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

P44 p.1.

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

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

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

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

[22] According to Ms. Yoho, Mr. Bascom was "in charge" of doing the FBA. Tr. 1101.

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

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

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

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

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

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

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

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

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

Current status Shrub Oak Fifth Grade

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

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

143. Information about Shrub Oak was presented at the due process hearing by Dr. Caitlin Sweetapple and other Shrub Oak staff members. Dr. Sweetapple[26] is the Director of Education. P65 p.1. Shrub Oak is a private coeducational therapeutic day and boarding school for students aged 8 30 who are on the autism spectrum. It focuses on students with complex challenges who typically have co occurring disabilities in addition to autism and have high personal attention needs. Shrub Oak is approved by the Office of Superintendent of Public Instruction (OSPI) as a non public agency.[27] *Id.* at 2; Tr. 413. There are currently 78 Students at Shrub Oak. Tr. 414.

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

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

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

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

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

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

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

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

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

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

57. It is undisputed that the Parents informed the District in writing on March 22, 2022, that they felt the Student needed residential placement and they intended to place him in such a setting if the District did not offer residential placement in an IEP. The District members of the team rejected the idea of residential placement after an extremely brief discussion on March 24, 2022.[36] The lack of robust discussion about the Student's placement gives the undersigned pause as to whether the District even considered the Parents' request and whether the IEP team examined what constituted the Student's LRE.

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

> Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:
>
> (1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and
>
> (2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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

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

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

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

> The IDEA provides that school districts … "must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." 34 C.F.R. § 300.115(a). This "continuum" of alternative placements may include "placement in a public or private residential program in the event such a program is necessary to provide special education and related service to a child with a disability." 34 C.F.R. § 300.104.

61. Placement in a residential facility is appropriate under the IDEA if it is necessary for the Student to obtain an educational benefit. 34 CFR § 300.104. Thus, a residential placement is "necessary" when a student cannot receive an appropriate education outside a residential placement. *Seattle Sch. Dist., No.1 v. B.S.,* 82 F.3d 1493, 1502 (9th Cir. 1996). If the placement "is a response to medical, social, or emotional problems . . . quite apart from the learning process," then it is not necessary under the IDEA. *Clovis Unified Sch. Dist. v. Calif. Office of Admin. Hearings*, 903 F.2d 635, 643 (9th Cir. 1990). For some students, a residential placement may well be the LRE. *Seattle Sch. Dist., No.1 v. B.S.,* 82 F.3d at 1501 (*quoting Board of Educ. v. Diamond*, 808 F.2d 987, 992 (3d Cir. 1986)). In *Seattle Sch. Dist., No.1 v. B.S.,* the Ninth Circuit upheld a lower court's findings that the student at issue needed a residential placement because she was unable to derive any meaningful benefit from her past education and the school district's new proposal was "similarly unlikely to provide educational benefit." 82 F.3d at 1500 01.

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

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

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

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

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

<u>Whether the District should have conducted a reevaluation of the Student after January 9, 2020</u>

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

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

Reevaluation timelines.

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

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

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

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

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

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

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

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

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

70. The IDEA requires that parents have the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child." WAC 392 172A 03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings but must also have the opportunity for "meaningful participation in the formulation of IEPs." *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342 (9th Cir. 2007). A school district must ensure that a student's IEP team includes, "at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student." WAC 392 172A 03095.

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

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

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

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

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

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

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

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

Whether the Parents are entitled to their requested remedies

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

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

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

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

WAC 329 172A 04115(3).

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

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

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

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

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

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

83. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of FAPE. *Burlington v. Department of Educ.,* 471 U.S. at 370*; Parents of Student W. v. Puyallup School Dist., No. 3.* 31 F.3d 1489, 1496 (9th Cir. 1994). "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup*, 31 F.3d at 1497.

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

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

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

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

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

Prospective placement at Shrub Oak is appropriate and necessary

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

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

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

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

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

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

8. The District is not required to reimburse the Parents for past or future expenses incurred for the Student's sibling to visit him at Shrub Oak.

9. Shrub Oak shall be the Student's stay put placement.

10. All remedies requested by the Parents have been considered. Any remedies not awarded above are DENIED.

Served on the date of mailing.

Jacqueline H. Becker
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety (90) days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504 7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

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

Parents [redacted]	via E mail [redacted]
Charlotte Cassady Cassady Law PLLC 7001 Seaview Ave NW, Suite 160 #510 Seattle, WA 98117	via E mail charlotte@cassadylaw.org
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Dated January 12, 2023, at Seattle, Washington.

Jazmyn Johnson

Representative
Office of Administrative Hearings
600 University Street, Suite 1500
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cc: Administrative Resource Services, OSPI