

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

IN THE MATTER OF:

OSPI CAUSE NO. 2021-SE-0136

OAH DOCKET NO. 10-2021-OSPI-01442

SUMNER-BONNEY LAKE SCHOOL DISTRICT

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

Administrative Law Judge (ALJ) Matthew D. Wacker held a due process hearing in the above matter via remote video conference over four days on April 18-21, 2022. The Mother of the Student whose education is at issue¹ appeared and represented herself *pro se*. The Mother was accompanied and advised by Helen Caldart. The Sumner-Bonnie Lake School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District was Karen Finigan, executive director of special services. A certified court reporter was also present.

STATEMENT OF THE CASE

*Procedural History*²

On October 29, 2021, the Mother filed a Special Education Due Process Hearing Request (Complaint). The Complaint was assigned Cause No. 2021-SE-0136 and Docket No. 10-2021-OSPI-01442. The Complaint was initially assigned to ALJ Pamela Meotti as the presiding ALJ. The District filed its Response to the Complaint on November 10, 2021. On February 22, 2022, the matter was reassigned to ALJ Matthew D. Wacker as the presiding ALJ.

The due process hearing was held April 18-21, 2022. The parties post-hearing briefs were due June 10, 2022. See May 11, 2022 Post-Hearing Order. The due date was later extended on the District's motion to June 14, 2022. See June 8, 2022 Second Post-Hearing Order. The parties timely filed their post-hearing briefs on June 14, 2022.

¹ In the interest of preserving the family's privacy, this decision does not use the actual names of the parents or the student. Instead, they are identified as the "Mother," "Father," or "Parents," and the "Student."

² This procedural history is not intended to detail every event. Rather, it is intended to provide a brief history of the most relevant matters for the reader.

Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See December 6, 2021 First Prehearing Order. The record of the hearing closed with the filing of post-hearing briefs on June 14, 2022. Thirty calendar days from June 14, 2022, is July 14, 2022. Therefore, the due date for a written decision in the above matter is **July 14, 2022**.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J1-J22.

Parent Exhibits: P1-P108, P110.

District Exhibits: D1-D3, D6-D14.

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

Bobbi Snider, principal, Donald Eismann Elementary School;
The Mother;
Melanie "Summer" Krook, District behavior specialist;
Tanya O'Callaghan, occupational therapist, managing and clinical director, Kids at Play Therapy;
Leslie Christin, District learning specialist/special education teacher;
Diane Thompson, board-certified behavior analyst;
Sonja Hemmerling, school psychologist;
Jessica Dykman, District paraeducator;
Melissa Brown, District general education teacher;
Audra Walters, District director of special services.

ISSUES AND REMEDIES

The statement of the issues and requested remedies for the Mother's Complaint is:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) when it:
 1. Failed to provide accurate and up-to-date information about the Student's Present Levels of Academic Performance and Functional Performance in the areas of social skills,

behavior and executive functioning, including the impact of the Student's disabilities on her ability to learn, between March 2020 and June 2021.

2. Failed to provide the Special Education Service Minutes and Related Services Service Minutes listed on the Student's IEP during the COVID-19 school closure from March 16, 2020, to June 19, 2020.
3. Failed to provide the Related Service of a 1:1 behavior support para educator, and thus failed to provide an appropriate education accessible to the Student during the COVID-19 school closure from March 16, 2020, to June 19, 2020.
4. Failed to provide the Special Education Service Minutes and Related Services Service Minutes listed on the Student's IEP during the 2020-2021 school year.
5. Failed to provide an appropriate education accessible to the Student during the 2020-2021 school year.
6. Failed to provide technology training to staff before the 2020-2021 school year, which resulted in the Student having no access to her Related Service of a 1:1 behavior support para educator and, therefore, no FAPE.
7. Denied the District staff request to practice using the unfamiliar distance learning technology software (Zoom) features through which the Student was to access her Related Service of a 1:1 behavior support para educator during the 2020-2021 school year, which resulted in the Student having no access and, therefore, no FAPE.
8. Inappropriately removed in-person services from the Student on January 20, 2021, with no documentation to prove that she no longer needed them and without Parent consent.
9. Excluded the Student from her general education classroom starting December 9, 2020, until January 20, 2021. This exclusion did not align with evidence-based interventions, classroom strategies, or her BIP.
10. Failed to place the Student in her general education classroom zooms during in-person services, therefore violating her Least Restrictive Environment starting December 9, 2020, until January 20, 2021.
11. Excluded the Student from her instructional or activity area by placing her in a zoom break-out room without supervision of the teacher or other school personnel on

December 16, 2020. This exclusion did not align with evidence-based interventions, classroom strategies, or her BIP.

12. Isolated the Student on January 27, 2021, with no documented proof that there was an imminent likelihood of serious harm.
13. Removed the Student from her learning environment, giving the Parent no other choice but to take her home, and did not provide suspension paperwork on January 29, 2021.
14. Restrained the Student on February 12, 2021, and May 10, 2021, with no documented proof that there was an imminent likelihood of serious harm.
15. Isolated the Student on February 12, 2021, with no documented proof that there was an imminent likelihood of serious harm.
16. Failed to provide advance notice to the Parent that the General Education Teacher would be absent from IEP meetings on February 1, April 15, May 25, and June 22, 2021.
17. Failed to provide the Parent with Prior Written Notice (PWN) within statutory timelines, limiting Parent participation and violating the rules governing the PWN. The PWN was sent to the Parent on May 26, 2020, for an IEP Meeting held on May 13, 2020, and the PWN states Action initiated on May 20, 2020.
18. Failed to provide the Parent with PWN within statutory timelines, limiting Parent participation and violating the rules governing the PWN. Fewer than 21 hours was not a reasonable amount of time before the initiated date of July 6, 2020. The PWN was sent to the Parent on July 5, 2020, at 12:07 p.m. for an IEP Meeting held on June 22, 2020, and the PWN states Action initiated on July 6, 2020, which was initiated at 9:00 a.m.
19. Failed to provide the Parent with PWN for an IEP Team Meeting that convened on September 3, 2020, limiting Parent participation, and violating rules governing PWN.
20. Failed to provide the Parent with the complete PWN, within statutory timelines, limiting Parent participation and violating the rules governing the PWN. (The first version of the PWN sent to the Parent on October 23, 2020, was missing Action initiated by date, original Parent request, and the reason for rejecting that original request.) The completed PWN was sent to the Parent on November 24, 2020, for an IEP Meeting held on October 15, 2020, and the PWN states Action initiated on November 3, 2020.

21. Failed to provide services to the Student as documented on the PWN with the initiated date of November 3, 2020.
 22. Failed to provide the Parent with the complete PWN within statutory timelines, limiting Parent participation and violating the rules governing the PWN. The incomplete PWN (missing Parent requests and team decisions) was sent to the Parent on January 25, 2021 for an IEP Meeting held on December 14, 2020 and January 7, 2021 (it became a two-part Annual IEP Team Meeting because the District did not schedule enough time for the first meeting to cover the IEP, BIP, and Parent Questions, even though Parent delivered questions to the District well before the first meeting so that the District could prepare answers), and the PWN states Action initiated on December 17, 2020.
 23. Failed to provide the Parent with the complete PWN within statutory timelines, limiting Parent participation and violating the rules governing the PWN. The incomplete PWN (missing Action initiated by date, Parent requests, and reasons for rejecting those requests) was sent to the Parent on February 2, 2021, for an IEP Meeting held on February 1, 2021 and the PWN states Action initiated on BLANK.
 24. Failed to provide the Parent with the complete PWN within statutory timelines, limiting Parent participation and violating the rules governing the PWN. The incomplete PWN (missing Parent requests and reasons for rejecting those requests) was sent to the Parent on March 3, 2021, for an IEP Meeting held on February 24, 2021 and the PWN states Action initiated on March 4, 2021.
 25. Failed to provide the Parent with the complete PWN within statutory timelines, limiting Parent participation and violating the rules governing the PWN. The incomplete PWN (missing Action initiated by date) was sent to the Parent on May 27, 2021, for an IEP Meeting held on May 25, 2021 and the PWN states Action initiated on BLANK;
- b. And whether the Parent is entitled to the requested remedies:
1. Compensatory education services for the loss of education during the initial pandemic that began on March 13, 2020, and through the 2020-2021 school year in the form of annual tuition for Apex Summer Camp through the Student's twelfth year (i.e., 2022 through 2026, inclusive);
 2. The District shall provide travel expenses, such as mileage for transporting the Student between home and Apex Summer Camp each year (i.e., 2022 through 2026, inclusive). This includes two 93-mile round trips each day;
 3. The District shall contract with Behavior Cusp to review and/or update the Student's Functional Behavior Assessment and Behavior Intervention Plan, to include: school

and home observation, assessment, and development; modeling strategies to staff and family; training of staff and family; development and staff training of data tracking system; and fidelity checks;

4. The District shall ban the use of restraint and isolation, at least starting with the youngest (i.e., preschool and pre-k) and most vulnerable students in the District. Training all District staff in alternative methods to deescalate students will be necessary. This ban and related training shall be developed and implemented with the guidance and approval of Lee Collyer, OSPI Program Supervisor, Restraints and Isolations;
5. The District shall collect and analyze data of all restraints and isolations, including preschool and pre-k students, in the District. At public school board meetings, the District shall present quarterly and annual reports that provide this data and analysis, which identifies, dissects, and resolves any patterns or trends. This data collection, analysis, and reporting process shall be developed and implemented with the guidance and approval of Lee Collyer, OSPI Program Supervisor, Restraints and Isolations;
6. Develop a policy and a process to review repeated use of restraint and isolation in the District. This policy and process shall be developed and implemented with the guidance and approval of Lee Collyer, OSPI Program Supervisor, Restraints and Isolations. Repeated use of restraint or isolation should trigger a review, especially when repeatedly used: on the same student; in the same location; or by the same staff member. Patterns or trends of repeated use of restraint or isolation shall be analyzed and dispositioned, i.e., patterns or trends will be identified, dissected, and resolved. This data shall also be included in the quarterly and annual reports presented at the public school board meetings;
7. The District shall install video cameras in all special education classrooms to ensure all students and staff are safe and secure while in those rooms. The District shall maintain recordings for 30 calendar days, unless a longer storage duration is required in compliance with: the District Policy No. 4040, Public Access to District Records, page 3, section titled "Electronic Records;" Office of the Secretary of State Public Schools (K-12) Records Retention Schedule ("security" in the index on page 89 referred to CORE/SGGRRS); Local Government Common Records Retention Schedule (CORE), page 89, section titled "Security Monitoring – Oversight/Surveillance Recordings;"
8. And/or other equitable remedies, as appropriate.

See December 6, 2021 First Prehearing Order.

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.

General Background

1. In January 2019, Jennie Hendrie, MD, the Student's pediatrician wrote, "To Whom It May Concern: [The Student], a patient of mine, has been diagnosed with Attention Deficit Disorder and Oppositional Defiant Disorder. I believe she qualifies for a 504 plan for her education." See P105p16.³

2. In February 2019, the Student was evaluated by an occupational therapist (OT) at Kids at Play Therapy, a private therapy provider. P1. The evaluation determined that due to "difficulties with fine motor skills, low postural tone, processing and modulating sensory information and poor emotional regulation, [the Student's] functional participation in daily living is impacted." *Id.* p7. The evaluation recommended the Student receive occupational therapy 1-2 times per week for 12 months, and then be reevaluated. *Id.*

3. In March 2019, Dr. Hendrie wrote:

"[The Student], a patient of mine, has been diagnosed with Attention Deficit Hyperactivity Disorder and provisional Sensory Integration Disorder, and is being evaluated for Autism Spectrum Disorder. These diagnoses will have ramifications for her education. Please make accommodations for her special challenges."

P2p2.

4. The Student was initially evaluated and determined eligible for special education and related services by the District in March 2019. P105p11. The Student, then a preschooler, was determined eligible under the Developmental Delay eligibility category. *Id.* The evaluation determined the Student required Specially Designed Instruction (SDI) for social skills and behavior. *Id.* p13.

³ Citation to the exhibits is by **Joint**, **Parent**, or **District** and page number. For example, citation to "P105p16" is a citation to Parent Exhibit 105 at page 16.

5. The District's evaluation did not include assessment or evaluation of the Student by an OT. *See generally* P105pp15-25. However, the Mother provided the evaluation team with the Kids at Play Therapy OT evaluation, which the team considered for its evaluation of the Student. *Id.* pp15-16.

6. Sonja Hemmerling appeared as an expert witness for the Mother. *See generally* T717-741. Ms. Hemmerling holds a PhD in Educational Leadership from Capella University. P110p10. She also holds a master's degree in Special Education from Eastern Washington University. *Id.* She is certified as a School Psychologist. *Id.* She has held multiple positions as a school psychologist and management positions in school special education administration. *Id.*

7. Ms. Hemmerling has never met the Student in person or otherwise. Hemmerling T719, T738. ⁴ She has never evaluated the Student. *Id.* T738. She has never observed the Student in an educational setting. *Id.* She has never attended any IEP or evaluation meetings for the Student. *Id.* T738-739. She has never spoken with anyone in the District about the Student. *Id.* T739.

8. Ms. Hemmerling offered her expert opinion on the results of the Behavior Assessment System for Children 3rd Edition (BASC-3) administered by the District as part of the Student's initial evaluation. P105p19. With respect to those areas where the Student scored in the clinically significant or significantly elevated ranges, Ms. Hemmerling opined that the:

Student is clinically significant or significantly elevated compared to peers in that overall social/emotional behavior range...I would take this combined with observation, teacher reports, parent reports and documentation from the classroom to determine whether there was a need for specially designed instruction.

Hemmerling T729.

9. Ms. Hemmerling is not sure she has ever worked with a school district "that directly qualifies a student (for special education) for executive functioning." *Id.* T731. "Executive functioning might fall under that social/emotional piece. It might fall under behavior." *Id.* T732.

10. Ms. Hemmerling provided her opinion regarding development of IEP goals and Present Levels of Educational Performance (PLOPs). To develop IEP goals, you must consider a student's PLOPs because "We are looking at seeing where that student is at." *Id.* T723. You must collect baseline data. *Id.* If the validity of an evaluation is at issue, an IEP team may still

⁴ Citation to the testimony of a witness is by last name and page number of the Transcript. The exception to this is citations to the testimony of the Mother, who is identified as such to help preserve the privacy of the family. For example, citation to "Hemmerling T719" is a citation to the testimony of Ms. Hemmerling at page 719 of the transcript.

have enough information to develop a student's PLOPs. *Id.* T725. This would depend "on the individual student and the individual evaluation." *Id.*

2019-2020 SY

11. The District conducted an early reevaluation of the Student in November 2019. J1. The early reevaluation was conducted at the Mother's request. *Id.* p5. The request included evaluation of the Student's cognitive, academic, adaptive, fine motor, assistive technology, and communication domains. *Id.*

12. By this time, the Student was attending kindergarten at the District's Donald Eismann Elementary (DEE) School. *Id.*

13. The early reevaluation determined the Student qualified under a new eligibility category: Other Health Impairment (OHI). *Id.* p6. It determined the Student still required SDI for social skills and behavior. *Id.* p8. After review of the reevaluation report, the Mother requested that the Student be assessment in the executive functioning domain; the team agreed. Mother T236.

14. On December 3, 2019, the Student's IEP team meeting to consider the results of a Functional Behavioral Assessment (FBA) of the Student. J2p4. After reviewing the FBA, the team recommended a Behavioral Intervention Plan (BIP) be developed for the Student. *Id.* p9.

15. Diane Thompson appeared at the hearing as an expert witness for the Mother. See *generally* Thompson T653-687. Ms. Thompson is a Board Certified Behavior Analyst (BCBA). Thompson T656. She earned her BCBA credential in December 2021 and holds a master's degree in Applied Behavior Analysis (ABA). *Id.* T656. Her master's program included training in FBAs and BIPs. *Id.* T661. She has no education, training, or experience with sensory processing or sensory integration disorder. *Id.* T658. She is not a certificated teacher but has 30 years' experience as a paraeducator. *Id.* T682, T683. She has never met, observed in an educational setting, or evaluated the Student. *Id.* T684. She has never spoken with any of the Student's teachers or attended any meetings involving the Student and her special education program in the District. *Id.* T684. She does not know where the Student falls on the "spectrum" of ADHD. *Id.* T686. During her testimony, she asked if the Student is "nonverbal." *Id.* T666. The child is verbal. While she was provided some of the Student's educational records prior to the hearing, it cannot be determined with reasonable certainty specifically which records she was provided. T685.

16. During her testimony, Ms. Thompson reviewed the Student's December 2019 FBA. *Id.* T665; J2p4. This was the first time she had seen this FBA. *Id.* T673. She was concerned that the FBA did not define the terms "noncompliance," "disruptive behavior," or "elopement." *Id.* T665-666, T673. However, she later found the definition for disruptive behavior in the FBA. *Id.*

T673; J2p6. Ms. Thompson defines as “elopement” as “being out of a designated area.” *Id.* T672. The FBA defines “noncompliance” to include “leaving area without permission.” J2p12.

17. Ms. Thompson went on to opine about the appropriateness of the Student’s December BIP, generally how elopement “typically manifests” in children with ADHD, and the appropriateness of remote learning via Zoom for a first grader with ADHD. Thompson T677-679, T681-682. While she holds a graduate degree and certification as a BCBA, it is clear from the record that Ms. Thompson knows practically nothing about the Student, her disabilities, and the impact of those disabilities on her educational program at the District. Whatever records she was provided for her review prior to the hearing did not inform her testimony, and this is most clearly reflected in her question about whether the Student is nonverbal. It is found that Ms. Thompson’s opinions do not warrant any substantial weight and are not accepted.

18. On December 17, 2019, the Student’s IEP team, including both Parents, convened a meeting to review a new draft IEP for the Student based on the November early reevaluation. DJ3p3. In part, the Parents requested that the Student have 1:1 support in her classes. *Id.* p5. The team agreed to provide the Student with 1:1 support from a Behavior Technician (BT). *Id.* pp12, 14. The IEP noted that “[The Student] will receive...1:1 support from a Behavior Technician throughout her school day. Due to this, the 1:1 Support (sic) personnel is considered part of her service matrix.” *Id.* p14.

19. The IEP determined the Student’s PLOPs and developed annual goals for the Student in the areas of social/emotional and behavior. *Id.* pp6-9. The IEP provided the Student’s school team consultation with an OT on an as-needed basis for the Student’s sensory needs. *Id.* pp11-12.

20. At the same meeting on December 17, 2019, the IEP team reviewed a draft BIP for the Student. J3p1, J4. The draft BIP was developed by Melanie (Summer) Krook. Krook T405. She also developed the FBA that “drives” this BIP. *Id.* T401, T405; J2p4.

21. Ms. Krook has been employed by the District as a Behavior Specialist since 2017. Krook T299. She earned a doctorate in Educational Leadership from City University of Seattle, with a specialty in special education and behavior management. *Id.* T297. She holds a master’s degree in Leadership, and a bachelor’s degree in Applied Psychology with an emphasis in Child and Adolescent Counseling from City University of Seattle. *Id.* She holds a certificate in Social Services and Mental Health, with an emphasis in Child and Adolescent Psychology. *Id.* She has more than 20 years’ experience and training in the field of ADHD, autism, and emotional-behavioral disorders. *Id.* T298. She has been a Right Response trainer for approximately 10 years. *Id.* T299.

22. The purpose of a BIP “is to provide interventions to both proactively prevent behavior from happening and also to provide interventions to respond when behavior does happen.” *Id.* T308, T321.

23. Ms. Krook was assigned to work with the Student at DEE school beginning in kindergarten. *Id.* T299. Ms. Krook has trained all the Student’s 1:1 paraeducators to implement the Student’s BIPs. *Id.* T311. Any time the Student’s BIPs are updated, she provides updated training to the 1:1 paraeducators. *Id.* T310. Ms. Krook also provides training in the Student’s BIPs to the general education staff, the District’s Learning Specialists,⁵ and the Mother. *Id.* T311.

All District Schools Close Due to COVID-19 Pandemic

24. On March 13, 2020, all District schools closed due to the Covid-19 pandemic. See P19p1 (“The school district closed all school buildings on March 13, 2020.”). No District students received in-person learning services through the end of the school year. Snider T200. The District transitioned to remote learning delivered through Zoom video conferencing sometime in March 2020. *Id.* All staff were provided training to use Zoom prior to starting remote learning. *Id.* T201. Remote learning also utilized software including Google Classroom. *Id.*

25. On March 12, 2020, the District provided long-term absence packets in anticipation of the school closures. Mother T237; P4, P5. The District began providing weekly lesson plans or guides on March 23, 2020. Mother T237; P6. And on March 31, 2020, the Student’s general education kindergarten teacher posted the first class Zoom. *Id.* T237; P7.

26. After the school closures began on March 13, 2020, the Student’s “one-on-one behavior support educator disappeared.” Mother T240. “The person assigned to this role was never seen or heard from after March 13th, 2020.” *Id.* T243. Without the Student’s 1:1 behavior support person, the Student “required significant and constant assistance, supervision, and prompting” from the Mother. *Id.* T240.

27. By March 20, 2020, the Student was making sufficient progress to achieve three of her four annual IEP goals within the duration of her IEP. J9. The Student was demonstrating an “emerging skill” with respect to her fourth IEP goal but might not achieve the goal within the duration of her IEP. *Id.*

28. In an email on March 28, 2020, to Audra Walters, the District’s Director of Special Services, Karen Finigan, the District’s Executive Director of Special Services, wrote:

⁵ The District identifies its special education teachers as Learning Specialists. Christin T810, Snider T214, T221.

Would you work with the agency that will be providing behavioral support with [the Student]? As Seleni quit, then we had the school closure. As we move toward new learning and we are not sure when school will start up, we thought it might be good to offer Zoom sessions if the agency and parent would be interested.

P9p1. Sometime before the end of the school year, the District had a paraeducator, or a Learning Specialist working as a paraeducator supporting the Student. Walters T924.

29. Ms. Krook provided training to implement the Student's BIP during the District-wide school closures from March 2020 to the end of the school year in June 2020. *Id.* T435-436; D9pp2-4. This training was updated in the fall of the 2020-2021 school year. *Id.* T436. Ms. Krook continued to develop additional training materials for the Student's BIPs over time. *Id.* T443; D10. The training was provided using PowerPoint and visuals over Zoom or in person. Krook T407. Ms. Krook also provided follow-up modeling and coaching on the Student's BIPs. *Id.*

30. Ms. Krook also developed materials and provided training for remote Zoom instruction to the Student and the Mother. *Id.* T437; D9pp5-20.

31. In an email on April 13, 2020, to the parents of all District students eligible for special education, Ms. Finigan wrote:

Our District will move from Continuous Learning to New Required Learning. For Special Education students this includes Specially Designed Instruction (SDI)...Since school is closed for the remainder of the 19-20 school year, we don't know exactly what Extended School (ESY) would look like, or even if it is possible at this time.

P11.

32. In an email on April 23, 2020, to Ms. Finigan and Ms. Walters, the Mother asked to discuss having the Student's 1:1 support person be a District employee rather than an "outsourced contractor." P10. The Mother reported the Student was "exhibiting abandonment issues because of having been assigned to...now two one-to-one staff members between October 2019 and March 2020." *Id.* The Mother made this request because nothing was communicated to her about who was providing 1:1 behavior support to the Student. Mother T241.

33. On May 5, 2020, an evaluation team, including the Mother, convened a Zoom meeting to consider an assessment revision to the Student's November 2019 reevaluation. J5p1, pp5-10, p11 ("[The Student's] mother participated in a zoom meeting"). The assessment revision considered the results of an assessment of the Student's executive functioning using the Behavior Rating Inventory of Executive Functioning (BRIEF). *Id.* p8. This assessment was conducted at the Mother's request. J1p34, J5p3.

34. The results of the BRIEF determined that, “[the Student] struggles within many areas of executive functioning. Many of her difficulties align with her symptoms of her medical diagnosis (of) Attention Deficit Hyperactivity Disorder.” J5p8.

35. The assessment revision concluded that the Student remained eligible for special education services under the OHI category. *Id.* It recommended the Student continue to receive SDI for social skills and behavior. *Id.* The team decided to schedule another IEP meeting to determine if any of the Student’s accommodations should be added or modified in her IEP to meet her needs. *Id.* p11.

36. An IEP team meeting was held on May 13, 2020, to review the Students’ current IEP in light of the assessment revision. J6p1, J6p17. The meeting was held via Zoom, and the Mother attended. *Id.* p3.; Mother T979. The team determined that most of the accommodations and modifications to address the Student’s executive functioning deficits were already being met with the Student’s current IEP and BIP. J17p17.

37. The team discussed that executive functioning is not a “service area; however, there is (sic) components of it that we can add to the IEP, and we added...those components as an accommodation on the IEP, and we also updated the service matrix.” Walters T933.

38. The team agreed to update the Student’s IEP to reflect that the Student’s 1:1 BT, a contracted or outsourced BT, would be replaced by a 1:1 District paraeducator because the past BTs had been “inconsistent.” *Id.* This was in response to the Mother’s request. See P10; Mother T983-984, Walters T934.

39. The PWN associated with this IEP team meeting (J6pp1718) states that the action would be initiated on May 20, 2020. J6p18. However, the Mother received the PWN via email from Ms. Walters on May 26, 2020, after the action-initiation date. Mother T239-240.

40. The Mother asserts that because she received this PWN after the action-initiation date her “parent participation” was “limited.” *Id.* T240. However, the Mother attended the IEP team meeting, and acknowledges that all the information on the PWN was discussed at the team meeting. *Id.* T980. Aside from her assertion that her parental right to participate in the Student’s education was limited by her receipt of the PWN after the action-initiation date, the Parent provided no testimony as to how or why her rights as a parent were limited.

41. In an email on May 31, 2020, to Ms. Finigan and others, the Mother provided her estimate that the Student would have a deficit of over 25,000 service minutes by the end of the school year. P11p1, P14p1. The Mother goes on to ask, “Has a plan been developed for delivering [the Student’s] missing Service Minutes for the 2019-2020 school year?” *Id.* The Mother’s estimate or calculation of the missed service minutes deficit is P12.

42. Ms. Walters replied to the Mother via email on June 2, 2020, stating in part that:

The state is still in the process of determining guidance for discussion on any type of compensatory education. We anticipate this guidance to be shared by OSPI in the fall. At that time, Districts will be able to open up these discussions and we will look at students' actual IEP service minutes.

P13.

43. The Mother, Ms. Finigan and Ms. Walters met twice via Zoom on June 10 and June 22, 2020, to "discuss parent request for discussion and plan to address the platform change from March to June 2020." J7p3. They also discussed services to support the Student over the summer. *Id.*; Mother 984.

44. The Mother requested over "25,000 service minutes be provided to [the Student] based on their service minute calculation/perception (including the 1:1 para support student received during a regular in person (sic) school day)." J7p3. The District rejected the Mother's request because, "Specially designed instruction is related to eligible service areas not 1:1 para." *Id.*

45. In an email on June 19, 2020, to Ms. Finigan and others, the Mother provided her "final version of the Service Minute log" she created. P16, P17 (Final Service Minute log). Based on her reading of the Student's IEP, the Mother asserted that 1:1 behavior support minutes do count as part of the 25,000 lost service minutes, and she asked for "a plan to rectify this deficit." P16. The Mother's final calculation of missed service minutes is 25,203 minutes of IEP services. *Id.*

46. On June 22, 2020, the Parents received an IEP goal progress report from Lynee Vanfleet, a District Learning Specialist. P18; Mother T244. As of June 19, 2020, the Student was making sufficient progress to achieve three of her four annual IEP goals within the duration of her IEP. J9. The Student was demonstrating an "emerging skill" with respect to her fourth IEP goal but might not achieve the goal within the duration of her IEP. J9.

47. The Mother replied to Ms. Vanfleet's email on June 23, 2020, stating in part:

I have been notified that [the Student] does not qualify for ESY or compensatory services because (1) she did not miss any service minutes during the school building closure and (2) because sufficient progress was made on her IEP goals. Can you please share the data on service minutes provided/received between March 16, 2020 and June 19, 2020? Can you also share the data behind these IEP goal progress determinations?

P18.

48. After meeting with Ms. Finigan and Ms. Walters on June 22, 2020, the Mother sent an email to Ms. Walters on June 23, 2020. P19. The Mother thanked Ms. Walters for meeting

“yesterday” and explaining that the Student’s 1:1 behavior support service minutes do not count towards the total service minutes in the Student’s IEP, and that the Student does not qualify for extended school year (ESY) services or compensatory education. *Id.* The Mother went on to ask for the District’s data on services minutes and behavior, and IEP goal progress data. *Id.*

49. Ms. Walters responded to the Mother by email the next day. P20. With respect to the 1:1 behavior support staff, Ms. Walters responded that:

The 1,780 services minutes for the 1:1 Behavior Support Staff listed on the IEP Service Matrix does not count towards total service minutes, even though page 14 of the IEP states, “the 1:1 Support personnel is considered part of her service matrix.

P20p1. With respect to the Mother’s request for behavior and IEP goal progress data Ms. Walters responded:

That’s not typically information shared as the data is converted into progress and reported on the progress report. It sounds like you are wanting more than progress reporting. If you are making a records request, please do so through (our) Public Records Generalist.

Id.

50. The Parents received a PWN dated July 2, 2020, from Ms. Walters via an email on July 5, 2020. J7p3, P21. This PWN concerned the two meetings on June 10th and June 22nd between the Mother, Ms. Walters, and Ms. Finigan. J7p3. The PWN states the District was:

(P)roposing to provide Summer Support for [the Student]. Due to COVID 19 and the change in educational platform (from in person (sic) school to virtual) during the global pandemic, service minutes in social and behavior and goal implementation were impacted.

Id. The PWN noted that summer support was offered from June 29th to July 24th, but those dates were “adjusted” to July 6th to July 31st to accommodate the Student’s family vacation. *Id.* It went on to state that, “Parent and SBLSD agree that Summer support will provide any missed service time/goal implementation during COVID 19 from March to June 2020.” *Id.*

51. The PWN went on to deny the Mother’s request for over 25,000 service minutes based on her calculation. *Id.* The PWN stated, “The action will be initiated on 07/06/2020. *Id.*

52. The Mother asserts that because the action initiation date was July 6, 2020, and she only received the PWN on July 5, 2020, her right as a parent to participate in the Student’s education was limited. Mother T246. However, with respect to the dates for summer support, the Mother reported that, “Ms. Walters and I agreed to and confirmed the schedule for summer support services on June 24th, 2020.” T246.

53. With respect to the statement in the PWN concerning an agreement between the Mother or Parents and the District that summer support services would provide for any missed services, the late receipt of the PWN caused the Mother to review the PWN in haste. Mother T246. It was not until the Mother read the PWN again almost a month later that she provided her “belated disagreement” with that statement. *Id.*; P22. However, there is no evidence to find the Mother or the Parents suffered any loss or limitation of their parental rights or any cognizable injury by the late receipt of this PWN. The Parents have raised the issue of whether the Student should receive a compensatory education award for any lost services from March 16, 2020, to June 19, 2020, in this due process hearing.

54. A meeting was held on September 3, 2020.⁶ The Mother believes it was an IEP team meeting, and the Parents requested but never received a PWN for this meeting. Mother T248, T249, T250. Ms. Walters believes this was not an IEP team meeting, rather it was a “transition meeting” for the Student to meet her new teacher, Ms. Brown. Walters T941. Therefore, this meeting did not require issuance of a PWN. *Id.* Ms. Vanfleet, who sent the invitation, was unsure how to “title” this meeting. P30p1. The electronic invitation Ms. Vanfleet sent to the participants on August 26th was not sent on the form the District typically uses for an invitation to an IEP meeting. *Compare* P30p2 with J10p1. At the meeting, Ms. Krook reviewed IEP goal and behavior data she collected during the Student’s summer support. P30p1, D7pp1-8. There is no evidence to find the meeting resulted in any changes to the Student’s IEP or BIP. After careful consideration of the evidence, it is found more likely than not that the September 3, 2020, meeting was not an IEP meeting.

55. The Mother asserted that at this meeting, Ms. Brown requested the opportunity to practice with the Zoom features, the chat and breakout rooms, but Ms. Walters said no. Mother T702; P35p3. Ms. Brown was able to practice with Zoom before school started and does not recall Ms. Walters telling her she could not practice. Brown T899, T900. It is found more likely than not that Ms. Walters did not tell Ms. Brown she could not practice using Zoom features at this meeting.

2020-2021 School Year

56. The Student attended Melissa Brown’s first-grade general education classroom for this school year. Brown T890. The Student’s Learning Specialist was Lynn Vanfleet. Snider T214. The Student began the school year with remote-only Zoom instruction. J10p5; Snider T202. During remote learning, paraeducator support was provided via Zoom. Snider T204. The

⁶ There is conflicting evidence whether this meeting occurred on September 3rd or 4th. There is reference to a meeting on September 3rd at 7:45 a.m. on an electronic invitation sent to the Mother on August 26th. P30p2. But later, the Mother references “the IEP team meeting we had on the 4th.” P30p1. However, the Mother later identifies “the 09/03/2020 IEP Team Meeting.” P35p2. It is found as fact that the meeting took place on September 3, 2020.

Student's schedule was developed by Ms. Vanfleet and Ms. Brown. *Id.* T215. Ms. Walters was the special education director who oversaw special education at DEE.

57. The Mother never observed the Student at DEE during the 2020-2021 school year. Mother T979.

58. At the beginning of the school year, Ms. Krook provided the Student's paraeducators, teachers, and the Mother with the same training for using Zoom and remote learning that she had provided after schools closed in March 2020. Krook T314-315. This included PowerPoint presentations, discussions, and role playing. *Id.* She would frequently observe the paraeducators using the interventions in the Student's BIP. *Id.* T316. She conducted one retraining in the use of the BIP interventions for Sarah Theden, one of the Student's paraeducators. *Id.* T317. Ms. Krook also provided the Mother with strategies, visuals and supports to use in the home environment with the Student. *Id.* T322. Sometimes these strategies worked and sometimes they didn't. *Id.* T323.

59. During the beginning of the school year, the Student "struggled significantly with attention seeking in the distance learning environment." *Id.* T318. Ms. Krook believes that "In a distance learning environment, the Student elopes because of inconsistent rules and expectations and a lack of structure and predictability." *Id.* Ms. Krook defines elopement as "leaving the learning environment without permission." *Id.*

60. At the beginning of the school year, Ms. Krook was on the Zoom meetings with the Student almost every day because she was training the Student's 1:1 paraeducators. *Id.* T409. She would "model" the behavior interventions for the paraeducators. *Id.* T466.

61. When the Student was assigned to her classroom, Ms. Brown met with Ms. Krook and got the Student's BIP. Brown T890-891. Ms. Krook went over the Student's BIP with her "extensively." *Id.* T891. She considered Ms. Krook's training for the Student's BIP as "the most extensive training I have ever had with dealing with a student that had a BIP." *Id.*

62. Ms. Brown agrees that the Student struggled during remote instruction using Zoom. *Id.* T894. The Student struggled to stay engaged during Zoom classes. *Id.* T895. With respect to the Student eloping during Zoom classes, Ms. Brown opined that "we tried to do our best, but...we were more effective in person" implementing the Student's BIP. *Id.* T901-902.

63. Via email on September 15, 2020, the Mother informed Ms. Brown, Ms. Krook, and Ms. Vanfleet that the Student did not make it through that morning's Zoom. P23; Mother T252. The Mother reported that the Student "physically walked away from the Zoom several times and was crying on screen for a long time before she finally chose to electronically leave the zoom." *Id.* There was no 1:1 behavior support paraeducator assigned to support the Student, although Ms.

Krook was present. Mother T251. The Mother believes the Zoom chat feature was not enabled. *Id.* T252.

64. Via email on September 21, 2020, the Mother informed Ms. Vanfleet that the Student was unable to reach out to her or Ms. Brown during Zoom in a “private chat” when the Student needed them. P24. It did not appear that the private chat and breakout room Zoom features were working. *Id.* The Mother went on to say that “We are looking forward to starting to receive SDI, both synchronously and asynchronously, it looks like by Sept 28.”⁷ *Id.*

65. During a telephone call on September 21, 2020, Ms. Walters told the Mother that the Student’s 1:1 behavior support person quit before the first day of school, and that other paraeducators would fill in until a new person could be hired and trained. P35p3.

66. On September 23, 2020, the Student was unable to access her 1:1 paraeducator because the Zoom chat feature was not enabled. Mother T255.

67. Via email on September 25, 2020, Ms. Vanfleet informed Ms. Brown and the Mother that a temporary paraeducator, Jessica (Veyhle) Dykman would be joining the classroom Zooms that day in addition to Ms. Krook. P25. “The idea here is that we have a back up (sic) plan for times that we have an absence. This time frame for her to jump in is perfect while the District hires another person.” *Id.* Ms. Vanfleet noted that the Student had met Ms. Dykman the prior school year and apparently had fun together. *Id.* This was the beginning of Ms. Dykman’s training as the Student’s 1:1 paraeducator. Dykman T880.

68. On September 25, 2020, the Mother reported to Ms. Vanfleet, Ms. Brown, Ms. Krook, and Ms. Dykman that the Student had a “meltdown” during her morning Zoom, and she refused to engage in Zoom. P26. Both Ms. Krook and Ms. Dykman were on the Zoom with the Student. *Id.*

69. On September 30, 2020, the Mother reported to Ms. Vanfleet, Ms. Brown, Ms. Krook, and Ms. Dykman that she was trying to keep the Student in Zoom class, but the Student did not want to stay, and the chat feature was turned off. P28.

70. On September 30, 2020, the Mother reported to Ms. Vanfleet that the Student could see Ms. Dykman in her music class Zoom but could not send Ms. Dykman a message. P29.

71. On September 30, 2020, the Mother reported to Ms. Krook, Ms. Brown, and Ms. Vanfleet that the Student, “got absolutely nothing out of her two zooms with Ms. Brown today...I guess I am at a loss of what to do. I cannot sit next to her listen in on all of her zooms.” P28.

⁷ “Synchronous” learning involves live instructors via Zoom classes or meetings. Snider T201. “Asynchronous” learning is learning that is done at a student’s own pace without a live instructor. *Id.*

72. Via email on October 2, 2020, to Ms. Brown, Principal Snider, Ms. Vanfleet, Ms. Walters, and Ms. Krook, the Mother requested that the Student receive all her services and accommodations “in-person in the school building five days a week, starting as soon as possible.”

P32. The Mother went on to state “[The Student] is struggling with her significant and complex needs and is not able to access instruction and services through distance learning.” *Id.*

73. On October 6, 2020, the Mother reported to Ms. Krook, Ms. Brown, and Ms. Vanfleet that the Student left her general education Zoom halfway through the class that morning. P33. The Mother went on to report that, “Now, not only is she refusing to do the daily asynchronous work, she is also refusing to attend zoom class.” *Id.*

74. On October 7, 2020, the Mother reported to Ms. Vanfleet that the Student was struggling in her general education Zoom class that day and had tried to reach out to her 1:1 paraeducator using the private chat but was unable to reach the 1:1 paraeducator. P34.

75. Via email on October 12, 2020, the Mother provided the Parents’ written input for an IEP team meeting set for October 15, 2020. P35. Although the Parents’ input identified the date for the IEP meeting as October 13, 2020 (See P35p2), a preponderance of the evidence supports finding the IEP meeting was held on October 15, 2020. See J8pp1, 2, 3, D13p10, D6p1 (Meeting notes by Ms. Vanfleet. Walters T939).

76. On October 13, 2020, the Mother reported to Ms. Vanfleet, Ms. Brown, and Ms. Dykman that the Student left her general education Zoom class 30 minutes early. P36. According to the Mother, the Student “said she was told she could. I just wanted to confirm that this is indeed what happened. Did she have permission to leave her teacher’s Zoom so early?” *Id.*

77. Ms. Krook replied minutes later, telling the Mother that the Student left the Zoom class without permission. P36.

78. On October 14, 2020, the Mother reported to Ms. Krook, Ms. Dykman, Ms. Brown, and Ms. Vanfleet that the Student “eloped with 20 minutes left to the general education class zoom.” P37.

79. On October 15, 2020, the Mother reported to Ms. Krook, Ms. Dykman, Ms. Brown, and Ms. Vanfleet that the Student eloped from her general education Zoom class. P38. The Mother stated, “Let me know if she had permission; otherwise, I am trying to get her to rejoin the zoom.” *Id.*

80. Later on October 15, 2020, the Mother reported to Ms. Dykman, Ms. Krook, Ms. Brown, Ms. Vanfleet, Ms. Snider, and Ms. Walters that:

This was the worst one yet. [The Student] was accessing her 1:1 Behavior Support in a private chat and then was told to not use the chat. The chat was then turned off. This was approximately 10 minutes into the 45-min zoom. [The Student] had a complete breakdown and was inconsolable for at least half an hour. She said she wants to go back to school and be with her friends. She says she hates zoom.

P39. The Mother identified Ms. Brown as the individual who told the Student not to use the Zoom chat feature, cutting off the Student from her 1:1 paraeducator. Mother T700. How the Mother knew it was Ms. Brown is not clear from the evidence.

81. An IEP team meeting was held via Zoom video conference on October 15, 2020. J8p3. The Mother attended the meeting. *Id.* The meeting was held in response to the Parents' request for in-person services during the District's "Stage 2 of a Global Pandemic." *Id.*; P32. Ms. Vanfleet took notes at the meeting. D6pp1-3; Walters T939.

82. "The team discussed bringing [the Student] back to school 4 days a week for 2.5 hours each day, Tuesday through Friday. She will work with a 1:1 Para Educator/educational staff member at Donald Eismann Elementary." J8p3. "The team proposed providing in person (sic) teaching for [the Student] due to the COVID 19 Global Pandemic and the impact of distance learning during this time." *Id.* "The team rejected 100% distance learning during Stage 2 based on parent request and in-person support with a para." *Id.* The team's plan was to have the Student come in-person to DEE from 8:00 a.m. to 10:30 a.m., Tuesday through Friday. D13p10.

83. The team also reviewed the Parents' written input for the IEP team. *Id.*, P35; Snider T94-95, Walters T940. "We always discuss, line by line, that input from [the Mother]. Walters T940.

84. As of this IEP meeting, no elementary school students were attending school in-person at the District. *Id.* T938. Elementary school students did not return to in-person instruction until sometime in January 2021. *Id.*

85. On October 16, 2020, the Mother sent a photo of the Student's laptop screen to Ms. Dykman, Ms. Krook, and Ms. Vanfleet. P40. The Mother believed the photo showed the Zoom chat feature already disabled. *Id.* However, Ms. Dykman confirmed that the photo reflects that the Zoom meeting had not yet started; the picture is the Zoom "welcome screen," which appears while waiting for everyone to sign in. Dykman T868, T882.

86. On October 22, 2020, the Student met her new 1:1 paraeducator, Sarah Theden. P65p11; Mother T702.

87. On October 23, 2020, the Mother reported to Ms. Krook, Ms. Brown, and Ms. Vanfleet that the Student left her general education Zoom class 15 minutes early. P42. The Mother also reported that she caught the Student playing games halfway through the Zoom and didn't know how long she was playing games instead of paying attention to the Zoom class. *Id.*

88. On October 23, 2020, the Mother received a PWN for the October 15, 2020, IEP team meeting. J8p3. Mother T992. This was the “first version” of the PWN. *Id.* Believing the PWN was “incomplete,” the Mother contacted the District. *Id.* Apparently, this first version of the PWN did not include an action-initiation date. *Id.* However, the Mother was already aware of when the Student would start her four days per week of in-person instruction at DEE. *Id.*

89. The District would later send the Mother a “Corrected/Updated” version of the PWN for the October 15, 2020, IEP meeting. See J8p3 (“Corrected/Updated PWN Date: 11/25/20). The District added language (See asterisks, J8p3), and added an action-initiation date of 11/3/20. *Id.*; Walters T931.

90. On October 26, 2020, the Mother reported to the District that the Student left her general education Zoom that morning only halfway through and “likely without permission.” P43.

91. On October 28, 2020, the Mother reported to the District that the Student left her general education Zoom class 30 minutes early. P44.

92. On October 29, 2020, the Mother reported to the District that the Student left her general education Zoom class 30 minutes early. P45. In part, the Mother reported that this “marks the 11th elopement this school year and I have documented each one.” *Id.* The Mother also stated that “tomorrow’s meeting cannot come soon enough.” *Id.*

93. Later on October 29, 2020, the Mother reported to the District that the Student left another Zoom 30 minutes early. P46.

94. Although the details are not well developed in the record, the Mother attended a “scheduling meeting” on October 30, 2020. Mother T708-709, T992-993. At that meeting, she was told she could not bring the Student to DEE for in-person learning until 8:15 a.m. and had to pick her up by 10:30 a.m. *Id.* T709. This meant that the Student would only receive 9 hours per week of in-person learning at DEE, not the 10 hours per week as stated in the PWN. *Id.*; J8p3. The Mother did not identify who told her that she could not bring the Student to DEE before 8:15 a.m. The District offered to let the Student stay until 10:45 a.m. to make up the 15-minute difference, but the Parent declined because that would conflict with the Student’s 10:45 a.m. Zoom class at home. *Id.*

95. On October 30, 2020, the Mother reported to the District that the Student left her general education Zoom class 30 minutes early. P47. The Mother reported that she learned the Student left her Zoom class without permission. *Id.*

96. Later on October 30, 2020, the Mother reported to the District that the Student left another Zoom class 30 minutes early, and she could not get the Student to rejoin. P48.

The Student Returns to DEE for In-Person Learning

97. On Tuesday, November 3, 2020, the Student began her schedule of four days per week of in-person learning at DEE. J10p5, D13p11; Mother T708. The Student continued with remote learning via Zoom on Mondays. The Student was returned to in-person learning because “she was not successful in the Zoom environment.” Krook T489.

98. The Student returned to in-person learning at DEE without any other students present in the school. *Id.* T488-489.

99. On Monday, November 9, 2020, the Mother reported to Ms. Vanfleet that the Student left her Zoom class 10 minutes early without permission. P51.

100. On November 17, 2020, the Mother reported to the District that she understood the Student lost privileges to use her computer at school the prior Tuesday, and changes were made to the Student’s “account.” P52. These changes resulted in the Student being unable to access videos and websites she needed to complete some of her assignments. *Id.*

101. On November 20, 2020, the Mother reported to Ms. Vanfleet that the Student did not have access to her 1:1 paraeducator until the very end of her general education Zoom class. P53. The Student was told there was no time to make her 1:1 paraeducator, Ms. Theden, a “co-host” so the Student could access her. *Id.* The Student then left Zoom class. *Id.* The Mother was unable to calm down the Student, so she missed her next Zoom class as well. *Id.*

102. On November 24, 2020, Ms. Walters emailed the Mother a copy of the “Corrected/Updated” version of the PWN for the October 15, 2020, IEP meeting. P54; See J8p3 (“Corrected/Updated PWN Date: 11/25/20”).

103. On December 2, 2020, Ms. Krook produced a “Data Summary and Comparison” regarding the Student’s behavior and her BIP. Krook T418; D7pp9-14. This data was captured through observations from September 29 to December 2, 2020. The data “reestablished” non-compliance, disruptive classroom behavior, and elopement as target behaviors for the Student. *Id.* p13. It concluded that although the Student “demonstrated unsafe behaviors during the observation period, a pattern of unsafe behavior was not established.” *Id.* It concluded that there was a “notable spike in demonstrated behavior on 11/3/20” when the Student returned to DEE for four days per week of in-person instruction. *Id.* It concluded that her “engagement increased when adults were not in close proximity to the (S)tudent.” *Id.* It concluded that the Student:

(W)as least likely to demonstrate the target behaviors in environments where the expectations were clear and stated consistently using scripted language, the schedule/routine was consistent, there was a high degree of positive reinforcement, and adults maintained physical separation from the (S)tudent while the (S)tudent was working.

Id. Ms. Krook shared her Data Summary with the Mother and the Student's school team during a meeting. Krook T418.

104. Based on her Data Summary, Ms. Krook determined that "adult proximity was increasing [the Student's] disruptive behavior." *Id.* T421. This led to new training for staff working with the Student. *Id.* Ms. Krook also concluded that her Data Summary supported her opinion that the Student's disruptive behaviors were improving. *Id.* T423.

105. On Monday, December 7, 2020, the Mother reported to Ms. Vanfleet that the Student left her Zoom class early and she was not able to get the Student to rejoin. P55. The Mother reported that the Student continues to have "difficulty staying in and paying attention to...general education Zoom." *Id.* The Mother reported that, per the Student's report to her, the Student:

(W)as so bored that she asked Jessica Dykman if she could leave...her class Zoom and the response was yes because (Ms. Dykman) didn't want to fight with her about it. I doubt the last part was said by an adult to [the Student] and I questioned whether the yes was for leaving or if (Ms. Dykman) thought [the Student] was asking for a break.

I suggest/request [the Student] receive in-person services at school on Mondays in addition to the Tuesday-Friday schedule.

Id.

106. The Mother and Ms. Krook had a conversation after school on December 8, 2020. Krook T337; P56. Ms. Krook told the Mother about the Student's "fairly significant behavior at the school with the teacher" that day. Krook T432. At least part of this behavior was the Student running into the school library and falling off a table. *Id.* T484. Ms. Krook was afraid the Student would hurt herself. *Id.* T433. The Mother reminded Ms. Krook of her concern that 60-minute Zoom meetings were too long for the Student. *Id.* Ms. Krook told the Mother that "until I could get [the Student's] unsafe behavior under control...I might have to take [the Student] out of that (60-minute) Zoom and teach her those skills one-to-one until we could get the unsafe behavior back under control." *Id.*

107. After discussing this with the Mother, Ms. Krook removed the Student from the Zoom class the next day. Ms. Krook considered this removal to be a "temporary intervention to work on reinforcing [the Student's] BIP." P72p4. Ms. Krook anticipated that she would begin reintroducing the Student to Zoom the next week unless the Student's schedule changed. Krook *Id.* The Mother never raised any concern with her about the Student not participating in the Zoom meeting. Krook T434. While the Student was not in the Zoom meeting, she was doing the same work with her paraeducators or with Ms. Krook. *Id.* T434-435.

108. Later the same day, the Mother sent Ms. Krook an email. P56. In her email, the Mother stated in part that:

[The Student] has not presented this type of unsafe behavior at home since this summer when we tried several different medications and especially not since October when a child psychiatrist advised us that her vitamin D level was below that associated with neurologic conditions such as Alzheimer's and Parkinson's. Since we have provided that supplement, her aggressive behaviors have disappeared...Even when something has really upset her at home, she has kept it together enough to keep herself and others safe...So I am bewildered that she has taken such a huge step backwards...It is also disturbing that you said this is the third time she had exhibited unsafe behavior. I did not realize she was hitting people and throwing things before today's incident.

Id.

109. An IEP team meeting for the Student was held on December 14, 2020. J10. The meeting was held via Zoom conference, and the Mother attended. *Id.* p16. Ms. Walters also attended and took notes during the meeting. Walters T943; D6pp4-5. Her notes are an accurate summary of what was discussed at the team meeting. Walters T943.

110. The team developed a new IEP with updated goals for the Student, increased the Student's SDI for the social and behavioral domains from 200 to 480 minutes per week, and determined the Student required ESY services. J10pp13, 16.

111. However, the team rejected the Mother's request to return the Student to "full time in person learning" at DEE. *Id.* The team decided it would meet again in February to determine if additional in-person learning would be added based on "individual data." *Id.*

112. The IEP team also planned on reviewing the Student's BIP but did not have sufficient time at the meeting. D6p4. The team agreed to meet again on January 7, 2021, to finish its review. J10p16.

113. On December 16, 2020, the Mother reported to the District that the Student left her Zoom class after 10 minutes. P58. The Mother reported that the Student was placed in the "waiting room" by herself twice without warning from either of her 1:1 paraeducators because she was not cooperating. *Id.* The Mother went on to report that the Student's paraeducators told the Student they "couldn't sit there without her doing any work and they had other meetings to go to."

114. Ms. Krook was aware that "the Student frequently said that she could not chat with adults in the chat room when she could, but I do know that she shared with (the Mother) frequently that she could not." Krook T327. However, Ms. Krook acknowledged that placing the Student in the

breakout or waiting room “was inappropriate and (the S’s paraeducators) were retrained the next day.”⁸ *Id.*

115. On December 17, 2020, the Mother emailed her notes from the Student’s December 14, 2020, IEP meeting to the IEP team.⁹ D14pp16, pp18-31.

116. In January 2021, Leslie Christin, a District Learning Specialist, was assigned as the Student’s special education teacher and case manager, replacing Ms. Vanfleet. Christin T813.

117. Ms. Christin was responsible for developing new annual IEP goals for the Student as her assigned Learning Specialist. When preparing new goals, Ms. Christin reviews prior evaluations, areas of SDI, current IEP goals, progress notes, any data, conducts her own observations, and talks to classroom teachers and anyone else providing services to a student. Christin T562-563.

118. Recommendations for SDI come from a student’s last evaluation; PLOPS are where the student is at the present time. *Id.* T567.

119. On January 4, 2021, the Mother reported that the Student left her general education Zoom class 15 minutes early. P59. The Mother considered the Student’s 90 minutes of Zoom classes on Mondays to be “torture for [the Student].” *Id.* The Mother went on to state that, “I understand [the Student] has skipped her daily hour-long general education zoom while at in-person services at school on Tuesdays through Fridays for the two weeks before winter break...What is the plan here?”

120. On January 7, 2021, the Mother reported to the District that the Student was not well-rested and was very verbally “combative” that morning. P60.

121. On January 7, 2021, Ms. Krook reported to the Mother that, “[The Student] eloped before we could get her to class this morning (in the hallway outside the office). We were able to deescalate her for a few moments ago, but she remains highly escalated.” P60.

122. The Student’s IEP team convened a Zoom meeting on January 7, 2021, to finish the review of the Student’s IEP and BIP they started at the December 14, 2020, meeting. J10p16. The Mother, Ms. Walters, and the Student’s new Learning Specialist, Ms. Christin, all attended.

⁸ The Zoom “waiting room” is the virtual room where all students gather before being admitted into the Zoom class or meeting. Krook T469. The Zoom “breakout room” is a virtual room where teachers can place students to do breakout lessons. *Id.*

⁹ The Mother added her IEP meeting notes in blue font to the Parents Input document (See D14p16, pp18-31). However, the copy of the Parents Input document is in all black font. It appears the Mother’s notes from the IEP meeting appear as bold-black font in the Parents Input document. See e.g. D14p18.

Id., Christin T813, Walters T942. Ms. Walters took notes at the meeting. D6pp5-6. Her notes are an accurate summary of the meeting. Walters T943. The team also updated the Student's BIP. J11.

123. Ms. Krook developed the updated BIP. Krook 424. The data to support this BIP is reflected in Ms. Krook's December 2, 2020 Data Summary and Comparison. Krook T424; D7pp9-14.

124. Based upon her review of data on the Student's behavior across the 2019-2020 school year and the 2020-2021 school year to date, Ms. Krook opined that the occurrence of the Student's target behaviors in her BIPs had decreased. Krook T428.

125. Ms. Krook provided staff training in the Student's updated BIP right after the meeting. *Id.* T430.

126. Although it is not clearly stated in the IEP, the team determined the Student, who up to this point had been attending in-person learning at DEE part-time on Tuesdays through Fridays since November 3, 2020, would begin attending DEE in person two days a week. See D6p6 ("Start with the two days A or B"), and J10p16 ("Students have returned to hybrid learning on 1/19/2021 and [the Student] is attending").

127. On January 8, 2021, Ms. Krook reported to the Mother that:

[The Student] eloped from the classroom today at about 9:00am. She entered into a different classroom and interrupted a classroom Zoom, and then went to an empty classroom where she removed items. She then left the building to the playground and refused to return. Mr. Mcdaniel (sic) was able to get her to return...She continues to be escalated and self-directed.

P61. The same day, the Mother reported to the District that:

[The Student] informed me that she was kicked out of her...Zoom 20 minutes early...Since the School District will not allow me to talk to [the Student's] 1:1 para educator...I don't have first hand (sic) knowledge of what happened...I know you say this does not happen, but it sounds like it did again. It also sounds like Classroom Exclusion...again. Is there a copy of suspension paperwork for me to pick up?

P62.

128. On January 11, 2021, the Mother reported to the District that:

I didn't realize until [the Student] told me that Melissa Brown was the only adult and Sarah Theden, nor anyone else, was present and filling the role of [the Student's] Special

Education Related Service of 1:1 para educator. This likely contributed to [the Student] eloping from her General Education Zoom 10 minutes early.

P63. Later the same day via email, the Mother sent a copy of her notes from the January 7, 2021, IEP meeting to the District. P64, P65.

129. In the email that accompanied her meeting notes, the Mother stated that the Parents disagreed with the team's decision that the Student would only attend DEE in person two days per week. P64p1. It went on to state that, "The Parents were informed at pick up on Friday, January 8, 2021 that the Student does not trust her 1:1 paraeducator and runs away/elopes when left alone in the room with her." *Id.* The Mother did not identify who told this to the Parents.

130. On January 12, 2021, the Parents received an email from the District. P66. The email informed the Parents that the Student was assigned to "Hybrid In-Person Learning Group B" at DEE. *Id.* p1. The return to hybrid in-person learning at DEE for students assigned to Group B would begin on January 20, 2021. *Id.* Group B students, including the Student, would attend DEE in person on Wednesdays and Fridays, from 9:00 a.m. to 3:30 p.m. *Id.*, D13p1. The other three days Group B students would be at home, learning remotely.

131. With the start of hybrid in-person learning, all the students attending DEE returned for at least some in-person learning. Krook T490.

132. Ms. Christin, the Student's new Learning Specialist, created a visual schedule for the Student's first week of hybrid in-person learning. D8p9.¹⁰
The Student begins Hybrid In-Person Learning at DEE

133. The Student began hybrid in-person learning at DEE on January 20, 2021. P66, Mother T709. She attended Ms. Brown's general education classroom in person two days a week. Brown T907.

134. Ms. Brown recalls the start of hybrid in-person learning for the Student as "being very rocky...[the Student] was eloping...within the first five minutes of school, but once we got things settled...she was engaged, she was participating." Brown T907. "When she eloped, she had a team of people supporting her." *Id.* T896. But Ms. Brown opined that when the Student eloped she lost "a lot" instructionally. *Id.* T897. Ms. Brown does not ever recall the Student being in school without a 1:1 paraeducator present. *Id.* T908. Academically, the Student is "high in all areas, but reading was definitely...her highest academic area." *Id.* T910. Ms. Brown opined that

¹⁰ Ms. Christin believes this schedule was a weekly schedule for February 2021 but was unsure. Christin T839. However, this cannot be correct as there is no "Monday 18" in February 2021. It is found that this schedule more likely than not is the Student's schedule for her first week of hybrid in-person learning beginning Monday, January 18, 2021.

for the Student, "it is all about relationship. She feels if you care about her, she is going to perform." *Id.* T911.

135. In an email to the District on January 21, 2021, the Mother reported that:

At pick up, (Ms. Dykman) told me to expect an email about [the Student's] day yesterday, so I am following up. If you sent it, then I never received it in my inbox or junk/spam folder. I asked [the Student] about her elopement and she said she was hungry and wanted to know when lunch was going to be ready...Overall [the Student] had a fabulous day yesterday and is looking forward to tomorrow.

P68. Ms. Krook replied to the Mother the next day, stating:

[The Student] eloped from her classroom for approximately 20 minutes in response to a direction from her teacher to follow directions. She didn't communicate to us that she was hungry, only that she wanted to go to recess (she is adjusting to a new schedule).

Id. Then later the same day Ms. Krook reported to the Mother that:

I wanted to let you know that [the Student] had a brief elopement this afternoon right before lunch. She ran from her 1:1 and attempted to enter her sister's classroom (she said she just wanted to say hi). The 1:1 prevented her from entering into the classroom completely, and was able to deescalate her.

P69. Then again later the same day Ms. Krook reported to the Mother that:

"[The Student] eloped from SEL today and hid from her 1:1. She eventually went to her classroom and asked for a break when she saw me. She did not have her shoes on so she was directed to return and get her shoes. She did not tell anyone where she was going. She did not take a break and eloped again. She is now back in her SEL class. Just keeping you in the loop as requested.

P70.

136. On January 25, 2021, the District sent the Parents a PWN for the two IEP/BIP meetings held on December 14, 2020, and January 7, 2021. P71, J10pp16-17. The PWN was dated January 24, 2021 and had an action-initiation date of December 17, 2020. *Id.* p17.

137. After the two IEP/BIP meetings, the Parents sent the District written questions/feedback about the BIP. P72. Ms. Krook responded to the Parents' questions/feedback, and her written response was sent to the Parents on January 25, 2021. P71 (Response to Parent Questions), P72. The Parents' questions appear in black font, and Ms. Krook's responses appear in blue font. P72. Then Ms. Krook held a follow-up meeting to discuss the questions and responses. Krook T431.

138. On January 27, 2021, the Student was isolated for 25 minutes at DEE. J12. The isolation occurred after the Student eloped into a number of classrooms, climbed up on a counter, hung off of cabinets she was opening and closing, stole items from drawers, got into the staff's personal items, and took off her mask. Krook. T364. The Student was "highly escalated." *Id.* Ms. Krook believed the Student's actions were "presenting a likelihood of imminent harm to herself." *Id.* Ms. Krook administered the isolation. J12p2. Ms. Krook is Right-Response trained and is a Right Response trainer herself. Krook T299. Ms. Krook prepared the Physical Restraint/Isolation Incident Report form. *Id.* T363, T454.

139. The Mother was notified of the isolation by Ms. Krook and Principal Snider at 2:29 p.m. the same day via a telephone call. J12p2; Mother T752, T987. However, the Mother and the Student never had a meeting with Principal Snider to discuss the isolation. Mother T752. The Mother was not present at DEE during the isolation. *Id.* T986.

140. Although Ms. Dykman was present during the isolation, she had no independent recollection of the event. Dykman T875, T876.

141. On January 29, 2021, the Student eloped from DEE two times. See P90pp1-2. On the first occasion, Principal Snider followed behind the Student as she left the DEE campus, all while keeping the Student in her line of sight. Snider T102, T207, T208. The proximity of DEE to the Student's home is "pretty short." *Id.* T102. Once at the Student's home, Principal Snider spoke with the Mother, after which the Student returned to DEE with Principal Snider. *Id.* T102. The Student eloped from DEE again shortly after that. *Id.* Again, Principal Snider followed the Student, eventually meeting the Mother near a "skate park." *Id.* The Mother decided to keep the Student home for the remainder of the day. *Id.* Principle Snider does not recall the Student eloping from the DEE campus after that. *Id.* T103. This ALJ does not find the Mother's version of the events on January 29, 2021, to be as plausible or as logically persuasive as Principal Snider's version of the same events. See P90p1 (No options were presented...other than [the Student] coming home for the rest of the day).

142. Via email on January 29, 2021, Ms. Christin sent the Mother the Student's Zoom schedule for the following week. P73.

143. An IEP team meeting for the Student was held on February 1, 2021, via Zoom conference. J13. The Mother attended. *Id.* Ms. Brown, the Student's general education teacher did not attend, and no other general education teacher of the Student attended. *Id.*

144. The Mother had no advance notice prior to the meeting that Ms. Brown would not be attending. Mother T757, Christin T597-598. Although the Mother was given the option of rescheduling the meeting so Ms. Brown could attend, the Mother felt she had to go forward given the Student was struggling with Zoom learning, and the meeting was being held to discuss her

request that the Student be returned to in-person learning on non-in-person days. WaltersT937, Mother T757-758, T995-996. The Mother did not provide her permission to excuse Ms. Brown in writing. Mother T758.

145. The IEP team noted that, “The observation and data indicates that the previous behavior of eloping is re-emerging. The change to hybrid learning and adjusting to her new schedule in the general education classroom maybe (sic) causing this behavior.” J13p3.

146. Although the IEP team rejected adding more in-person learning at that time, it agreed to meet again on February 24,2021, to consider adding more in-person time. *Id.*

147. The PWN dated February 1, 2021, did not include an action-initiation date. *Id.* The PWN did not include an action-initiation date because no action was taken at the meeting. Christin T818. The Mother opined that because the PWN had no action-initiation date, the District had “no accountability.” Mother T1001.

148. A PWN that has no action initiation date “may or may not affect the parent’s participation” in the student’s education. Hemmerling T736.

149. On February 3, 2021, Ms. Krook reported to the Mother that the Student “had a brief elopement on the way to break (she entered into a classroom with other students, but her mask was on)...Overall her day is much better than previous days and I expect her to continue to improve.” P75.

150. On February 5,2021, the Mother reported to the District that:

I just learned of [the Student’s] multiple elopements today, interrupting other class (sic) in Music and P.E. She did not tell us until after we had rewarded her ‘good choices’ that we assumed she made today because no one told us otherwise, with access to her tablet...This is a failure of communication and consistency.

P76. The Mother learned of these elopements when the Student self-reported her elopements. Mother T761.

151. On February 8, 2021, Ms. Krook reported to the Mother that “[The Student] left the Zoom at 9:18 am (she remained logged in).” P77.

152. The Mother responded less than an hour later, stating: “[The Student] was typing the whole time...I was otherwise occupied and not able to fill in as her 1:1 behavior support para educator...She said she was given permission to leave the Zoom, but I was unable to double check that. P77.

153. Ms. Krook replied minutes later, stating “Thank you for letting me know about the tech issues (or lack of tech issues). Know that we will not give [the Student] permission to leave class.” P77.

154. On February 10, 2021, Ms. Krook reported to the Mother that:

[The Student] had a difficult day today. Early in the day, she struggled with staying in class and eloped. We were able to get her back on track, but not long after she eloped again. She continued to elope on and off throughout the day...She entered classrooms, disrupted the PE and music classes, and eloped from the building in the afternoon. During the time she was outside, she refused to put on her mask and demonstrated unsafe hands and feet (directed at staff).

P78

155. On February 11, 2021, the Mother reported to the District that:

I’m a little confused. At our last IEP Team Meeting, you told me that ALL asynchronous work will be done at school because of how much she struggles. I documented this agreement in my IEP Team Meeting notes that I shared with you all, and no one corrected my understating of this agreement. I asked for this agreement, among many others, to be added to the PWN and Audra rejected my request, yet she still did not object to my understanding of the team agreement.

P80 (emphasis in original).

156. Ms. Walters had a conversation with the Mother about her “(A)ssumption that if...an email or input was not corrected...to not assume that it is correct, and we always offered another meeting to discuss...And I did follow up more than once with...please do not assume that everything is correct because you don’t get an objection via e-mail.” Walters T950.

157. On February 12, 2021, the Student was isolated for 65 minutes and physically restrained for three minutes during the period of isolation at DEE. J14p1. The Mother was not present at DEE for either of these events. Mother T987. She was notified of the events in a telephone call with Principal Snider the same day. *Id.* T765, T987-988. She received a copy of the Physical Restraint/Isolation Incident Report within a day or two of the events. *Id.* T987. The Mother and the Student never had a meeting with Principal Snider to discuss the events. *Id.* T765.

158. Both Principal Snider and Ms. Dykman were present and observed the events, but neither have any independent recollection of the events. Snider T116, Dykman T877.

159. Ms. Krook administered the isolation and restraint. J14p2; Krook T367. The Student was “highly escalated,” knocking down chairs, climbing on tables and countertops, throwing items at staff - including computers, locking herself in the staff room, and hitting and kicking staff. Krook

T366, T367. The Student was hitting, running, kicking, and pushing. J14p1. Ms. Krook did not place her hands on the Student until she was hitting Ms. Krook in the face with a wooden whiteboard, breaking her glasses. Krook T367. The Student remained highly escalated throughout the isolation, both before and after the restraint. *Id.* T369-370. Ms. Krook attempted to use a “chair hold,” but the Student slipped out. *Id.* T371. Then Ms. Krook used a “very brief...one arm hold.” *Id.* The Student was not injured. *Id.* T374.

160. On February 18, 2021, Ms. Krook reported to the Mother that, “[The Student] left her Zoom without permission at 9:41 am...Even still, the Zoom’s (sic) continue to improve.” P82. Minutes later, Ms. Krook reported to the Mother that “[The Student] returned to the Zoom briefly but eloped again when Zoom expectations were restated.” P82.

161. On February 23, 2021, Ms. Krook reported to the Mother that, “I just wanted to update you on [the Student’s] zoom today. She continues to improve...Sarah reminded her she could ask for a break in zoom and she took a 7-minute break...This is wonderful progress!” P83.

162. The Student’s IEP team convened an IEP meeting via Zoom video conference on February 24, 2021. J15p2. This meeting was a follow-up meeting to the February 1, 2021, IEP meeting. Christin T819. The Mother and Ms. Brown attended the meeting. J15p2.

163. The team discussed the Mother’s request to increase the amount of in-person learning for the Student. The Student was still attending DEE in person only on Wednesdays and Fridays. *Id.* The team reviewed goal-progress and observational “data.” Christin T817. The team considered that the Student’s “eloping continues, however, the duration of each elopement is decreasing.” J15p2.

164. The team “rejected coming in on non in person (sic) days...because it would be another schedule change and adjustment before she is solid with her current schedule.” *Id.* However, the team determined that it would meet again on March 15, 2021, to review additional data. *Id.* In the interim, the team agreed to change the Student’s schedule for Zoom learning. *Id.*

165. On February 25, 2021, the Mother reported to the District that:

[The Student] does not pay attention to any of you while on Zoom. [The Student] takes advantage of the fact that she can do whatever she wants and no one can control her because you aren’t physically together...The Zoom situation is NOT working...Please help!

P84 (Emphasis in original).

166. As of March 2021, the Student was making sufficient progress on all her annual IEP goals to achieve those goals within the duration of her IEP. D3. Ms. Christin prepared the IEP progress report based upon the paraeducators’ data sheets and observations by herself and Ms. Krook.

Christin T833. This progress report was shared with the Parents. *Id.* Ms. Christin reported the Student's progress on her IEP goals to the Parents each trimester. *Id.*

167. On March 1, 2021, the Mother reported to the District that:

[The Student] did not participate in today's SDI Zoom...I just wanted to be clear that she eloped...Though when Sarah said it was time to go, [the Student] did go back and turn on the camera and unmuted herself. Sarah spent an extra 10 minutes deescalating [the Student]. It was amazing...I want to thank Sarah for sticking it out while [the Student] went dark and then spending the extra time with her afterwards.

P85.

168. Via email on March 3, 2021, Ms. Christin sent the Mother the Student's Zoom schedule that was changed pursuant to the team's determination at the February 24, 2021, IEP meeting. P86; Krook T357.

169. Via email on March 3, 2021, Ms. Christin sent the Parents a copy of the PWN from the February 24, 2021, IEP meeting. P88, J15p2. This PWN was dated March 3, 2021, and included an action-initiation date of March 4, 2021. J15p2.

170. In an email to the District on March 3, 2021, the Mother stated, "I am so glad to hear about [the Student's] first day at school since January 20th in which she did not leave class without permission! This is fantastic!!!! We are celebrating and I hope you are too." P87.

171. From whom and/or how the Mother came to "hear" what she reported to the District cannot be determined from the evidence. Careful review of the evidence does not support the Mother's statement that March 3, 2021, was the first day since January 20, 2021, that the Student did not leave class without permission. There are multiple days during that period when there is no evidence to find the Student left a class without permission.

172. Ms. Krook replied to the Mothers' email later the same day. P87. Referencing March 3, 2021, Ms. Krook stated in part that:

While I was at the building from 9-11:45, [the Student] eloped from her para on the way to recess and entered a classroom where I was without Sarah's permission. A little while later while in the gym for pictures she refused to return to class with her class...It was a very good day! But I thought I would ensure you had all of the information.

Id.

173. On March 7, 2021, the Mother sent an email to the District. P88. This was in response to receiving the PWN for the February 24, 2021, IEP meeting. J15p2. The Mother requested multiple “edits” to that PWN. P88.

174. Via email to the Mother on March 9, 2021, Ms. Krook informed the Mother that the Student said the camera on her computer was not functioning properly. P89. Ms. Krook asked the Mother if she could let them know if the camera was working properly. *Id.*

175. The Mother replied via email to Ms. Krook the same day, stating:

When I have been able to be in the same room as her, more often than not, there is no technology problem and she pretends that it does not work because she does not want to be on camera or watched. It's the same when she pretends she cannot hear you. She turns down the volume all the way to try to fool me into believing it too.

P89.

176. The Student’s IEP team convened an IEP meeting via Zoom video conference on March 15, 2021. J16p3. The team proposed adding in-person learning on Mondays at DEE for the Student. *Id.* p17. This decision was made:

(B)ecause the current data indicates [the Student] is ready to transition to more in person (sic) learning. While the number of elopements have (sic) not decreased, the intensity and duration have decreased. This data indicates that [the Student] is adjusting to the hybrid schedule and is ready to transition to another change of schedule. The team determined that Mondays will be the day she will attend due to current elopements into other classrooms/cohorts. On Mondays there are no other student (sic) in the building.

Id.

177. Ms. Christin wrote this IEP amending the Student’s December 2020 IEP. Christin T819. Ms. Christin and the Mother attended this IEP meeting. *Id.* T820-821; J16p17. At the meeting, the team “talked about...[the Mother’s] note template, and we went through every bullet point that you had said in your note template, and we discussed each and every one of them.” Christin T577. The team also discussed the Student’s PLOPs. *Id.* T819.

178. With this IEP amendment, the Student’s schedule for learning became: Mondays, In-person with no other students at DEE; Tuesdays, Asynchronous and Zoom; Wednesdays, In-person all day; Thursdays, Asynchronous and Zoom; Fridays, In-person all day. *Id.* T822.

179. In an email on March 22, 2021, to the District, the Mother stated:

Good news! I learned that other Donald Eismann Elementary School students receive in-person services before and after school. I have asked about this option in the past and

have been told it does not exist. Now that it does, can we replace the last two 30-minute Zooms for SDI that...[the Student] still struggles through with before or after school in-person services?

P93.

180. The Student began in-person learning at DEE on Monday, March 22, 2021. P92.

181. O March 22, 2021, Ms. Krook reported to the Mother that the Student “was off task for most of the day,” but finally remarked that “it is a huge celebration that there were no elopements!!” *Id.*

182. On March 26, 2021, Ms. Krook reported to the Mother that:

[The Student] had a very difficult day today. She had more than 40 incidents of disruptive behavior...13 incidents of noncompliance...and at least 4 elopements out of the classroom or away from her 1:1...Although the elopements are still less frequent, less intense and have shorter duration times, these are still significant behaviors that would not lead to a reward based on our previous discussions.

P95.

183. In an email to the District on April 1, 2021, the Mother reported the Student struggled again that day with her 30-minute Tuesday/Thursday Zoom SDI. She requested for the second time that the IEP team approve the Student to receive this SDI before or after school on Wednesdays and Fridays. P97.

184. The Student’s IEP team convened an IEP meeting via Zoom video conference on April 19, 2021. J17. The team met to discuss the Parents’ request for in-person learning instead of the current model of Zoom for non-in-person days. *Id.* p3. “The District finally agreed to replace the last of the online specially designed instruction with a third hour of in-person services on Mondays.” Mother T773.

185. No general education teacher attended this meeting. J17p3 (“In attendance at today’s meeting via zoom: (list of attendees)). At the beginning of the meeting there was a discussion about no general education teacher being present. Mother T994, Christin T823-824. The Mother did not object to the absence of a general education teacher because “I didn’t feel like I had a choice to put it off, so we moved forward because [the Student] was struggling.” Mother T994.

186. On April 22, 2021, Ms. Christin sent the Mother an email with the Student’s new in-person learning schedule:

Monday 9-12 in person (sic) SDI (added 1 hour)
Tuesday 9-9:30 – 30 min asynchronous Centervention zoom

Wednesday In person regular school (no change)
Thursday 9-9:30 – 30 min asynchronous Centervention zoom
Friday In person regular school (no change)

P98.

187. The Student’s IEP team convened an IEP meeting via Zoom video conference on April 26, 2021. J18pp1-3. The purpose of this meeting was to determine if the Student was eligible for summer 2021 ESY services, and if so to develop an ESY IEP. *Id.* p4. The team determined the Student was eligible for ESY services and developed an ESY IEP. *Id.* pp3-4.

188. On May 10, 2021, the Student was physically restrained for one minute at DEE. J20. Ms. Dykman administered the restraint. *Id.* p2. She was Right-Response trained at the time. *Id.*

189. The only witness at hearing who was present during the restraint was Ms. Dykman. Dykman T878. Ms. Dykman has no independent recollection of the restraint. *Id.* However, the May 10, 2021, restraint is further documented in the Debrief Interview with Ms. Dykman and Ms. Theden after the restraint.¹¹ P107pp2-9. In the Debrief Interview Ms. Dykman is identified as “Para A.” Krook T382-383.

190. Leading up to the restraint, the Student punched Ms. Dykman with “force” three times while Ms. Dykman was sitting in a chair. P107p3. Ms. Dykman stood up and began using the Right-Response technique of backpedaling away from the Student. *Id.* The Student continued to punch Ms. Dykman with a closed fist approximately 15-20 times. *Id.* Ms. Dykman used “verbal de-escalation/scripted language in a calm and neutral voice,” but the Student kept hitting and punching her. *Id.* The Student grabbed a chair and Ms. Dykman thought she might throw it at her. *Id.* The Student had thrown chairs at Ms. Dykman in the past. *Id.* The Student let go of the chair and started punching Ms. Dykman again. *Id.* p4. Eventually, Ms. Dykman used a “cross-arm hold” to keep the Student safe. *Id.* This eventually led to the Student deescalating her behavior. *Id.* p5.

191. Principal Snider notified the Mother of the restraint the same day via a telephone call later that afternoon. *Id.* p2. The Mother received a copy of the Physical Restraint/Isolation Incident Report form within a day or two of the restraint. Mother T988. Based on input from the Mother, the Report was revised by Principal Snider and a copy of the revised Report was sent to the Mother.¹² Snider T136.

¹¹ Only Ms. Dykman’s debriefing (P107pp2-6) will be considered here, as Ms. Theden did not appear as a witness available for examination at the hearing.

¹² The revisions to the Report involved whether the Student attempted to bite or did bite Ms. Dykman during the restraint. It is found that whether the Student attempted to bite or did bite Ms. Dykman is not material

192. The Student's IEP team convened a meeting on May 27, 2021. J21. The purpose of the meeting was to discuss and consider the input from the Student's private OT provider, Kids at Play, for the Student's BIP. *Id.* p3. The Mother attended this meeting along with Corrine Kimbrell and Tonya O'Callaghan, OTs from Kids at Play. *Id.*

193. The team determined it would change the Student's BIP "to align scripted behavior language between school and private therapy." *Id.* The team determined it would "update the BIP with suggestions and review it at the next meeting." *Id.*; Walters T947.

194. No general education teacher attended the meeting. Christin T609, Mother T780, Walters T946. The Mother was not provided advanced notice that no general education teacher would be present. Mother T780. "On the spot, I was given the options to either stop and reschedule this meeting or continue without her." *Id.* Because the Student was struggling in her current setting and her BIP was not effective, the Mother felt she could not put off this discussion. *Id.* If she had been provided advance notice, she would have rescheduled this meeting. *Id.* T781.

195. The PWN for the May 27, 2021, IEP meeting did not include an action-initiation date. J21p3. This was because "We took all the input (from KAP staff) together and then said we would update the behavior plan and schedule a follow-up meeting to go over it with everyone." Walters T947, Christin T826.

196. The Student's IEP team met again on June 22, 2021, to continue the collaboration with Kids at Play and follow up with amending the Student's BIP. J22p15.

197. No general education teacher attended the IEP team meeting. Mother T782, Christin T610. No one provided the Mother with advance notice that no general education teacher would be present. *Id.* T782. Once again, she had to "immediately choose whether to stop the meeting before it began or continue without an integral IEP team member." *Id.* While she was offered the option of rescheduling the meeting, this was the last day of the school year and she wanted to have the BIP in place for the start of the next school year. D11p2; Mother T999.

198. In the summer of 2021, the Student attended Apex Summer Camp. P104; Mother T769. This is a five-week "intensive behavioral Summer Treatment Program (STP) sponsored by the University of Washington Autism Center. It includes the SEASTAR Program at Apex Summer Camp for children with ADHD." *Id.* p1. It "focuses on a number of broad treatment goals: increasing children's prosocial behavior and decreasing challenging behavior, enhancing social

to resolving the issues in this case. The Mother has not raised any issue regarding this restraint. See Statement of Issues and Remedies.

skills and improving peer relationships, and increasing children's' participation in developmentally-appropriate recreational activities." *Id.*

199. The Student "showed significant progress in her ability to self-regulate when upset, participate actively with the group, and respect others' personal space. By the end of the summer, [the Student] was able to consistently bounce back from challenging situations more quickly, advocate for personal needs and express emotions using appropriate words and voice volume...and participate in non-preferred activities with minimal negative behaviors." *Id.* p2.

200. "Overall, staff observed a large amount of growth from [the Student], ranging from her sports skills and knowledge to her social skills and her emotion regulation skills." *Id.* p3.

201. The cost to attend Apex Summer Camp for summer 2021 was \$4,700.00, which the Parents paid. Mother T1008. The Parents are not requesting reimbursement for this expense. Mother T1017-1018.

202. The cost for attending Apex Summer Camp for Summer 2022 is \$4,750.00. *Id.* T976; P103p2. The Parents have already registered the Student for Summer 2022 and paid \$4,750.00 for the camp. Mother T976.

203. Apex Summer Camp is a 93-mile, one-way, three-hour drive from the Parents' residence. *Id.* T977. The camp is five-weeks long, or 25 business days. *Id.* Both Parents work from home. *Id.*

204. As compensatory education for any denial of FAPE the District has caused the Student, the Parents are requesting the District pay for five summers at Apex: the summers of 2022 through 2026. *Id.* T972. In addition, the Parents are requesting reimbursement for mileage to and from Apex, as well as reimbursement for their time transporting the Student to and from Apex at a rate of \$50.00 per hour. *Id.* T978, T1016. Fifty dollars per hour is approximately what the Parents each earn from their employment. *Id.* T1016.

205. On October 26, 2021, the Parents filed the Complaint in this matter.

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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). Therefore, the Parents bear the burden with respect to the issues raised in their Complaint.

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

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

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

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew 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," 137 S. Ct. at 994 (citation omitted), 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*, 583 U.S. ___, 138 S. Ct. 556 (2017).

5. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

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 therefore may warrant a remedy, only if they: See also 34 CFR §300.513; 20 USC §1415(f)(3)(E)(ii).

Whether the District Denied the Student FAPE by Isolating Her on January 27, 2021, or by Isolating and Restraining Her on February 12, 2021, or by Restraining Her on May 10, 2021; Because There is no Documented Proof of an Imminent Likelihood of Bodily Harm?

6. "Isolation" means "Restricting the student alone within a room or any other form of enclosure, from which the student may not leave." WAC 392-172A-01107. "Restraint" means "Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement." WAC 392-172A-01162.

7. WAC 392-172A-02110 sets forth the conditions under which isolation or restraint may be used with a student. Isolation and restraint may only be used when a student's behavior poses an "imminent likelihood of serious harm." *Id.*

8. "Imminent" means "the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092. "Likelihood of serious harm" means

(1) A substantial risk that:

(a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to die by suicide, or inflict physical harm on oneself;

(b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(2) The person has threatened the physical safety of another and has a history of one or more violent acts.

9. The Mother's central argument is that the Incident Reports do not describe circumstances rising to the level of an imminent likelihood of serious harm. This ALJ respectfully disagrees with the Mother's interpretation of the law. As an initial matter, the Incident Reports do not stand on their own. They are complimented and supported by the credible testimony of Ms. Krook, a highly qualified, trained, and experienced staff person who administered the isolation on January 27, 2021. It was Ms. Krook's belief, which this ALJ finds credible, that the Student was "highly escalated" when she eloped into other classrooms, climbed up on a counter, hung off cabinets she was opening and closing, stole items from drawers, got into the staff's personal items, and took off her mask. Based on her education, training, and experience, Ms. Krook determined the Student's actions constituted a likelihood of imminent harm to the Student. The Mother was not present to observe this incident.

10. The same is true regarding the incident on February 12, 2021. Ms. Krook was present and administered the isolation and restraint. During these events the Student was knocking down chairs, climbing on tables and countertops, throwing items at staff - including computers, locking herself in the staff room, and hitting and kicking staff. Ms. Krook did not place her hands on the Student until she was hitting Ms. Krook in the face with a wooden whiteboard, breaking Ms. Krook's glasses. The Student remained highly escalated throughout the isolation, both before and after the restraint. Again, the Mother was not present to observe what happened on February 12, 2021.

11. During the restraint on May 10, 2021, the circumstances leading to the restraint were, if anything, more compelling and egregious. See, Finding of Fact 190.

12. It is concluded that the Mother has failed to carry the Parents' burden of proof that the Student was denied FAPE due to any of these incidents. These issues are dismissed.

Whether the District Denied the Student FAPE or Limited the Parents' Participation in the Student's Education With Respect to Prior Written Notices for Meetings Held on May 13, 2020 (J6p17), June 22, 2020 (J7p3), September 3, 2020 (No PWN), October 15, 2020 (J8p3), December 14, 2020 and January 7, 2021 (J10p16), February 1, 2021 (J13), February 24, 2021 (J15p2), and/or May 27, 2021 (J21p3)?

13. Prior Written Notices are governed by WAC 392-172A-05010, which provides in relevant part that:

(1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education services, or referred for special education services a reasonable time before the school district:

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

(2) The notice required under this section must include:

- (a) A description of the action proposed or refused by the agency;
- (b) An explanation of why the agency proposes or refuses to take the action;
- (c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (d) A statement that the parents of a student eligible or referred for special education services have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;
- (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
- (g) A description of other factors that are relevant to the agency's proposal or refusal.

14. Violations of WAC 392-172A-05010 are procedural violations of the IDEA. Therefore, in order to warrant any remedy, such a procedural violation must impede the Student's right to FAPE, significantly impede the Parents opportunity to participate in the decision-making process regarding provision of FAPE to the Student or cause a deprivation of educational benefits for the Student. See, WAC 392-172A-05105(2), above.

15. The meeting held on September 3, 2020, was not an IEP meeting. See Finding of Fact #54. Therefore, the District had no legal duty to provide the Parents a PWN regarding that meeting.

16. The Mother's arguments regarding the remaining PWNs at issue are not compelling. They generally address receiving PWNs shortly before or after the date for initiating the action identified in the PWN(s), PWNs lacking action-initiation dates, PWNs lacking what the Mother believes is sufficiently detailed information, or PWNs not identifying which IEP team member was the District representative.

17. The evidence in this case is clear. The Mother attended and actively participated in every one of the meetings associated with these PWNs. She is an intelligent, detailed, organized, well-informed, and forceful advocate for the Student and the Parents. She has been intimately involved in the Student's education throughout the period at issue. Despite the Mother's repeated assertions that the District's PWNs deprived or limited the Parents' participation in the Student's education, the evidence does not support concluding any defects in the PWNs had any demonstrably substantive impact or in fact limited the Parents' participation in the Student's

education. It is concluded that to the extent any of the PWNs at issue were sufficiently defective to violate the IDEA, the Parents have not proven such procedural violation(s) warrant any remedy. These issues are dismissed.

Whether the District Denied the Student FAPE by Failing to Provide Technology Training to Staff Before the 2020-2021 School Year, Which Resulted in the Student Having no Access to Her Related Service of a 1:1 Behavior Support Paraeducator, or Denied a District Staff Request to Practice Using the Unfamiliar Distance Learning Technology Software (Zoom) Features Through which the Student Was to Access Her Related Service of a 1:1 Behavior Support Paraeducator During the 2020-2021 School Year, Which Resulted in the Student Having no Access to Her Paraeducator?

18. The Mother asserted that Ms. Brown, the Student's general education teacher, asked to practice with the Zoom software features but Ms. Walters denied her request. The facts do not support the Mother's assertion. It has been found that in fact Ms. Walters did not tell Ms. Brown she could not practice with Zoom features. See Finding of Fact #55. This issue is dismissed.

19. The facts in this case are clear and establish the depth and breadth of the technology training the District provided to its staff before and during the 2020-2021 school year. It is concluded that the evidence does not prove this training was deficient or significantly impeded the Student's 1:1 paraeducators' provision of services to the Student. This issue is dismissed.

Whether the District Denied the Student FAPE by Removing Her From Her Learning Environment, Giving the Mother No Other Choice But to Take Her Home, and Did Not Provide Suspension Paperwork on January 29, 2021?

20. The facts in this case do not support a conclusion the District suspended the Student on January 29, 2021. In fact, it was the Mother who decided to keep the Student home after the Student eloped from DEE a second time that day. See Finding of Fact #141. Accordingly, this issue is dismissed.

Whether the District Denied the Student FAPE by Placing Her in a Zoom Break-Out Room Without Supervision of the Teacher or Other School Personnel on December 16, 2020?

21. The Mother reported that the Student was placed in a "waiting room" twice on December 16, 2020, not a breakout room. However, it is concluded that this distinction is not material to determination of this issue. It is not clear from the evidence whether the Mother herself witnessed this on December 16, 2020, or whether she was relying on the Student's report of what happened that day. There is ample evidence to find the Student is not a reliable reporter of events. For example, Ms. Krook was aware that the Student frequently said she could not chat with adults in the chat room when in fact she could. Furthermore, it seems highly unlikely that Ms. Dykman and Ms. Theden would tell the Student they had other meetings to go to as the reason why they were

leaving. But for the sake of analysis, it is assumed that this report is true. Upon learning of this report, Ms. Krook acknowledged that placing the Student in the breakout or waiting room was inappropriate and she retrained the Student's 1:1 paraeducators the next day.

22. Only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

“[S]pecial education and related services” need only be provided “*in conformity with*” the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

* * *

We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. *Id.* at 821-22 (italics in original)

23. It is concluded that placing the Student in a waiting room by herself on this one occasion over the course of a school year is not a material failure to implement the Student's IEP. This is best characterized as minor discrepancy in the services required by the Student's IEP over the course of a school year, which does not support a conclusion the Student was denied FAPE. This issue is dismissed.

Whether the District Denied the Student FAPE by Failing to Provide Accurate and Up-To-Date Information About the Student's Present Levels of Academic Performance and Functional Performance in the Areas of Social Skills, Behavior and Executive Functioning, Including the Impact of the Student's Disabilities on Her Ability to Learn, Between March 2020 and June 2021?

24. When determining whether an IEP is appropriate, the “question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Rowley*, U.S. at 206-07. 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.*

25. The Mother argues that the Student's PLOPs and levels of functional performance were not accurate for several general reasons. The Mother argues Ms. Christin limited her focus to vague, high-level descriptions from evaluation summaries, which in turn resulted in inaccurate PLOPs and levels of functional performance. Ms. Christin testified at length about the multiple sources of information she considers when developing IEP goals, which in turn relies upon her determination of a student's PLOPs. Given Ms. Christin's education, training, and experience as a special education teacher and IEP case manager, this ALJ concludes that Ms. Christin's

methodology and opinions about the accuracy of the PLOPs and IEP goals she developed for the Student are entitled to greater weight than the Mother's beliefs.

26. The Mother argues that the February 2019 Kids at Play OT evaluation report and the diagnoses therein "were mentioned...but never considered." Parent Closing Brief, p3. This argument is not compelling. Whether an IEP team or an evaluation team has "considered" information is a legal determination. The Mother explains her understanding of what constitutes consideration of such a report in the Parent Closing Brief, but there is no evidence to find the Mother has the relevant legal qualifications or experience to support her understanding. The Mother's remaining arguments on this issue are not compelling or adopted.

27. It is concluded that the Mother has failed to carry the Parents' burden to prove the Student was denied FAPE due to any failure to provide accurate and up-to-date information about the Student's PLOPs or functional performance between March 2020 and June 2021. This issue is dismissed.

Whether the District Denied the Student FAPE by Failing to Provide Services to the Student as Documented on the PWN With the Initiated Date of November 3, 2020?

28. The PWN with the action-initiation date November 3, 2020, is the PWN dated October 23, 2020. J8p3. That PWN placed the Student back at DEE for in-person services a total of 10 hours per week beginning November 3, 2020. Later, the Mother was told she could not bring the Student to DEE until 8:15 a.m. rather than 8:00 a.m., but the District offered to have the Student stay until 10:45 a.m. to make up the difference. The Mother declined the District's offer because staying until 10:45 a.m. would conflict with the Student's 10:45 a.m. Zoom meeting at home. This resulted in the Student receiving a total of 12 hours less than she was entitled to under the PWN over the course of the next 12 weeks.

29. It is concluded that the loss of 12 hours of in-person services over 12 weeks is more than a minor discrepancy and constitutes a material failure to implement the Student's IEP pursuant to the PWN dated October 23, 2020. This is a violation of the IDEA and warrants a remedy. Adams, *supra*.

Whether the District Denied the Student FAPE by Failing to Provide Advance Notice to the Mother That the General Education Teacher Would Be Absent From IEP Meetings on February 1, April 15, May 25, and June 22, 2021?

30. As a preliminary matter, both the Mother and the District misidentify the dates when two of these meetings were held. There was no IEP meeting on April 15, 2021; the meeting was held on April 19, 2021. See J17pp2, 3. There was no IEP meeting on May 25, 2021; the meeting was held on May 27, 2021. See J21, pp1, 2, 3.

31. School Districts must ensure that the IEP team for each student eligible for special education services includes not less than one general education teacher of the student if the student is, or may be, participating in the general education environment. WAC 392-172A-03095(1)(b). However, a school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education services and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. WAC 395-172A-03095(5)(a).

32. The Student's IEPs during the relevant time periods at issue all place her most of the school day in a general education classroom. Therefore, unless one of the Parents consents in writing to excuse a general education teacher from these IEP meetings, at least one of the Student's general education teachers must attend the meetings.

33. Given the COVID-19 pandemic and the resulting necessity to hold IEP meetings virtually through a software program like Zoom to ensure the health and safety of all the meeting participants, it is a reasonable and prudent compromise to allow a school district to temporarily suspend the requirement that it obtain a parent's consent to excuse an IEP team member in writing. The District will not be held liable for any violation of the IDEA because it did not obtain written consent to excuse Ms. Brown, the Student's general education teacher, from these meetings.

34. The more problematic issue here is how the District went about obtaining the Mother's verbal consent to excuse Ms. Brown from the meetings. For the February 1, April 19, and May 27, 2021, meetings, the Mother had no notice in advance of the meetings that Ms. Brown would be absent. The Mother was given the option of rescheduling these meetings "on the spot." The Mother credibly testified that because the Student was struggling in her then-current educational placements and with her behaviors, the Mother had no choice but to excuse Ms. Brown and move forward with those meetings without prior notice. Under the facts in this case, it is concluded that the District's failure to provide the Mother with notice a reasonable time before the meetings started that Ms. Brown would be absent is a procedural violation of the IDEA because more likely than not this limited the Mother's ability to prepare and actively participate in these meetings. It is concluded that this significantly impeded the Mother's opportunity to participate in the decision-making process regarding provision of FAPE to the Student. See, WAC 392-172A-05105(2), above. Therefore, a remedy is warranted.

Whether the District Denied the Student FAPE by Failing to Provide the Special Education Service Minutes and Related Services Minutes Listed on the Student's IEP or Failed to Provide the Related Service of a 1:1 Behavior Support Paraeducator During the COVID-19 School Closure From March 16, 2020, to June 19, 2020?

35. The evidence is not well developed regarding the issue of the Student's 1:1 paraeducator

during this time. Once schools closed, the Mother never heard from or saw the Student's then-assigned 1:1 paraeducator again. Without that 1:1 paraeducator, the Student required significant and constant assistance, supervision, and prompting from the Mother during remote learning. On March 28, 2020, Ms. Finigan acknowledged that the Student's 1:1 support person had quit before schools closed and requested Ms. Walters work with the agency that *would be* providing behavioral support for the Student. By April 23, 2020, the Mother still did not know who was providing 1:1 support for the Student. However, sometime before the end of the school year the District had a paraeducator or Learning Specialist supporting the Student.

36. Although the evidence could have been better developed, there is enough evidence to conclude that it is more likely than not that the Student did not receive all the 1:1 paraeducator support provided in her IEP from March 16, 2020, to June 19, 2020. It is concluded that this loss of 1:1 support was more than a minor discrepancy from the Student's IEP, and therefore warrants a remedy.

37. The same facts support a conclusion it is more likely than not that the Student did not receive all her special education and related services during the same period, and that the loss was more than a minor discrepancy from the Student's IEP. Therefore, a remedy is warranted for this procedural violation of the IDEA.

Whether the District Denied the Student FAPE by Excluding the Student From Her General Education Classroom or by Failing to Place the Student in Her General Education Classroom Zooms During In-Person Services from December 9, 2020, Until January 20, 2021?

38. The Findings of Fact relevant to these issues are Findings of Fact #106 through #133. This period of time begins with Ms. Krook's removal of the Student from at least one of her Zoom classes beginning December 9, 2020, based on Ms. Krook's concerns about the Student's behavior during her in-person learning days at DEE. This period ends with the Student's return to Hybrid learning with other students at DEE on January 20, 2021.

39. The Mother was aware that 60-minute Zoom classes were difficult for the Student. The Mother would later characterize the Student's 90 minutes of Zoom classes on Mondays as "torture" for the Student. After discussing this with Ms. Krook on December 8, 2020, the Mother did not raise any concerns with Ms. Krook about removing the Student from her 60-minute Zoom class. In place of the Zoom class, the Student worked in-person with her 1:1 paraeducator doing the same general-education work she had been doing in the 60-minute Zoom. The Mother argues this violated the IDEA's Least Restrictive Environment (LRE) mandate, and does not align with evidence-based practices, classroom strategies, or the Student's BIP. However, the Parent Closing Brief does not explain what evidence-based practices or classroom strategies support her argument the Student was denied FAPE, or how this violated the Student's BIP. The issue of LRE is similarly not well developed in the Parent Closing Brief. See Generally Parent Closing Brief pp29-32.

40. It is concluded that the Mother had failed to carry the Parents' burden to establish either of these issues denied the Student FAPE. These issues are dismissed.

Whether the District Denied the Student FAPE by Removing In-Person Services From the Student on January 20, 2021, With no Documentation to Prove That She no Longer Needed Them and Without Parent Consent?

41. January 20, 2021, coincides with the District's commencement of Hybrid Learning at DEE. The Student attended DEE in-person two days a week from 9:00 a.m. to 3:30 p.m., for a total of 13 hours of in-person learning. This represented an increase over the nine hours of in-person learning the Student had been receiving since November 3, 2020. The other three days the Student would be learning remotely at home.

42. This ALJ does not find the Mother's arguments on this issue to be persuasive. See Parent Closing Brief pp26-29. It is concluded that the Mother has not carried the Parents' burden of proof with respect to this issue. This issue is dismissed.

Whether the District Denied the Student FAPE by Failing to Provide the Special Education Minutes and Related Services Minutes Listed on the Student's IEP During the 2020-2021 School Year, or by Failing to Provide an Appropriate Education Accessible to the Student During the 2020-2021 School Year?

43. These two issues are closely connected: providing the services called for in the Student's IEP(s) is necessary to provide FAPE to a student unless the discrepancy between what the IEP calls for and what is provided is minor.

44. The District argues that the Student was able to access her education during this school year. See District's Post-Hearing Brief pp26-27. But the District too narrowly construes what it means to access an education. Yes, the District provided a software platform, Zoom, for all the students' remote learning to start the school year. Yes, the District provided support in the form of Ms. Krook and the Student's 1:1 paraeducators' remote support during instruction on Zoom. In that sense, the Student had access to her education. But that is only the beginning. The evidence is overwhelming that the educational impact of the Student's disabilities did not allow her to access her educational program during much of the 2020-2021 school year.

45. The Student was in first grade during the 2020-2021 school year. Her young age in combination with the impact of her ADHD and provisional diagnosis of Sensory Integration Disorder combined to make it very difficult for the Student to maintain her attention and concentration long enough to stay engaged in and benefit from remote learning despite her high cognitive abilities. The difference is the opportunity to access an education versus the ability to benefit from that access. The fact that the District made instruction accessible to the Student is

not sufficient because the Student's disabilities limited the benefit she could derive from her access to remote instruction despite the remote support the District was able to provide during the Covid-19 pandemic. Despite this, the Student did make progress on her IEP goals during the 2020-2021 school year.

46. The evidence is clear that, particularly until her return to at least partial in-person learning and likely longer, the Student missed a substantial amount of remote instruction due either to problems with technology or, more likely, her inability to stay on Zoom during remote learning before eloping or leaving. The Mother succinctly identifies examples of this in the record. Parent Closing Brief p12. The difficulty is attempting to specifically quantify the amount of instruction the Student missed over time due, primarily, to the impact of her disabilities. However, it is concluded that the amount of instructional time lost, and hence services in her IEP not provided, was clearly more than a minor discrepancy from what her IEP team had determined was necessary to provide her with FAPE.

47. It is therefore concluded that the Student was denied FAPE during a significant portion of the 2020-2021 school year, and this warrants a remedy.

The Mother's Requested Remedies

48. The evidence establishes that the District violated the IDEA regarding issues 2 through 5, 16, and 21, and these violations warrant remedy or remedies.

49. The Mother's requested remedies include: Banning the use of restraint and isolation District-wide; District-wide staff training; collection and analysis of data regarding all restraints and isolations; quarterly public reports at public school boards; development of District-wide policies and review policies; and installation of video cameras in all District special education classrooms.

50. This ALJ discussed these requested remedies during prehearing conferences with the Mother and the District. This matter involves the Parents, the Student, and the District. This due process hearing is not the proper legal forum to raise District-wide issues that involve other students and their educations. This ALJ is unaware of any legal authority in statute or regulation that grants this ALJ authority to order the District to undertake any of these District-wide remedies the Mother requests. Accordingly, all these District-wide remedies are denied. If the Mother wishes to address systemic, District-wide issues, the proper recourse is to file a citizen complaint with the Office of Superintendent of Public Instruction. See WAC 392172A-05025.

51. The Mother has also requested compensatory education as a remedy. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), *cited with approval in R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). Compensatory education is not a

contractual remedy, but an equitable one. “There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia, supra*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra*, 401 F.3d at 524. Compensatory education is intended to place students with disabilities in the same position they would have occupied if the District had honored its obligation to provide FAPE. *Reid v. District of Columbia*, 43 IDELR 32 (D.C. Cir. 2005); *Letter to Riffel*, 34 IDELR 292 (OSEP 2000).

52. The Mother has requested as compensatory education an award of five summers of tuition to Apex Summer Camp for the Student. The Student attended Apex during the summer of 2020, and the Parents saw substantial behavioral and emotional growth for the Student. **The Parents are awarded three years of tuition for Apex Summer Camp as compensatory education** for the Student. The Parents are not awarded their requested five years because the specific extent of the District’s FAPE denial cannot be more specifically determined, and because despite the FAPE denial the Student did make some progress on her IEP goals during the 2020-2021 school year.

53. The Parents have already paid for the Student to attend Apex Summer Camp for the summer of 2021. If the Parents wish reimbursement for the summer of 2021, they may elect to use one of the three summers of compensatory education. Upon reasonable proof of payment provided to the District for the summer of 2021, the District shall reimburse the Parents for the cost of the Student’s attendance at Apex.

54. For future summers, the Parents may pay for the Student to attend Apex Summer Camp and seek reimbursement from the District upon reasonable proof of payment. In the alternative, the Parents and the District may work together to have the District pay Apex directly for the Student’s attendance. The Parents may select either alternative.

55. The Mother requests “preemptive reimbursement” for the three years of attendance at Apex Summer Camp by payment of one lump sum from the District now. That request is denied. Such a prospective reimbursement is too speculative at this time. There are too many circumstances that could intervene impacting the Student’s future attendance.

56. The Mother also requests reimbursement for transporting the Student to and from Apex Summer Camp. This requested remedy is reasonable and is granted as follows. Upon reasonable proof of transportation provided to the District, it shall reimburse the Parents for mileage driven at the then-current IRS Approved Mileage Rate. For the same reasons discussed above, the Mother’s request for a prospective lump-sum payment now is denied.

57. The Mother has also requested the Parents be compensated for their time transporting the Student to and from Apex at the rate of \$50.00 per hour, which is the approximate median hourly wage for the Parents. That remedy is denied. There may well be more cost-effective means to transport the Student to Apex, and such an award would be inequitable to the District.

58. The Mother has also requested that the District be ordered to contract with Behavior Cusp, to review and update the Student's BIP. That remedy is denied. The evidence does not establish that the District is incapable of developing an appropriate BIP for the Student.

59. The Mother also requests as other equitable remedies reimbursement for the Mother's time filing in for the Student's missing 1:1 behavior support paraeducator during spring 2020, reimbursement for expenses associated with this due process hearing, and reimbursement for the Mother's time spent preparing for and participating in this four-day due process hearing. Those requested remedies are denied. The Parents elected to file the Complaint. It is not unreasonable to expect them to bear the costs associated with pursuing that Complaint. This ALJ does not have the authority to impose attorney fees on a school district if parents prevail at a due process hearing. This is the equivalent of what the Mother now request.

60. Any other requested remedies not specifically identified herein are denied.

FINAL ORDER

The Sumner-Bonney Lake School District has violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education. The Parents are awarded the remedies in paragraphs #52 and #56, above.

Signed on the date of mailing.



MATTHEW D. WACKER
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.

Parent

[REDACTED]

Karen Finigan
Executive Director of Special Services
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Helen Caldart
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Dated July 14, 2022, at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI