*, 822 F.3d at 1121, the court emphasized that "a school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel this suspicion through informal observation." District policy is consistent with that holding and requires a staff member who suspects a disability to contact either a school psychologist or the student's guidance team to start the special education referral process. In this case, however, although the Student's counselor was aware the Student might have a disability, she determined, based on her own review of the Student's file and informal observations, that the Student was not showing any signs that her suspected disability was impacting her education. Based on her own subjective views, the Student's counselor determined that a referral, and thus an evaluation, was not warranted because she did not see any signs of educational impact. Although the District's closing brief emphasizes that no District staff suspected the Student might need special education services, that does not change the fact that the Student's counselor suspected that the Student had a disability but decided on her own that an assessment was unnecessary. D22.

22. For all of these reasons, it is concluded that the District violated its child find duty following the reentry meeting on January 21, 2020. At that point, District staff suspected that the Student had a disability but relied on the subjective views of one staff member in not referring the Student for an evaluation at that time. *Timothy O.*, 822 F.3d at 1121.

23. 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; see also *S.B. v. San Mateo Foster City Sch. Dist.*, 2017 U.S. Dist. LEXIS 217440 at *54-55. "A procedural violation denies a FAPE if it results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010)(citations omitted); see also WAC 392-172A-05105.

24. In this case, even if the Student had been referred for an evaluation on January 21, 2020, it is unlikely she would have been found eligible for special education services at that time. A student is eligible for special education if the student has a disability in one of thirteen eligibility categories and, because of the disability and an adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related

services. WAC 392-172A-01035(1)(a); 34 CFR § 300.8(a). When the Student's evaluation team met nearly a year later in December 2020, they struggled with the eligibility decision because the Student's disability was not having any impact on her academic performance or ability to access her education. The team "erred on the side of the Student" and found her eligible based on the possibility of future impact. At all times relevant to this proceeding, the Student has achieved excellent grades and attendance. She has not had disciplinary issues at school. She has friends. The Parents acknowledged this when they filled out the intake form for Ms. Warren and the Parent History Form for Dr. Jenkins. In filling out those forms, they made no mention of behavioral issues at school. The overwhelming evidence in the record further establishes that the Student's problematic behaviors were occurring at home and were not being seen at school. Moreover, although the Parents were aware of significant issues occurring at home, they did not share any of these concerns with the District. In sum, the Parents have not shown that the Student would have been found eligible for special education services had the District agreed to an evaluation on January 21, 2020 or shortly thereafter. Based on a comprehensive review of the record, it is concluded that the Parents have not shown by a preponderance of the evidence that the District's failure to evaluate the Student on January 21, 2020 or shortly thereafter resulted in a loss of educational opportunity, seriously infringed on the parents' opportunity to participate in the IEP formulation process or caused a deprivation of benefits. WAC 392-172A-05105.

25. The District's procedural violation in January 2020 or shortly thereafter did not result in a denial of FAPE and therefore does not warrant a remedy.

Issue 3) Whether the District violated the IDEA and denied the Student a FAPE since December 2019 by failing to timely complete or unnecessarily delaying a special education evaluation after receiving consent to evaluate from the Parents in August 2020, thereby causing an undue delay in special education eligibility.

Issue 4) Whether the District violated the IDEA and denied the Student a FAPE since December 2019 by unnecessarily delaying special education eligibility by performing its own independent neuropsychological evaluation after receiving sufficient data to determine eligibility in August 2020.

26. In issues 3) and 4), the Parents contend that the District's delays in evaluating the Student resulted in a denial of FAPE.

27. A school district has twenty-five days after receipt of a request for an initial evaluation to determine whether it will evaluate the student. WAC 392-172A-03005(2)(c). After a school district receives written consent to evaluate a student, it has thirty-five school days to

complete the evaluation and make an eligibility determination unless the parents and school district agree to extend the timeline. WAC 392-172A-03005 (3)(a) and (c).

28. When conducting an initial special education evaluation of a student, a district is required to “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student....” WAC 392-172A-03020(2)(a). The district must “[n]ot use any single measure of assessment as the sole criterion” to determine if a student is eligible for special education. WAC 392-172A-03020(2)(b). The district must also ensure that its evaluation “is sufficiently comprehensive to identify all of the student’s special education and related services needs....” WAC 392-172A-03020(2)(g). Finally, WAC 392-172A-03035 requires a district to issue an evaluation report that includes: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student’s progress in the general education curriculum; and the recommended special education and related services the student needs. *Id.*, see also 34 CFR §300.304-.306.

29. The Parents first suggest the District failed to make a timely decision to evaluate the Student because the Parents requested an evaluation on May 26, 2020, but the evaluation was not initiated until August 2020. The Parents’ Complaint did not raise this claim and the District expressly declined to expand the issue statement. WAC 392-172A-05100(3). The Parents have not provided any argument as to why this claim should be considered despite not having been raised. *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-16 (E.D. Cal. Mar. 7, 2019), *aff’d* 810 Fed. Appx. 588 (9th Cir. 2020); *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35, 37 (W.D. Wash. May 8, 2019). Accordingly, this claim is not considered.

30. The Parents next contend the District unnecessarily delayed the Student’s special education eligibility determination by obtaining its own evaluation, despite the fact that Dr. Jenkins had completed an evaluation and provided her testing data to the District.

31. The evidence establishes that the District decided to conduct its own evaluation of the Student because it had no knowledge of Dr. Jenkins and because Dr. Jenkins evaluated the Student in the wilderness. Dr. Jenkins’s evaluation and report provided no information related to the Student’s performance in a school setting and offered no information about what the Student required to succeed in a school setting. As Dr. Jenkins testified at the hearing, she did not include a recommendation in her report as to whether the Student would qualify for special education because she is not a school psychologist and she was focused more on “the [REDACTED].” As a result, it was entirely reasonable for the District to conclude that it

needed to complete its own evaluation of the Student to obtain information about the Student's performance in a school setting.

32. As part of its evaluation, the District obtained information from teachers at Canyon Park and Turning Winds. The District also contracted with Dr. Young, and the Parents agreed it was a good idea to get a second opinion. When the Parents asked for an evaluation from a neuropsychologist because they were concerned that the Student might have ASD, the District agreed to this request. The District contracted with Dr. Muscatel to complete the evaluation. Although Dr. Muscatel did not think additional testing was necessary, he believed his work in reviewing Dr. Jenkins's data and report, and in conducting interviews of the Student and others, was necessary. On balance, the Parents have not shown that the District unnecessarily delayed the Student's special education eligibility determination by performing its own independent neuropsychological evaluation.

33. The Parents also claim that the District failed to complete its evaluation in a timely manner because the District did not complete the Student's evaluation and find her eligible until 64 school days after the Parents provided consent on August 7, 2020.

34. As discussed above, after parents provide written consent, a district has thirty-five school days to complete the evaluation and make an eligibility determination unless the parents and school district agree to extend the timeline. WAC 392-172A-03005 (3)(a) and (c). Here, the Parents agreed in writing to extend the timeline until November 30, 2020. This extension was necessary to provide an assessment by a neuropsychologist, as requested by the Parents. Although the Parents now contend it was not necessary for a neuropsychologist to conduct an Autism assessment, that does not change the fact that the Parents requested an assessment by a neuropsychologist and the District accommodated their request. The Mother agreed that Dr. Muscatel began working on his assessment in a prompt manner. However, he was unable to complete his work, which involved conducting multiple interviews and drafting a lengthy report, until November 30, 2020. This prompted Ms. Ter-Veen to ask to extend the evaluation deadline of November 30, 2020, to ensure that the team had time to review the results and prepare a draft evaluation report. The Parents responded by asking if it was possible to meet December 4, 2020, but did not agree to the extension. Ultimately, the team met on December 7, 2020, which was five school days after the November 30, 2020 deadline to which the parties had agreed. Accordingly, the District missed the deadline for completing its evaluation and determining eligibility by five school days.

35. To the extent that the delay of five school days constitutes a procedural violation of the IDEA, the Parents have not shown that it impeded the Student's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process, or caused a

deprivation of educational benefits. WAC 392-172A-05105. The evidence demonstrates that the Student's IEP team met on December 17, 2020, which was 10 days after the eligibility determination. Under WAC 392-172A-03105(2)(a), the team had 30 days to hold an IEP meeting following the eligibility determination. Because the IEP team met within 10 days, the delay of 5 days in determining eligibility did not delay the overall timeline for developing an IEP. Moreover, Ms. Trembath-Neuberger's testimony established that the Student may not have been found eligible without the reports by Dr. Muscatel and Dr. Jenkins. Therefore, the Parents have not shown by a preponderance of the evidence that the District's delay in completing the evaluation and making an eligibility determination denied the Student a FAPE. The District's procedural violation of a five school day delay did not result in a denial of FAPE and therefore does not warrant a remedy.

Issue 5) Whether the District violated the IDEA and denied the Student a FAPE since December 2019 by failing to offer an Individualized Education Program (IEP) to the Student in December 2020 that included an educational placement in the Student's least restrictive environment.

Issue 6) Whether the District violated the IDEA and denied the Student a FAPE since December 2019 by failing to consider recent evaluative data when determining an educational placement for the Student in December 2020.

36. In issues 5) and 6), the Parents argue that the District failed to offer the Student a placement in her least restrictive environment and failed to consider evaluative data when determining her placement. They argue both Dr. Jenkins and Dr. Muscatel recommended a residential placement for the Student, which was consistent with the views of Mr. Baisden, Ms. Rock, and the Parents, but the District "ignored the substantial evidence that [the Student] needed continued placement at a residential treatment center. . . ." PB44.

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

38. WAC 392-17A-02060(1) and (2) require that an IEP team, including the parents, make a decision about the educational placement of a student after formulating the IEP³⁵ and based on the following criteria:

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

See 34 CFR 300.116(b)(2).

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

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

Ms. S. ex rel. G v. Vashon Island Sch. Dist., 337 F.3d 1115, 1137 (9th Cir. 2003) (Internal quotation marks omitted; citations omitted). "While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child's IEP goals." *City of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996).

40. Placement in a residential facility is appropriate under the IDEA if it is necessary in order for the Student to obtain an educational benefit. 34 C.F.R. § 300.104. A residential placement is "necessary" when the "student is incapable of deriving educational benefit outside of a residential placement." *Ashland Sch. Dist. v. Parents of R.J.*, 588 F.3d 1004, 1009 (9th Cir. 2009). If a placement "is a response to medical, social, or emotional problems . . . quite apart

³⁵ The Parents challenged the Student's placement but have not challenged any other components of the IEP.

from the learning process,” then it is not necessary under the IDEA. *Clovis Unified Sch. Dist. v. Calif. Office of Admin. Hearings*, 903 F.2d 635, 643 (9th Cir. 1990).

41. In this case, Dr. Jenkins’s report recommended residential placement to address the Student’s [REDACTED]. Dr. Jenkins acknowledged her evaluation was focused on the “[REDACTED]” and did not make recommendations as to what special education or academic programming the Student required. Additionally, Dr. Jenkins did not review the Student’s educational records or talk with District staff. She opined that a residential placement was more appropriate than a therapeutic day program because the majority of the Student’s problematic behaviors were occurring at home or outside the school setting, resulting in a need for continuous supervision. In fact, Dr. Jenkins’s report does not list any problematic behaviors occurring in the school setting and she acknowledged during cross-examination that her report would have included any risky behaviors she knew about. In sum, Dr. Jenkins’s evaluation does not establish that the Student required a residential placement in order to obtain an educational benefit.

42. Similarly, Dr. Muscatel’s report did not contain a placement recommendation. Although his report notes that the Student would require assistance and services upon return to the District, he did not specify what those were. With respect to special education, Dr. Muscatel “presumed that she would meet the test for an IEP designation” based on her emotional and behavioral problems. He acknowledged, however, that he does not perform special education evaluations on a regular basis and last attended an IEP meeting seven or eight years ago. Finally, Dr. Muscatel did not recommend any special education services in his report because “she didn’t really need educational special education services.” He was less concerned about SDI and more concerned that she needed to be in a structured and controlled environment to prevent her from decompensating. Like Dr. Jenkins, he concluded that the Student’s behaviors were occurring at home, outside of the school day.

43. On balance, neither Dr. Jenkins’s report nor Dr. Muscatel’s report establishes by a preponderance of the evidence that the Student required a residential placement and was incapable of obtaining an educational benefit outside of a residential placement. Moreover, the Parents have not established that the team failed to consider or ignored Dr. Jenkins’s and Dr. Muscatel’s reports and the evaluative data they contained. To the contrary, the evidence establishes that the team considered both reports, but ultimately decided that the Student’s needs could be met in a less restrictive placement. As discussed above, both experts were focused more on the Student’s [REDACTED], and less on her academic needs. Thus, while Dr. Jenkins’s report recommended a residential placement to meet the Student’s [REDACTED], it did not address what placement would best serve her educational needs. Dr. Muscatel’s report did not include a placement recommendation. On balance, the

Parents have not shown that the team ignored either report or the underlying data. Moreover, although the Parents argue that District staff did not know the Student and therefore should have relied on the experts' reports, neither report addressed what placement would best serve her educational needs.

44. Mr. Baisden and Ms. Rock also testified regarding the Student's need for residential placement. Mr. Baisden knows the Student but has had limited involvement with her. As a result, I give little weight to his recommendation as to her placement. Ms. Rock opined that the Student required a residential placement as well, noting that removing her from Turning Winds too early would reverse the gains she had made. It is important to note that Ms. Rock is not a teacher, has never observed the Student in an educational setting other than Turning Winds, and was not familiar with the term SDI. I therefore give little weight to her opinion on the appropriateness of a District placement as compared to a residential placement in meeting the Student's educational needs. The testimony of Mr. Baisden and Ms. Rock do not establish that the Student was incapable of obtaining an educational benefit outside of a residential placement.

45. To the extent that the Parents rely on the opinion of Ms. Warren to establish that the Student required a residential placement, I give no weight to her opinion. Ms. Warren has no formal education or qualifications to provide such advice. She has no knowledge of the District and has never met the Student. Moreover, she is "in the industry," is sometimes contacted by schools seeking her review, and has placed numerous students with Turning Winds, which is a for-profit company.

46. The Parents also contend that the issue is whether the Student's disabilities interfered with her education and necessitated special services. Relying on *L.J. v. Pittsburg Unif. Sch. Dist.*, 850 F.3d 996, 1006 (9th Cir. 2017), they argue "[i]t [REDACTED]

In this case, however, the overwhelming evidence in the record establishes that the Student excelled in school, had no attendance or disciplinary issues, made friends, and had no behavior issues at school. Considering the evidence as a whole, the Parents have not shown by a preponderance of the evidence that a residential placement was necessary in order for the Student to obtain an educational benefit.

47. The Parents also contend that the District failed to offer the Student a placement in her least restrictive environment. The evidence establishes that the IEP team discussed a number of placement options and ultimately decided that placement at Dartmoor would be most appropriate. The first and second *Rachel H.* factors focus on the academic and nonacademic

benefits of placement in a mainstream setting with appropriate services and supports.³⁶ Dartmoor offered the Student academic challenge and an opportunity to interact with general education peers, but it also provided the structure and high level of supervision she required in order to be safe. Dartmoor also offered the Student [REDACTED]

48. The Parents contend that Dartmoor did not offer enough opportunities for social interaction with a diverse group of students, and that the Student will not have sufficient peer interactions to be able to work on her IEP goals. During the hearing, however, the Parents elicited no testimony as to how the Student would be unable to work on her IEP goals at Dartmoor. Additionally, while the Parents contend that the Student had more opportunities for social interactions at Turning Winds, all of the students at Turning Winds have some degree of behavioral difficulties, the males and females are kept separate, there are only 12 female students, and students are constantly supervised and monitored. On balance, the Parents have not met their burden to establish that Dartmoor does not offer sufficient peer interaction to allow the Student to work on her IEP goals.

49. The Parents further contend that “the potential harmful effects on [the Student] were not considered in the District’s offer of education placement.” PB45. The record establishes, however, that the team was highly focused on finding a placement that would ensure the Student had sufficient supervision and structure to keep her safe at school. They determined a one-to-one placement at Dartmoor would best meet this need, but also meet the Student’s needs for academic challenge, access to peers, and [REDACTED]. The Parents have not shown by a preponderance of the evidence that a placement offering the level of structure and supervision afforded by a one-to-one placement was insufficient to keep the Student safe at school.

50. In conclusion, the Parents have not shown by a preponderance of the evidence that residential placement was necessary for the Student to receive a meaningful educational benefit. Rather, the evidence establishes that the Student’s placement at Turning Winds was not for educational purposes, and stemmed from issues apart from the learning process that occurred outside of school and in response to the Student’s emotional problems. See *Ashland*, 588 F.3d at 1009-10. Additionally, the Parents have not shown that the District, in offering placement at Dartmoor, failed to offer the Student a placement in her least restrictive

³⁶ There is no evidence in the record that the Student’s presence had any negative effect on the teacher or other students in the classroom, as discussed in the third *Rachel H.* factor. Additionally, the record does not establish whether the team discussed concerns associated with the costs of the various placement options considered, as discussed in the fourth prong of *Rachel H.*

environment. Therefore, the Parents have not shown that the District violated the IDEA or denied the Student a FAPE.

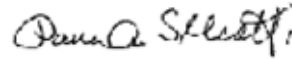
Issue 7) Whether the private evaluations and services obtained for the Student between January 2020 to present were appropriate for her.

51. Because the District did not deny the Student a FAPE, the Parents are not entitled to a remedy. As a result, it is not necessary to reach issue 7), which focuses on whether the evaluations and services obtained for the Student were appropriate for her for purposes of determining whether the Parents are entitled to reimbursement as a remedy.

ORDER

The Northshore School District did not deny the Student a free appropriate public education. The Parents' requested remedies are DENIED.

Served on the date of mailing.



Pamela Meotti
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

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

Parents



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Dated July 7, 2021, at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI