

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Eastmont School District

Docket No. 06-2024-OSPI-02241

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0080

A due process hearing was held before Administrative Law Judge (ALJ) Jill H. Brown on December 16 through December 18, 2024, April 14 through April 16, 2025, and April 29, 2025, via videoconference. The Parent of the Student whose education is at issue¹ appeared and was represented by Whitney Hill, attorney at law. The Eastmont School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District was Katie Tucker, Director of Special Education.

STATEMENT OF THE CASE

Procedural History

The Parent filed a Due Process Hearing Request (Complaint) with the Office of Administrative Hearings (OAH) on June 4, 2024. The Complaint was given Cause No. 2024-SE-0080 and assigned to ALJ Jill H. Brown. The District filed its Response to the Complaint on June 14, 2024.

ALJ Brown issued a prehearing order on June 28, 2024, which set the hearing dates for December 16 through December 18, 2024. On December 3, 2024, ALJ Brown issued a Prehearing Order Denying Without Prejudice Parent's Request to Order Virtual Observation. In an order dated December 19, 2024, ALJ Brown scheduled three additional days of testimony for the hearing. In an order dated April 17, 2025, ALJ Brown scheduled an additional half-day of testimony to complete the hearing.

Post-Hearing Briefs

The due date for post-hearing briefs was June 9, 2025. The parties' post-hearing briefs were timely filed.

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

Due Date for Written Decision

As set forth in a prehearing order dated June 28, 2024, the due date for a written decision in this matter was extended to thirty days after the record of the hearing closes. The record of the hearing closed on June 16, 2025, one week after the parties submitted post-hearing briefs. Accordingly, the due date for a written decision is July 16, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:^{2,3}

District's Exhibits: D1 – D2, D4 – D22

Parent's Exhibits: P1 – P2, P6, P8 – P9, P11 – P13, P15 – P19, P21 – P22, P24 – P27, P33 – P37, P38 – P39, P41 – P44

Witnesses Heard (in order of appearance):

- Dr. Marla Evans, Assistant Director of Special Education
- Cody Kinsman, Special Education Teacher
- Kathryn “Katie” MacCallum, Occupational Therapist
- Kelley Norrell, Speech Language Pathologist
- The Student's Father (referred to herein as Father or Parent)
- Candis Coble, former District Board Certified Behavior Analyst, and Assistant Special Education Director
- Mike Bills, retired School Psychologist
- Sarah Lewman, former District Special Education Director
- Katie Tucker,⁴ District Director of Special Education

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

³ Citations to the exhibits of record are by party (P for the Parent; D for the District) and page number. For example, a citation to P6 p1, refers to page 1 of Parent's Exhibit 6. Citations to the transcript of record are to “T” followed by the page number. For example, a citation to T214, refers to page 214 of the transcript.

⁴ Katie Tucker is referred to herein as Ms. Tucker, not to be confused with Dr. Vanessa Tucker who is referred to as Dr. Tucker.

- Dr. Vanessa Tucker, Board Certified Behavioral Analyst
- Patty Meiners, Developmental Disability Administration respite care provider
- Andrea Lupas, Ph.D., Board Certified Behavioral Analyst
- Kasey Shipman, Developmental Disability Administration case manager
- McKade “Kade” Jackson, District special education paraeducator
- Tobin Garcia, District special education paraeducator
- Stacia Hardie, Assistant Principal at Eastmont High School

ISSUES

The issues for hearing, as set out in the June 28, 2024, Prehearing Order, are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to materially implement the Student’s individualized education programs (IEP) from June 2022 to present;
 - ii. Failing to develop IEPs that were appropriate in the areas of specially designed instruction, related services, accommodations, behavior supports, and placement, in light of the Student’s circumstances, from June 2022 to present; and
 - iii. Inhibiting meaningful parental participation by rescinding their offer for residential placement — thereby changing the Student’s placement — in May 2024 without the Parent’s knowledge and outside of the IEP team.
- b. And, whether the Parent is entitled to his requested remedies:
 - i. Declaratory relief finding that the District violated the IDEA;
 - ii. Declaratory relief that the District denied the Student a FAPE;
 - iii. Compensatory special education and related services for the Student to allow him to obtain the educational benefit that he would have received but for the District’s violations of the IDEA and denial of FAPE, consistent with 20 U.S.C. 1415(i)(2)(c)(iii);
 - iv. An Order that the District shall reimburse the Parent for private evaluations and services he obtained for the Student between June 2022 to present;

- v. An Order to develop an IEP moving forward that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 that is appropriate and reasonably calculated to meet the Student's unique needs; and
- vi. Whatever additional relief the Court may find just and equitable.

FINDINGS OF FACT

Some of the evidence presented was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs."⁵ An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so "would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence."⁶ To the extent any findings of fact are based on hearsay, it is determined that such findings did not unduly abridge the parties' opportunity to confront witnesses and rebut evidence.

Background

1. The Student is currently 19 years old. He has diagnoses of autism spectrum disorder (ASD), disruptive behavior disorder, mixed receptive-expressive language disorder, and intellectual and developmental disabilities.⁷ He was originally found eligible for special education services in 2009 under the category of developmental delay.⁸
2. The Student was described as "lovely," "very thoughtful," and "a very happy kid."⁹ "He loves attention, loves to make you laugh."¹⁰ The Student has "an amazing smile and a great laugh. He's got a great attitude."¹¹ The Student was "a lot of fun to be around."¹²

⁵ RCW 34.05.452(1).

⁶ RCW 34.05.461(4).

⁷ D7 p1; P33 p1; P37 p1.

⁸ D8 p13.

⁹ T618, 1072.

¹⁰ T618.

¹¹ T932.

¹² T1072.

3. The Student began exhibiting self-injurious behavior (SIB) at a young age.¹³ The SIB became a problem when the Student was in fourth or fifth grade.¹⁴

4. In March 2022, the Student attended Eastmont High School in the District.¹⁵ At that time, staff saw an escalation in his behavior.¹⁶ He engaged in SIB that impacted his education and when “staff would attempt to impede his ability to self-injure, they would often get injured as well.”¹⁷

5. When served by the District, the Student communicated his wants and needs using vocalizations that were difficult to interpret by an unfamiliar listener.¹⁸ Special education staff used picture-symbols and photos to provide choices for the Student. He typically did not initiate conversation, but would initiate occasional expressive output, such as “mask off.”¹⁹ Staff typically interpreted the Student's intent based on how he responded to choices with vocalizations, facial expressions, and body language.²⁰

6. When the Student was served at the high school in 2022, the school had pads in his favorite room, including pads against the wall, because “he liked to put himself on the floor and he would hit the wall with his back.”²¹ The Student headbutted and kicked staff members and broke the wrist of a paraeducator.²²

7. On or about March 1, 2022, the District performed an evaluation of the Student (March 2022 Evaluation).²³ Candis Coble²⁴ served as the District's board certified behavior analyst (BCBA) at the time of the March 2022 Evaluation, as well as the

¹³ T457.

¹⁴ T458.

¹⁵ D1 p5.

¹⁶ T621.

¹⁷ T621.

¹⁸ D1 p13.

¹⁹ D1 p13.

²⁰ D1 p13.

²¹ T1140.

²² T1141.

²³ P2; T510.

²⁴ Ms. Coble is currently a program supervisor with the Office of Superintendent of Public Instruction. She earned a K-8 teaching endorsement in 2008 and a special education endorsement in 2010. She obtained a special education master's degree in 2012. She became a BCBA in 2014. She worked as a special education preschool teacher in the Wenatchee School District for three years before starting an applied behavior analysis clinic for Catholic Charities. In the period 2019 through 2024, she worked for the District as a life skills teacher, a BCBA, and assistant director of special education. T506-507.

District's Assistant Special Education Director.²⁵ Ms. Coble was part of a behavior team in the District that was called in when a student "exhibited behaviors that were beyond the capabilities of building teams."²⁶ Ms. Coble's behavior team was called to assist with the Student in March 2022 because "there was an injury to a staff member's hand [and] they were concerned about that becoming increasing behavior."²⁷

8. Mike Bills,²⁸ District school psychologist, compiled the information in the March 2022 Evaluation, but Ms. Coble performed all of the testing for the evaluation.²⁹

9. As part of the evaluation, Ms. Coble, as BCBA, with two behavior support specialists and a paraeducator, worked with the Student in school for two hours each day over a 12-week period to gather data and work on increasing the Student's functional communication skills and reduce his problem behaviors.³⁰ The Student had some words he used at the time, but he did not have a functional communication system.³¹

10. While working with the Student, Ms. Coble and her team saw an initial decrease in behaviors; however, after some time, the behaviors sharply increased.³²

11. The March 2022 Evaluation showed the Student was eligible for services under the autism category.³³ It recommended the IEP team provide the Student with specially designed instruction (SDI) in reading, writing, math, behavior, adaptive/self-help, and social skills, as well as related services of adapted PE, communication, and fine motor.³⁴ The Evaluation recommended a program that is over 50% functional communication training as well as an intensive applied behavior analysis (ABA) program.³⁵ The Evaluation did not make a recommendation regarding the amount of

²⁵ P2 p5; T511.

²⁶ T510.

²⁷ T510.

²⁸ Mr. Bills is a retired school psychologist. He earned a master's degree in psychology in 1992. In 1993, he obtained an educational specialist degree. He retired in June 2024 after serving as the District's school psychologist for 32 years. He worked with students in all grades from kindergarten through twelfth grade. T550-551.

²⁹ T510, 553-554.

³⁰ T511-512.

³¹ T512.

³² T521.

³³ P2 p3.

³⁴ P2 p4.

³⁵ P2 p7.

time the Student should receive services each day, but indicated it should be based on his tolerance.

12. By prior written notice (PWN) dated March 1, 2022, based on the information gathered in the March 2022 Evaluation, the District recommended that the Student be placed in a “day treatment or residential facility that can safely manage his behavioral needs.”³⁶ The District offered an interim placement of two days per week “for 30 minutes of service to be provided in the home environment with the supervision of an adult, District BCBA, and behavior support specialists.”³⁷

13. The PWN shows the Parents rejected an immediate start to interim services because they needed time to process and would contact the District when they were ready to begin interim placement.³⁸

14. In an email from the Mother to Ms. Coble, dated March 4, 2022, the Mother wrote,³⁹

Hi Candis, can you send me the info on placement for [Student]. He needs more care than anyone can provide. [Father] and I do not agree right now about placement, I'm for it, he is against it.

15. On March 4, 2022, Ms. Coble replied to the email and attached a list of residential facilities.⁴⁰ The list of facilities provided to the Mother by Ms. Coble included 39 facilities with contact information for each.⁴¹ Ms. Coble made notes indicating dates she contacted the facility and the information she gathered regarding cost and whether they might serve the Student.⁴²

16. On March 3, 2022, the District invited the Parents by email and by letter to an IEP meeting on March 15, 2022. The District did not receive a response.⁴³ On March 15, 2022, the District members of the Student’s IEP team met to review the Student’s IEP and determine the proper placement for the Student (March 2022 IEP).⁴⁴ The

³⁶ P3 p1.

³⁷ P3 p1.

³⁸ P3 p1.

³⁹ P6 p1.

⁴⁰ P6 p1-9.

⁴¹ P6 pp3-9.

⁴² P6 pp3-9.

⁴³ D1 p2.

⁴⁴ D1.

record does not include a list of the District IEP team members who attended the meeting.⁴⁵ The Parents did not attend the March 15, 2022, IEP meeting.⁴⁶

17. The IEP team noted that the Student's behavior significantly impacted his learning and the safety of himself and others.⁴⁷ The IEP team noted that the Student's SIB had increased since January 2022.⁴⁸ The Student went from displaying four instances of SIB in 14 days to 20 in 12 days.⁴⁹ He hit himself with a closed fist or head-butted the wall or floor "hard enough to cause head injury."⁵⁰ Ms. Coble and her team collected "a lot" of data at the time on the Student's SIB and aggressive behavior because "that was the behavior [they] were targeting decreasing."⁵¹

18. The IEP team determined that, based on the March 2022 Evaluation, the Student continued to qualify for special education in the area of behavior management, with a significant need for behavior intervention support and an intensive program.⁵²

19. The IEP team discussed that Ms. Coble, the two behavior support specialists, and the paraeducator were not making progress with the Student.⁵³ As such, the IEP team determined that the least restrictive environment (LRE) for the Student was in a private residential facility.⁵⁴ The IEP team determined that the Student's interim placement, while such a program was found, would be at home, with 30 minutes of instruction provided in the home by the District twice per week.⁵⁵

20. By PWN dated March 16, 2022, the District proposed "a residential placement due to the severity of [Student]'s behavior when he is injuring himself."⁵⁶ The District

⁴⁵ D1.

⁴⁶ D1 p24.

⁴⁷ D1 p8.

⁴⁸ D1 p9.

⁴⁹ D1 p9.

⁵⁰ D1 p9.

⁵¹ T520.

⁵² D1 p9.

⁵³ T516-517.

⁵⁴ D1 p22.

⁵⁵ D1 pp22-23.

⁵⁶ D1 p24.

proposed an interim placement of 30 minutes, twice a week, at the home while the Student waited for a residential placement.⁵⁷

21. According to the March 16, 2022 PWN,^{58, 59}

there has been emails and text message conversations with parents around their decision and they have not fully agreed to the placement. The school district stands ready to serve [Student] with an interim placement of 30 minutes, twice a week, at the home.

22. The March 16, 2022 PWN is directed to the Student's Mother and does not include the Father's name.⁶⁰

23. The Father did not recall discussing residential placement with the District or the Mother in 2022.⁶¹ The Father recalled Sarah Lewman,⁶² District Director of Special Education in March 2022, telling him in 2022 about "state group homes," which he did not believe was the right solution for the Student.⁶³ According to the Father,⁶⁴

I didn't want to send him somewhere where he was just going to get shipped back and forth to people just giving him different meds . . . because that's basically how she explained it to me. And I really didn't know anything about any of the other residential type facilities at that point.

24. Ms. Lewman had an in-person conversation with the Father around the time of the March 2022 IEP meeting. She recalled that the Father told her he was not willing

⁵⁷ D1 p24; T519.

⁵⁸ D1 p24.

⁵⁹ Any language quoted herein from documentary evidence and from the hearing transcript contains the same grammatical, typographical, and spelling errors that appear in the original.

⁶⁰ D1 p.24.

⁶¹ T467, T470.

⁶² In 2001, Ms. Lewman earned a bachelor's degree in applied psychology, with a special education complement. She also got her first teaching credential in 2001. She obtained a master's degree in education in or around 2005. She earned a master's degree in administration in 2019. Ms. Lewman taught in the Chelan School District from 2001 to 2016. She began teaching in the District in 2016. She became the Director of Special education in the District in the fall of 2018. She left the District in January 2023. Ms. Lewman currently serves as the Special Services Director at Omak School District. T614-618.

⁶³ T578.

⁶⁴ T578.

to send the Student anywhere, even if a residential facility was what the District determined the Student required.⁶⁵

25. The Father does not remember discussing residential placement for the Student until his Developmental Disabilities Administration (DDA) caseworker brought it up in September 2023.⁶⁶

26. At some point in 2022 or 2023, during a period when Ms. Coble worked with the Student, the Mother asked the District to communicate only with her about the Student and not to communicate with the Father.⁶⁷ According to Ms. Lewman, the District did not honor the Mother's request.⁶⁸ Ms. Coble recalled that the District told the Mother they could not remove Father from communications, but she recalled that "if we were to call, we called her first."⁶⁹

27. The Father did not request to be removed from communications with the District.⁷⁰

28. The Student stopped attending school in the District on or around February 14, 2022.⁷¹ He was not attending school or receiving in-home services in March 2022.⁷² On or around March 28, 2022, the District unenrolled the Student.⁷³ Ms. Coble took steps to unenroll the Student because the Parents had not engaged in the in-home services program and the Student had been absent from the District for 20 consecutive days.⁷⁴ The Father did not want the Student unenrolled from the District at that time.⁷⁵

29. The District contacted residential facilities in Spring 2022, but the facilities "needed family involvement pretty early on, along with the school's involvement, to get the Student registered."⁷⁶ The District located two or three facilities that had openings

⁶⁵ T630.

⁶⁶ T467, T475, T578-579, T602.

⁶⁷ T522, T628.

⁶⁸ T642.

⁶⁹ T522-523.

⁷⁰ T579.

⁷¹ P8

⁷² P8; T527.

⁷³ D3; P8.

⁷⁴ P8; T527.

⁷⁵ T468.

⁷⁶ T641.

and had experience with students who exhibited SIB and had autism.⁷⁷ The District let the Parents know that the next step would be for the District to start the interim placement and to start communicating with agencies.⁷⁸ At that time, the District understood that the Parents did not agree with residential placement and would not be sending the Student anywhere.⁷⁹

30. In an email to the Student's Mother dated June 6, 2022, Ms. Coble told the Mother to "let us know if we can assist in reaching out to facilities for you."⁸⁰ Ms. Coble sent the email because the District had not heard from the Parents since March 2022 and the District was "still wanting to ensure [the Student] was receiving education and [to] continue to work with the family to find some place for him."⁸¹

31. The Parents did not inform Ms. Coble that they had contacted a potential residential facility or that they had selected a facility for the Student.⁸²

32. Dr. Vanessa Tucker testified as an expert in this matter. For the purpose of this hearing, at the request of the Parent, Dr. Tucker reviewed the March 2022 Evaluation and the March 1, 2022 PWN.⁸³

33. Dr. Tucker became familiar with the Student in February 2024, when the Student's insurance provider contacted her with an "urgent request" to assess the Student in the hospital.⁸⁴ Dr. Tucker did not assess the Student in the hospital because he was released and then placed at Seattle Children's Hospital Psychiatric Behavioral Medical Unit (PBMU).⁸⁵ Dr. Tucker did not meet the Student until December 5, 2024, during a virtual meeting she had with the Father.⁸⁶

34. Dr. Tucker is a BCBA, doctorate level.⁸⁷ She is currently a clinical behavior analyst at the University of Washington with the Adult Neurodevelopment Wellness

⁷⁷ T650.

⁷⁸ T650-651.

⁷⁹ T650-651.

⁸⁰ P9.

⁸¹ T531.

⁸² T541-542.

⁸³ T758-768.

⁸⁴ T756.

⁸⁵ T757.

⁸⁶ T757.

⁸⁷ T748.

Project.⁸⁸ She also teaches in the ABA program at the University of Washington.⁸⁹ She is the clinical director for Basics Northwest, an ABA agency.⁹⁰ Dr. Tucker earned bachelor's degrees in special and general education in 1995, a master's degree in low incidence disabilities (i.e. severe or complex disabilities) in 2002, and a doctorate in ABA and low incidence disabilities in 2010.⁹¹ She has specialties in literacy and ABA.⁹² Dr. Tucker has worked in the field of special education for 29 years.⁹³ She taught special education students from 1995 to 2004 and was an education specialist and program coordinator with Tacoma Public Schools from 2004 to 2010.⁹⁴ Dr. Tucker has also taught special education at Pacific Lutheran University as a tenured professor.⁹⁵

35. Dr. Tucker's responsibilities as Clinical Supervisor with Basics Northwest include providing ethics consultation on cases as well as direct service for hospital-based cases across Washington State.⁹⁶ One third of the time Dr. Tucker spends with Basics Northwest is spent consulting with school districts either by working with them directly, or supporting other BCBA who work in school districts.⁹⁷

36. Dr. Tucker is the owner and clinical director of Tucker Consulting, LLC.⁹⁸ As a consultant, she provides school consultations, independent educational evaluations, program evaluations, BCBA mentoring and IEP-related services to local school districts.⁹⁹ She also provides functional behavioral assessments (FBA) and behavior intervention plans (BIP) for school teams.¹⁰⁰ Districts often call on Dr. Tucker to help with students who are engaging in high levels of aggression.¹⁰¹ Over the years she has consulted with 12 school districts, off and on, and typically works with between three and six during any given year.¹⁰²

⁸⁸ T748.

⁸⁹ T748.

⁹⁰ T748, T751.

⁹¹ P44 p1; T748.

⁹² T748.

⁹³ P44 p3; T749.

⁹⁴ P44 p3; T749.

⁹⁵ T749-750.

⁹⁶ P44 p2.

⁹⁷ T752.

⁹⁸ P44 p2.

⁹⁹ P44 p2.

¹⁰⁰ T752.

¹⁰¹ T753.

¹⁰² T754-755.

37. Dr. Tucker did not observe the Student in his education setting.¹⁰³ She has not performed an evaluation of the Student.¹⁰⁴ The District did not permit Dr. Tucker to observe the Student virtually and she was unable to arrange an in-person observation in her schedule.¹⁰⁵ It is not uncommon for Dr. Tucker to perform virtual observations of students and the District is the first school district to deny her the opportunity to observe virtually.¹⁰⁶

38. Dr. Tucker has not spoken to the Student's special education teacher about the Student, about his evaluations, or about his IEP.¹⁰⁷ She has not spoken to anyone in the District about the Student's programming, implementation of his FBA, his BIP, or his IEP, and she has not participated in any District meetings regarding the Student.¹⁰⁸ Dr. Tucker has not spoken to anyone at Seattle Children's Hospital about the Student or about the FBA/BIP developed at PBMU.¹⁰⁹ Dr. Tucker's knowledge of the Student is based on her review of the Student's records as they appear in the record of the hearing, and on her virtual meeting with the Father and the Student on December 5, 2024.¹¹⁰

39. Regarding the District's recommendation of residential placement for the Student in March 2022, Dr. Tucker noted that,¹¹¹

something as restrictive as daily treatment and/or 24/7 residential facility treatment should be taken as a very last course decision, only for someone that truly needs it. . . And with the descriptions of [the Student's] behaviors, a day treatment facility or a 24/7 facility would have been a good option for him just based on the types of behaviors he was demonstrating with the intensity that he was demonstrating these behaviors.

40. Dr. Tucker was "surprised" by the District's offer to provide services in the Student's home for 30 minutes, two days per week.¹¹² She described it as "a

¹⁰³ T758.

¹⁰⁴ T817.

¹⁰⁵ T758, T817.

¹⁰⁶ T758.

¹⁰⁷ T818, T822.

¹⁰⁸ T818-827.

¹⁰⁹ T820.

¹¹⁰ T818-828.

¹¹¹ T766.

¹¹² T767.

significant step backwards” after the Student received the highly specialized program with Ms. Coble for two hours each day.¹¹³

The 2022-2023 School Year

41. During the 2022-2023 school year, the Student remained unenrolled from the District and spent the school days home with his Mother.¹¹⁴ He did not receive any services from the District during the school year.

42. The District issued a PWN on October 11, 2022. It stated that the Student’s family had informed the District on September 26, 2022, and October 12, 2022, that they were concerned over the Student not being in school, they did not agree with the “current placement,” and they intended to enroll the Student in a different school district.¹¹⁵ The family requested that the team “draft another IEP that removed the information regarding violent behaviors.”¹¹⁶

43. The October 11, 2022 PWN proposed that the Student’s family “re-engage with the district and allow services to resume in the home 30 minutes twice weekly while assisting in the coordination of his placement in a treatment facility.”¹¹⁷ According to a notice for the proposed meeting, the Parents were invited to attend and participate in a Prior Notice meeting.¹¹⁸ The Parents did not attend the meeting.¹¹⁹

44. The October 11, 2022 PWN included the following other factors relevant to the District’s proposed action:¹²⁰

The current IEP is in draft form as the family did not attend the meeting and the residential placement would change and adapt the matrix as needed to meet the needs of the student, family, and facility. The current interim placement of 30 minutes twice a week in [the Student’s] home is proposed with additional support in giving the student an I-Pad with the LAMP communication program installed. The next steps would be to let us know the device is wanted in the home, the staff will set up a small training to explain how to add and remove buttons from the students screen and then "check-out" the device to the family. Additional trainings

¹¹³ T767.

¹¹⁴ T431.

¹¹⁵ D4 p3.

¹¹⁶ D4 p3.

¹¹⁷ D4 p3.

¹¹⁸ D4 p1.

¹¹⁹ D4 p3.

¹²⁰ D4 p3.

in safety care (crisis management) and behavioral support have been offered and are still available for the family.

45. The family rejected the District's offer of placement in October 2022 because "the family does not feel that this placement is in the best interest of [the Student]." ¹²¹

46. The District had not located a residential facility for the Student in October 2022, because they were not "given the green light" by the Parents. ¹²² At that time, Ms. Lewman hoped the Parents would "come back to the table" and re-engage with the District so the District could start the search for a residential facility and begin interim placement for the Student. ¹²³

47. The October 11, 2022 PWN was addressed to both of the Parents. ¹²⁴ Ms. Lewman's practice at that time was to send a PWN through registered mail. ¹²⁵

48. By email sent on November 9, 2022, the Student's Mother contacted the District and requested the Student's current IEP with amendments, as well as all behavior referrals from 2019 through 2022. ¹²⁶ In a follow-up email sent on November 21, 2022, the Student's Mother wrote, "Our son deserves the right to go to school with qualified staff and safety measures in place. One hour a week does not cut it for his learning, as you all should realize." ¹²⁷

49. Kasey Shipman ¹²⁸ began working as the Student's DDA case manager in December 2022. ¹²⁹ Ms. Shipman recalled that in February 2023, the Mother was not

¹²¹ D4 p3.

¹²² T633-634.

¹²³ T634.

¹²⁴ D4 p3.

¹²⁵ T643.

¹²⁶ P11 p1.

¹²⁷ P11 p1.

¹²⁸ Ms. Shipman is a DDA enhanced case manager. In 2014, she earned an associate's degree in healthcare management. She graduated with a bachelor's degree in human services management in 2016. She has worked with individuals with intellectual disabilities and developmental disabilities in some way since she was in junior high. She has worked for the DDA since 2016. Ms. Shipman is an Enhanced Case Manager (ECM) with DDA. An ECM has 30 clients on her caseload, where a standard case manager has 75. Ms. Shipman serves individuals who are at high risk for abuse, neglect, or exploitation, or need extra attention from a case manager because they are experiencing a difficult time. T926-928.

¹²⁹ T929.

in favor of residential placement for the Student, and the Mother was “of the opinion that she was not going to ship her son off to have somebody else handle him.”¹³⁰

50. By email sent to the District on June 15, 2023, the Student’s Mother again requested the Student’s current IEP and previous behavior referrals, writing,¹³¹

I did mention in my last email that this is not over for my son, he has had more than enough time at home without an education, which by WA state law, he is entitled . . . My son is the most deserving and he does not need to be forgotten because he has autism, his life means the world to me and I will not stop until I see fit for him.

51. On June 27, 2023, via email, Ms. Coble replied to the Student’s Mother, letting her know that she had provided the requested documents to a PAVE representative and that the District was “very eager to work with her on getting [Student]’s services.”¹³²

52. Ms. Coble has not worked on the Student’s case since June 2023.¹³³ Ms. Coble stopped serving as the District BCBA in fall 2023, when she returned to the classroom as a life skills teacher.¹³⁴ To her knowledge, there were no BCBAs in the District after fall 2023.¹³⁵

53. At the time of the due process hearing, the District had an elementary behavior coach who had BCBA credentials.¹³⁶ That BCBA did not consult on the Student’s case.¹³⁷ Special Education Teacher Cody Kinsman¹³⁸ did not recall a District BCBA ever working with the Student or discussion in the IEP team meetings regarding whether the Student needed a BCBA to consult or provide direct services.¹³⁹

¹³⁰ T942.

¹³¹ P12 p1.

¹³² P12 p1.

¹³³ T543.

¹³⁴ T507.

¹³⁵ T509.

¹³⁶ T707.

¹³⁷ T707.

¹³⁸ Mr. Kinsman has a Bachelor of Arts in secondary education. He has endorsements in K-12 special education and 7-12 English language arts. He has been a special education teacher in the District since 2023. Prior to joining the District, he worked for one year as a long-term substitute teacher in special education in Nevada and for two years in a severe and profound classroom in Oregon. T164-165.

¹³⁹ T323-324.

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54. In August 2023, the Mother moved out of the home she shared with Student and the Father.¹⁴⁰ The Mother has not had contact with the Student since that time.¹⁴¹ During the period of March 2022 through August 2023, despite living together, the Mother and Father were not communicating about the Student.¹⁴²

55. By email dated October 6, 2023, Katie Tucker,¹⁴³ District Director of Special Education, informed Eastmont High School Assistant Principal Stacia Hardie,¹⁴⁴ and Kim Browning (Executive Director of Teaching and Learning) that the Student's Mother was "no longer living in the home or participating in parental decision making," and that the Father wished to re-enroll the Student at Eastmont High School and have an IEP meeting.¹⁴⁵

56. The Father re-enrolled the Student in the District on or around October 12, 2023.¹⁴⁶ The Father decided to re-enroll the Student in the District after talking with DDA advocate Ms. Shipman about finding a better situation because the Student needed help.¹⁴⁷

57. Ms. Tucker was not the director of special education when the Student was enrolled in the District in 2022.¹⁴⁸ In October 2023, Mr. Bills provided Ms. Tucker and other new team members with the Student's history.¹⁴⁹ When the District team

¹⁴⁰ T474.

¹⁴¹ T474.

¹⁴² T577-578.

¹⁴³ Ms. Tucker earned a bachelor's degree in education in 2000 and a master's degree in education in 2004. She earned a master's degree in administration in 2018. She is a professionally certified general education teacher in Washington state and is nationally board-certified. Ms. Tucker began teaching in the District in 2001. She later served as an assistant principal and a principal, and in May 2023 she began serving as the District's Director of Special Education. She officially started the director's position on July 1, 2023. T655-656.

¹⁴⁴ Ms. Hardie has been the assistant principal at Eastmont High School for 13 years. She earned an associate's degree in 1991, a bachelor's degree in education in 1994, and a master's degree in athletic administration in 1999. She obtained an administrative certificate in or around 2001. Before becoming assistant principal, she taught high school for six years, and was the dean of students at a K-12 school for a year. She served as a teacher and assistant principal at Eastmont Junior High School in a split position before her current position. T1136-11327.

¹⁴⁵ P13 p1.

¹⁴⁶ D5.

¹⁴⁷ T432.

¹⁴⁸ T559, T656.

¹⁴⁹ T559.

members were familiarizing themselves with the Student in October 2023, they were in favor of residential placement, based on the recommendation of the Student's previous team.¹⁵⁰

58. On November 14, 2023, the Student's IEP team met to update his IEP and determine placement for the Student (November 2023 IEP).¹⁵¹ The Father, Ms. Tucker, Assistant Special Education Director Dr. Marla Evans,¹⁵² Ms. Hardie, and Ms. Shipman attended the November 14, 2023 IEP meeting.¹⁵³ The special education teacher, general education teacher, speech language pathologist (SLP), and occupational therapist (OT) were excused from the meeting.¹⁵⁴

59. Because the Student had not been enrolled in the District for at least 18 months, the IEP team based the Student's present levels of educational performance on the Student's March 2022 IEP.¹⁵⁵

60. In the period between March 2022 and October 2023, the Student demonstrated the following behaviors at home:¹⁵⁶

A lot of him jumping around, hitting himself in the head, hitting himself in the legs, hitting himself in the ribs. . . He hit himself so hard in the shoulder one time he gave himself a goose egg.

61. Based on the Student's 2022 Evaluation, the IEP team determined that the Student qualified for behavior management services.¹⁵⁷ The IEP team also determined the Student qualified for SDI in reading, writing, math, behavior, adaptive/self-help, and social skills, and related services in communication and fine motor.¹⁵⁸

¹⁵⁰ T704.

¹⁵¹ D6 pp1-3.

¹⁵² Dr. Evans has a bachelor's degree in social sciences and a master's degree in integrating art into curriculum. She has a doctoral degree in organizational leadership and special education. She has teaching certificates in elementary education K-8, and special education K-12. Dr. Evans has a certification in early childhood executive leadership. Since July 1, 2023, she has served as the District assistant special education director. Prior to her current role, she taught special education for approximately seven years. T41-42.

¹⁵³ D6 p3.

¹⁵⁴ D6 pp3, 5.

¹⁵⁵ D6 pp11-14, 16-17.

¹⁵⁶ T478-479.

¹⁵⁷ D6 p11.

¹⁵⁸ D6 p25.

62. According to the November 2023 IEP, the District would provide the Student with the following services from November 14, 2023, through November 4, 2024:¹⁵⁹

Services 11/14/2023 - 11/04/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
Yes	Communication	Special Education Teacher	SLP	10 Minutes / 1 Times Monthly	Special Education	11/14/2023	11/04/2024
Yes	Fine Motor	Special Education Teacher	OT	10 Minutes / 1 Times Monthly	Special Education	11/14/2023	11/04/2024
Special Education							
Yes	Reading	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Weekly	Special Education	11/14/2023	11/04/2024
Yes	Written Expression	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Weekly	Special Education	11/14/2023	11/04/2024
Yes	Math	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Weekly	Special Education	11/14/2023	11/04/2024
Yes	Adaptive/Self Help	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Weekly	Special Education	11/14/2023	11/04/2024
Yes	Social Skills	Special Education Staff	Special Education Teacher	60 Minutes / 1 Times Weekly	Special Education	11/14/2023	11/04/2024
No	Behavior	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Weekly	Special Education	11/14/2023	11/04/2024

Total minutes per week of building instructional time available for this student (excluding lunch):

1815 minutes per week

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

60 minutes per week

Percent of time in general education setting:

96.69% in General Education Setting

63. The IEP team determined in November 2023 that the Student's LRE was a private residential facility, finding that the Student¹⁶⁰

will attend a residential behavior treatment center where he will receive specially designed instruction. It is not known the amount of time he will spend with non-disabled peers.

During the interim, [Student] will receive 1 hour a week (2 half hour sessions) in-home instruction

64. According to Ms. Tucker, in November 2023 neither she, her team, nor the Father were very familiar with what a residential treatment option meant.¹⁶¹

65. By PWN dated November 15, 2023, the District proposed that the Student be placed in residential treatment and that the District remove the Student's BIP because the Student had not been attending a school in the District for 18 months.¹⁶² According

¹⁵⁹ D6 p25.

¹⁶⁰ D6 p26.

¹⁶¹ T705.

¹⁶² D6 p28.

to Dr. Evans, “we removed [the BIP] knowing that we are going to get to see him again, and we could do another FBA and build a BIP, if necessary at that point.”¹⁶³

66. In November 2023, the District considered placement at Eastmont High School in the District.¹⁶⁴ The District rejected this option due to “[c]oncern for escalating [Student]’s self-harming behaviors – Safety.”¹⁶⁵

67. According to the November 15, 2023 PWN, the IEP team did not make a placement decision at the IEP meeting because the Father “requested more time to think about the residential option, and investigate other options.”¹⁶⁶

68. Dr. Evans recalled that at the time, the Father did not want the Student to be away from home and had negative thoughts about what residential placement could be.¹⁶⁷ Ms. Tucker recalled that the Father “was not convinced that [residential placement] was the best option for the Student at that time.”¹⁶⁸ According to Dr. Evans, by the end of November 2023, the Father had decided he was open to residential placement.¹⁶⁹

69. Ms. Shipman was in favor of the District’s recommendation for residential placement for the Student.¹⁷⁰ According to Ms. Shipman, learning that the District proposed residential treatment “was a shock” to the Father and “he wasn’t pleased with the idea of having the Student across the country.”¹⁷¹ She recalled that the Father “came around” to the idea of residential placement for the Student around Christmas of 2023, after she had multiple conversations with him and after he did some of his own research.¹⁷²

70. Patricia Meiners¹⁷³ is a care giver and respite care provider for DDA.¹⁷⁴ In fall 2023, she began providing respite care services to the Student and his Father.¹⁷⁵ Ms.

¹⁶³ T97.

¹⁶⁴ D6 p28.

¹⁶⁵ D6 p28.

¹⁶⁶ D6 p28.

¹⁶⁷ T45.

¹⁶⁸ T663.

¹⁶⁹ T52; T97.

¹⁷⁰ T946.

¹⁷¹ T945.

¹⁷² T946-947.

¹⁷³ Ms. Meiners has been in her current position since 2021. She has bachelor’s degrees in therapeutic recreation and K-8 education. She has a special education endorsement. She taught special education from 2000-2005 and from 2007 until she began her work with the DDA. T830-833.

¹⁷⁴ T830.

¹⁷⁵ T830, 835, 863.

Meiners first met the Student when he was four years old when she was a special education teacher and the Student transitioned from preschool into her classroom.¹⁷⁶

71. Ms. Meiners recalled that the Father initially did not agree to residential treatment.¹⁷⁷ According to Ms. Meiners, “he was like, ‘No way. I’m not sending my son anywhere.’”¹⁷⁸ After meeting with the IEP team in fall 2023, “reality kind of hit him . . . [and] he came to grips with the Student needing something more that couldn’t be provided [in the District].”¹⁷⁹

72. Beginning on or about November 29, 2023, Mr. Kinsman and a paraeducator began serving the Student outside of the school setting.¹⁸⁰ Mr. Kinsman initially met with the Student for 30 to 45 minutes once per week “as a first step to get to know the Student and his behaviors.”¹⁸¹ The visits later increased to two 30-minute sessions twice per week.¹⁸²

73. The Student received services for reading, written expression, math, adaptive/self-help, and social skills concurrently when served by the District in fall 2023.¹⁸³ The District limited the Student’s services to 120 minutes per week based on the District’s perception of the Student’s tolerance levels at the time, rather than his educational needs.¹⁸⁴ According to Mr. Kinsman, the Student did not have the stamina to participate in 60 minutes of SDI in all areas each day.¹⁸⁵ The Student did not receive 60 minutes of behavior services once per week, as required by the November 2023 IEP.¹⁸⁶

¹⁷⁶ T833.

¹⁷⁷ T839.

¹⁷⁸ T839.

¹⁷⁹ T839-840.

¹⁸⁰ D15 pp2-3;T50.

¹⁸¹ T100, T166, T214.

¹⁸² T101-102.

¹⁸³ T94-95.

¹⁸⁴ T95.

¹⁸⁵ T325.

¹⁸⁶ T94-95.

74. The District was on winter break from December 18, 2023, through January 1, 2024.¹⁸⁷ The Father cancelled sessions scheduled with Mr. Kinsman on January 3, 2024, and January 10, 2024, due to illness.¹⁸⁸

75. In the period of November 29, 2023, through January 13, 2024, the District met with the Student three times.¹⁸⁹

76. Mr. Kinsman did not work under the supervision of an SLP or OT from November 29, 2023 through January 13, 2024.¹⁹⁰ According to Dr. Evans, the District did not provide SLP services when it began serving the Student again in November 2023, “because we did not know [the Student’s] behavior yet.”¹⁹¹

77. When he worked with the Student in-home in fall 2023, Mr. Kinsman focused on building rapport, talking to the family, and getting to know the Student and his needs.¹⁹² Mr. Kinsman worked on fine motor activities, like putting together flashlight batteries, and did things like identifying community signs, to increase the Student’s safety in the community.¹⁹³

78. Mr. Kinsman initially met with the Student at his home, but eventually met with the Student at public parks when the weather was nice.¹⁹⁴ Mr. Kinsman continued working on building rapport with the Student and focused on “leisure play that would be appropriate for the Student’s developmental capacity and help him be acclimated to the community.”¹⁹⁵

79. In an effort to find residential placement for the Student, the District reviewed an OSPI list of approved residential placement options.¹⁹⁶ The District called facilities on the list to find out if they would consider the Student.¹⁹⁷ According to Dr. Evans, the District ran into “roadblocks” because of the Student’s age and because of his

¹⁸⁷ D16 p1.

¹⁸⁸ D16 pp3, 5.

¹⁸⁹ D10 p36; T215

¹⁹⁰ P27; T218-219.

¹⁹¹ T101.

¹⁹² T167-168.

¹⁹³ T167-168.

¹⁹⁴ T168.

¹⁹⁵ T168.

¹⁹⁶ T98.

¹⁹⁷ T98.

“previous behaviors.”¹⁹⁸ Ms. Tucker recalled that the Student’s age caused some challenges because many of the residential facilities served either children under age 18 or served adults, and the Student was “right between childhood and adulthood.”¹⁹⁹ The District was able to share “a couple” facilities with the Father.²⁰⁰

80. Ms. Shipman “went through everything that DDA can offer” in an attempt to locate a DDA placement for the Student.²⁰¹ After the Mother left the home, Ms. Shipman submitted a “waiver request” for additional funding supports through DDA.²⁰² Because of the Student’s age, it was difficult to find placement for him.²⁰³ Ms. Shipman did not pursue supported living through the DDA because the District was moving forward with residential placement for the Student.²⁰⁴

81. In a January 4, 2024 e-mail, Ms. Tucker let Mr. Kinsman know the District was ready to start the application process for residential placement, but was working with the father to arrange additional medical appointments for the Student.²⁰⁵

82. On or about January 13, 2024, the Student was admitted to the Wenatchee Emergency Department for self-harming behaviors.²⁰⁶ The Father admitted the Student to the hospital because his behaviors were “getting out of control” and “he was hurting himself too bad.”²⁰⁷

83. The District participated in hospital care team meetings for the Student on January 18, January 26, and February 2, 2024.²⁰⁸ These meetings included the Father, the Student’s current medical providers, social workers, and his DDA representative.²⁰⁹

84. In late January 2024, the Father informed the District that he was interested in exploring Lakemary Center, a residential facility in Kansas, as a potential residential

¹⁹⁸ T98.

¹⁹⁹ T669.

²⁰⁰ T663.

²⁰¹ T934.

²⁰² T934.

²⁰³ T934-935.

²⁰⁴ T935.

²⁰⁵ D18 p4.

²⁰⁶ D15 p3; T435.

²⁰⁷ T480.

²⁰⁸ D15 pp3-8; T55-56, T671-673

²⁰⁹ D15 pp3-8; T55-56, T671-673

placement for the Student.²¹⁰ According to a January 26, 2024 email from Dr. Evans to Ms. Tucker and other staff, the Father had signed a consent form allowing the District to refer the Student for placement at Lakemary as soon as possible.²¹¹

85. The Student was released from the Wenatchee Hospital on or around February 6, 2024.²¹² The Student's behaviors "started right back up" after leaving Wenatchee Hospital.²¹³

86. On or around February 9, 2024, the Student was admitted to the Seattle Children's Hospital PBMU due to his self-injurious behavior.²¹⁴ PBMU identified the following target behaviors of the Student based on information gathered from the Parent and through direct observation of the Student:²¹⁵

Primary Target Behaviors:

1. Self-Injurious Behaviors: Hand to head hitting, object to head hitting, head-banging, hitting other parts of body with open hand or closed fist.

Secondary Target Behaviors:

1. Physical Aggression: May include grabbing, hitting, pinching, attempting to use the hands of others to hit himself, flailing limbs and contacting others, head butting, biting.
2. Vomiting: Putting hands into mouth and inducing self-vomiting/ emesis.

87. While at the PBMU, the Student completed functional communication training and worked on "thinning the schedule," which is "delaying his access to reinforcement and building up his tolerance for those delays when he's denied access to something."²¹⁶ He was asked to complete small activities or tasks during the waiting intervals.²¹⁷ The Student was²¹⁸

²¹⁰ T53-54.

²¹¹ P18.

²¹² D15 p11; T435.

²¹³ T481.

²¹⁴ D7 p1; P21; T435.

²¹⁵ D7 p1.

²¹⁶ T889.

²¹⁷ T890.

²¹⁸ T890

both increasing his ability to wait for a tangible, which had been a big function of behaviors, and then also increasing compliance with demands, which escape from demands had been another big function of his self-injury and aggression at the time.

88. The staff supporting the Student at PBMU included two BCBAs, a supervising psychologist, and several behavior technicians.²¹⁹

89. PBMU conducted an FBA of the Student and developed a BIP (PBMU FBA/BIP).²²⁰ The purpose of a PBMU FBA/BIP is to “give families, schools, community a resource for what [PBMU has] evaluated and what [PBMU has] determined to be effective in terms of strategies for supporting and decreasing severe behavior.”²²¹

90. The PBMU FBA/BIP outlines protocols for responding when the Student exhibits warning signs of SIB and aggressive behaviors and when he exhibits the behaviors.²²² Caregivers are directed to have the following materials available when responding to the Student’s SIB or aggressive behaviors: soft mats/pads to block self-injury; mats to create partitions to limit roaming area; soft helmet for the Student; and a helmet for caregiver.²²³

91. The PBMU FBA/BIP provided the following examples of triggers and warning signs for the Student’s SIB: overstimulating environments, prolonged exposure to aversive/loud sounds, removed preferred access to items/persons, increased pacing and yelling behavior, vocalizations/whimpering, pressing hands against forehead, and bouncing hard on chair.²²⁴ In response to warning signs, the FBA/BIP directed caregivers to use prompt communication, offer [Student] the helmet, assess his basic needs, assess the environment, and use a soft/calm tone when engaging with [Student].²²⁵

92. In response to the Student’s SIB, the PBMU FBA/BIP directed caregivers to provide the following: place vertical mats in the area as partitions; ensure that soft helmet is on [Student]; provide redirection using incompatible activity; and require 60

²¹⁹ T890.

²²⁰ D7.

²²¹ T891.

²²² D7 pp10-13.

²²³ D7 p10.

²²⁴ D7 pp10-11.

²²⁵ D7 pp10-11.

seconds of calm using a visual timer before [Student] is allowed access to reinforcement and the removal of his helmet.²²⁶

93. The PBMU FBA/BIP outlines the treatment protocol for responding to aggressive behaviors exhibited by the Student, specifying that caregivers need to have soft mats/pads to block self-injury; mats to create partitions to limit roaming; soft helmet for the Student; and a helmet for the caregiver.²²⁷

94. The PBMU FBA/BIP does not specify that it is intended to be implemented only in a hospital setting.²²⁸ The PBMU FBA/BIP does not include a specific recommendation about the Student's academic placement.²²⁹

95. On February 27, 2024, the District requested consent from the Parent to allow a reevaluation of the Student.²³⁰ The reevaluation would be virtual and would address the areas of medical-physical, communication, adaptive/self-help skills, social/emotional, behavior management, and review of existing data.²³¹ The reevaluation was requested by Seattle Children's Hospital to provide a thorough evaluation of the Student's present levels.²³²

96. The District participated in additional hospital care team meetings for the Student on February 27, 2024, March 5, 2024, March 12, 2024, and March 19, 2024.²³³

97. At the care team meeting on February 27, 2024, Seattle Children's Hospital reported to the District that the Student exhibited the following behaviors: "head banging resulting in goose-egg and lacerations to the skin" and "face and leg slapping."²³⁴ At the March 12, 2024 care team meeting, the hospital informed the District that the Student was restrained on March 6, 2024, for "head banging."²³⁵ The

²²⁶ D7 p11.

²²⁷ D7pp11-13.

²²⁸ D7; T790.

²²⁹ D7.

²³⁰ D8 p2.

²³¹ D8 p3.

²³² D8 p3; D15 pp.16-17

²³³ D15 pp17, 19, 20, 24; T62, T64, T674-677.

²³⁴ D15 pp16-17.

²³⁵ D15 p20.

hospital reported at a care team meeting on March 19, 2024, that the Student was restrained 26 times during his first week and four times since then.²³⁶

98. On a date not reflected in the record, but in or around the time the Student was in Seattle Children's Hospital, the Father learned about Bancroft, a residential facility in New Jersey with educational supports.²³⁷ The Father found Bancroft through his own research.²³⁸ The Father signed release forms to allow the District to investigate Bancroft as a residential option for the Student.²³⁹

99. By email dated February 28, 2024, Shannon Duran, Admissions Coordinator with Bancroft, asked the District and the Student's family to participate in a virtual screening to determine if Student would be appropriate for the program at Bancroft.²⁴⁰ Bancroft representatives met with the Student virtually on March 19, 2024.²⁴¹

100. The District participated in a Seattle Children's Hospital discharge meeting for the Student on March 19, 2024.²⁴²

101. Seattle Children's Hospital discharged the Student on March 20, 2024.²⁴³ According to the Father, the Student was discharged because he was medically stable and because the hospital was under the impression that the Student would be going to a residential facility.²⁴⁴

102. After the Student's release from Seattle Children's Hospital, the Father did not find the Student's behavior at home to be different than it had been before the hospitalization.²⁴⁵ The Student's behavior "was okay for a few days, but it kind of just went back to . . . where it was."²⁴⁶ The Father witnessed the same issues he had with the Student for many years, including SIB.²⁴⁷

²³⁶ D15 p22.

²³⁷ T478.

²³⁸ T478.

²³⁹ T478.

²⁴⁰ D15 p18; T62, T64.

²⁴¹ D15 p21

²⁴² D15 p24; T66.

²⁴³ D15 p24.

²⁴⁴ T450.

²⁴⁵ T440.

²⁴⁶ T482.

²⁴⁷ T440.

103. After the Student's release from Seattle Children's Hospital, Ms. Shipman did not witness a change in his behaviors.²⁴⁸ According to Ms. Shipman, "[the behaviors] were pretty much the same – like he had never gone in at all."²⁴⁹

104. On March 25, 2024, the District informed the Father that Lakemary Center would not accept the Student because the Student's size, "coupled with behavior presentation, create a safety issue beyond Lakemary's capacity to manage."²⁵⁰ The District had not yet received a decision from Bancroft and acknowledged at the time that it needed "to look at other options." The District asked the Father to look at Adelbrook, a residential facility in Connecticut, and asked him to provide the District with written permission if he wished to explore it as an option for the Student.²⁵¹

105. By notice dated March 13, 2024, the District invited the Parent, the special education teacher, and the school psychologist to participate in a meeting on March 22, 2024, to review evaluation reports, consider transitional services, and review educational progress.²⁵²

106. Some members of the IEP team met on March 22, 2024, including the Parent.²⁵³ The IEP team created a draft IEP, but did not issue a PWN after the meeting.²⁵⁴ According to the draft IEP, in March 2024, the IEP team agreed that residential placement was the proper placement for the Student.²⁵⁵

107. In March 2024, the IEP team decided to resume in-home services for the Student on April 8, 2024, after spring break.²⁵⁶ Ms. Tucker believed the Student came out of Seattle Children's Hospital "very, very much stabilized."²⁵⁷

108. Mr. Bills, school psychologist, performed the District evaluation of the Student over the following dates: March 11, 2024, March 14, 2024, and March 26, 2024

²⁴⁸ T952.

²⁴⁹ T952.

²⁵⁰ D15 p25.

²⁵¹ D15 p25.

²⁵² D8.

²⁵³ P22 p3; T122-123; T435.

²⁵⁴ P22; T128; T155.

²⁵⁵ P22 p23; T127.

²⁵⁶ D16 p1; T680.

²⁵⁷ T680.

(March 2024 Evaluation).²⁵⁸ Mr. Bills went to the Student's home once and spent between an hour and a half and two hours with the Student in his home.²⁵⁹

109. On March 25, 2024, the Father attempted twice to bring the Student to Eastmont High School to participate in testing with Mr. Bills.²⁶⁰ According to Mr. Bills, "[Father] said that both times they pulled into the parking lot that [Student] got really agitated. [Father] thinks he has bad memories of the building."²⁶¹

110. Mr. Bills was not able to do any formal testing with the Student and relied on his observations of the Student to gather information for the March 2024 Evaluation.²⁶²

111. Mr. Bills attempted twice to assess the Student's cognitive abilities with the Wechsler Nonverbal Scale of Ability (WNV).²⁶³ Because he was not able to fully administer the WNV, Mr. Bills believed the test results underestimated the Student's skills.²⁶⁴

112. The Student's WNV scale results were provided as follows:²⁶⁵

	T-Score /Standard Score	Percentile	Confidence Interval	Classification
Matrices	10	<0.1		
Coding	10	<0.1		
Object Assembly	-	-	-	-
Recognition	-	-	-	-
Spatial Span	13	<0.1		
Picture Arrangement	17	<0.1		
Full Scale*	30	<0.1	30-43	Extremely Low

*This is a standard score with a mean of 100 and a standard deviation of 15.
The rest are t-scores with a mean of 50 and a standard deviation of 10.

²⁵⁸ D8 p6, pp9-14.

²⁵⁹ T573.

²⁶⁰ P24.

²⁶¹ P24.

²⁶² T562.563.

²⁶³ D8 p10.

²⁶⁴ D8 p10.

²⁶⁵ D8 p11.

113. Mr. Bills evaluated the Student's adaptive/self-help skills.²⁶⁶ He observed the Student cook and use the restroom on his own.²⁶⁷ The Father told Mr. Bills that the Student dresses himself.²⁶⁸

114. To evaluate adaptive/self-help skills, Mr. Bills referred to the results of an adaptive skills test completed in Fall 2020 and the results of a past Adaptive Behavior Assessment System-3rd ed (ABAS 3) that was administered by the Student's Mother and a teacher.²⁶⁹ The adaptive skills test and the ABAS 3 "both had a Global Adaptive Standard Score of 48, which is in the 'Extremely Low' range of functioning" for the Student's age.²⁷⁰

115. To evaluate the Student in the areas of medical-physical, behavior management, and social skills, Mr. Bills relied on information provided in the PBMU FBA/BIP.²⁷¹

116. The March 2024 Evaluation found that the Student remained eligible for special education services under the disability category of autism, noting that, "[i]t's clear that without continued Special Educational services, that [the Student] is at great risk of school failure."²⁷² The March 2024 Evaluation recommended SDI in the areas of adaptive/self-help, behavior, math, reading, written expression, and social skills.²⁷³

117. After the meeting to review the reevaluation of the Student, the District issued a PWN dated March 27, 2024.²⁷⁴ Through the March 27, 2024 PWN, the District proposed continuing special education services for the Student under the autism category and continuing the Student's placement, which, according to the PWN dated November 15, 2023, was proposed residential placement.²⁷⁵

118. By email dated March 26, 2024, Shannon Duran with Bancroft informed the District that Bancroft accepted the Student to its program, pending bed availability.²⁷⁶

²⁶⁶ D8 p12.

²⁶⁷ D8 p12.

²⁶⁸ D8 p12.

²⁶⁹ D8 p12.

²⁷⁰ D8 p12.

²⁷¹ D8 p9, p13.

²⁷² D8 p6.

²⁷³ D8 p7.

²⁷⁴ D8 p15.

²⁷⁵ D8; p15; D6 p28.

²⁷⁶ P25 p2.

Ms. Duran let the District know that the Student's health insurance would need to be sorted out before offering an admission date, as the facility did not accept the Student's current health insurer.²⁷⁷

119. By email dated March 26, 2024, Dr. Evans wrote to Ms. Tucker, the Father, Ms. Shipman, and Mr. Bills to help coordinate the Student's placement at Bancroft.²⁷⁸ She advised the Father that they would need to notify Bancroft if they accept placement, noting that, "Once a bed comes available we may only have 2 weeks. Missing a placement can put us back months or even a year."²⁷⁹

120. By email dated March 29, 2024, Ms. Duran confirmed with the District that the Father accepted the placement at Bancroft and that he was applying for Supplemental Security Income (SSI) benefits to solve the insurance issue, as well as seeking a guardianship of the Student.²⁸⁰

121. OT Kathryn MacCallum²⁸¹ originally met the Student in or around 2012 when the Student was in elementary school.²⁸² Ms. MacCallum began working with the Student again at the end of April 2024.²⁸³

122. In an email from Ms. Tucker dated April 29, 2024, sent to OT Ms. MacCallum, Dr. Evans, and Mr. Kinsman, Ms. Tucker informed the team that beginning April 30, 2024, SLP Kelley Norrell²⁸⁴ would be observing the team's interactions with the Student.²⁸⁵ Ms. Tucker wrote that, "our hope is we can update [Student]'s

²⁷⁷ P25 p2.

²⁷⁸ D15 pp26-27.

²⁷⁹ D15 pp26-27.

²⁸⁰ P25 p1.

²⁸¹ Ms. MacCallum has a bachelor's degree in fine arts and a master's degree in occupational therapy. She holds a medical license and a school-based license in occupational therapy. She worked for the District as an OT from 2012 to 2014. From 2014 to 2017, she practiced in a pediatric outpatient setting. She rejoined the District in 2017. T359-360.

²⁸² T360.

²⁸³ T361.

²⁸⁴ Ms. Norrell obtained a bachelor's degree in public relations in 1991. After working in the private sector, she earned her SLP assistant license and worked for eight years as an SLPA. She earned a master's degree in 2021 and has been a board certified SLP since 2022. She is the District SLP serving three District secondary schools. T402-403.

²⁸⁵ P27.

communication goals so they are applicable and relevant to his current situation and learning.”²⁸⁶

123. Also in her April 29, 2024 email, Ms. Tucker asked her staff to schedule a meeting with the District members of the Student’s IEP team, writing,²⁸⁷

I would also like for us to schedule a Team meeting in the coming weeks to revisit [Student]’s IEP now that he is out of the hospital and making consistent gains. Prior to the full IEP Team meeting, it would be great if we could meet as an Eastmont Team to make sure we are all on the same page and have a DRAFT plan for moving forward prior to the larger Team meeting.

124. Prior to Ms. Norrell joining the Student’s team, the Student had communication services on his IEP, but Mr. Kinsman delivered the communication instruction.²⁸⁸ Mr. Kinsman did not work under the supervision of an SLP prior to Ms. Norrell joining the team at the end of April 2024.²⁸⁹ There is no evidence in the record of an OT working with the Student prior to Ms. MacCallum joining the Student’s team in April 2024.

125. During the time the Student was in Seattle Children’s Hospital, the District still considered residential placement “a good option for him.”²⁹⁰ Ms. Tucker estimated that she changed her personal opinion about residential placement for the Student at the end of April 2024, after the SLP and OT joined the team.²⁹¹ Ms. Tucker described the Student at that time as “directable” and “much more regulated.”²⁹² Ms. Tucker did not point to any data collected by the District between April 8, 2024, and the end of April 2024, when she changed her opinion.

126. According to Ms. Tucker, the District communicated with the Father about how the Student was doing at home after his release from Seattle Children’s Hospital.²⁹³ Ms. Tucker recalled that,²⁹⁴

²⁸⁶ P27.

²⁸⁷ P27.

²⁸⁸ T404.

²⁸⁹ P27; T218-219, T256.

²⁹⁰ T714-715.

²⁹¹ T719.

²⁹² T719.

²⁹³ 719-720.

²⁹⁴ 719-720.

[t]he team was communicating with dad. I did not personally collect any official, like, formal data. But with Cody and Katie and Kelly and Marla and my conversations with dad, we were feeling like he was doing much better at home as well. There was still concerns, and dad did share concerns with us. But we were all feeling that the Student had come out of Children's much more regulated and much more directable. We were able to work with him and find success.

127. In the period between April 8, 2024, and June 4, 2024, the District provided services to the Student beginning with 30-minute sessions twice per week outside the school environment.²⁹⁵ According to Dr. Evans, the District wanted to start services slowly to learn the Student's preferred activities and build a rapport with the Student.²⁹⁶

128. The Student's 30-minute sessions in spring 2024 initially took place at a park, and later in a classroom at Eastmont Junior High School.²⁹⁷ The District eventually increased the sessions to 45 minutes twice per week.²⁹⁸ The record does not show when this change in duration of the meetings took place. The sessions took place outside of normal school hours.²⁹⁹ In the period between April 8, 2024, and June 4, 2024, the Student did not have access to high school-aged peers.³⁰⁰

129. When the District had sessions with the Student at a park, Mr. Kinsman flew a kite with the Student, played with bubbles, with a ball, and with a parachute.³⁰¹ Mr. Kinsman would walk around the park with the Student and point out vocabulary words.³⁰² Dr. Evans considered these activities part of the SDI provided to the Student.³⁰³ Dr. Evans, acknowledged that the activities may sound "loosey-goosey," but she believed they were spending "intentional time" with the Student.³⁰⁴

130. From April 8, 2024, through June 4, 2024, the Student received 60 minutes per week of SDI in social skills and behavior, but he did not receive SDI in reading,

²⁹⁵ D15 p28; T66-67.

²⁹⁶ T67, T114.

²⁹⁷ T110-111, T351.

²⁹⁸ D9 p5.

²⁹⁹ T111.

³⁰⁰ T113.

³⁰¹ T114.

³⁰² T114

³⁰³ T113.

³⁰⁴ T125-126.

writing, math, and adaptive/self-help.³⁰⁵ Mr. Kinsman believed that the Student needed much more than 60 minutes per week in SDI in spring 2024.³⁰⁶

131. Beginning at the end of April, 2024, SLP Ms. Norrell delivered services in communication to the Student once per week as part of his 45 minute sessions.³⁰⁷ During that 45 minute period, she worked with Mr. Kinsman, OT Ms. MacCallum, and Dr. Evans to provide services as a team.³⁰⁸

132. Dr. Tucker does not believe a program of 45 minutes twice a week was appropriate for the Student at that time.³⁰⁹ According to Dr. Tucker,³¹⁰

the Student went from a 24/7 inpatient hospital unit where he received supervision, the intervention that he needed, medically, behaviorally, and showed progress that was documented here, and then he goes home and has a total of 90 minutes a week. There's no comparison there.

* * *

If 45 minutes in the home is all that a student can tolerate, if I were in charge of that program, I would be looking at some sort of educational placement where he could receive more intensive services for longer amounts of time.

May 2024 Assessment Revision, May 2024 IEP, BIP, Emergency Response Protocol (ERP), and Extended School Year Services (ESY) IEP

133. On May 7, 2024, the Father provided consent for the District to assess the Student in the areas of fine-motor and communication (May 2024 Assessment Revision).³¹¹

134. On May 21, 2024, Ms. Norrell assessed the Student's communication skills.³¹² Ms. Norrell performed a file review of the Student, observed him, and gathered

³⁰⁵ T223-224.

³⁰⁶ T226.

³⁰⁷ T424.

³⁰⁸ T428.

³⁰⁹ T793.

³¹⁰ T793, 794-795.

³¹¹ D9.

³¹² D9 pp5-9.

information from the Father, Mr. Kinsman, Dr. Evans, and Ms. Tucker.³¹³ Ms. Norrell also administered the Functional Communication Profile-Revised (FCP-R) to the Student.³¹⁴ She chose to use the FCP-R (rather than the Communication Matrix), because it is more involved and covers a wider range of communication skills used by complex communicators like the Student.³¹⁵

135. Ms. Norrell observed that the Student presented with complex communication needs, communicated through simple verbal utterances and nonverbal language, benefited from known communication partners, and demonstrated some nonverbal behaviors that minimally impacted his ability to communicate.³¹⁶

136. Ms. Norrell found the Student had the following levels of communication impairment:³¹⁷

Category	Level of Impairment
Sensory and Motor	Severe
Attentiveness	Severe
Receptive Language	Severe
Expressive Language	Severe
Pragmatic/Social Language	Severe
Speech	Moderate
Voice	Mild
Oral	Unable to Assess
Fluency	None Observed
Non-Oral Communication	None Observed

³¹³ T405-406.

³¹⁴ D9 pp5-6.

³¹⁵ D9 p6; T406.

³¹⁶ D9 p6.

³¹⁷ D9 pp6-7.

137. To perform a file review of the Student, Ms. Norrell reviewed the PBMU FBA/BIP and some of the Student's previous District records.³¹⁸

138. Based on her assessment of the Student, Ms. Norrell's diagnostic impression was that the Student's "expressive and receptive language abilities are below expectations and he demonstrated difficulty in his ability to use and understand language in various tasks."³¹⁹

139. Ms. Norrell determined the Student required specialized instruction and related services for expressive language, receptive language, and for speech language impairment in a special education classroom.³²⁰

140. To deliver indirect SLP services, Ms. Norrell discussed the Student's needs with his team once per week. They worked on a schedule for the Student and discussed problem solving for when the Student became frustrated.³²¹

141. According to Ms. Norrell, functional communication is important for a complex communicator like the Student to ensure his safety.³²²

Can he provide his information if he is lost in the community? That would be like dad's name and number. Can he let us know if he's in pain or hurt? Can he tell us what he needs if he's hungry? Those kinds of things are important for functional communication.

142. OT Kathryn MacCallum assessed the Student's fine-motor skills as part of the May 2024 Assessment Revision.³²³ Ms. MacCallum used the School Function Assessment (SFA) Part III Activity Performance questionnaire, parent interview, non-standardized testing, and a review of records including past fine-motor performance, goals, and treatment.³²⁴ For the parent interview, Ms. MacCallum asked the Father questions about the Student's performance level in an effort to get a baseline to be able to develop goals for the Student.³²⁵ To assess the Student's fine-motor tasks and

³¹⁸ T407.

³¹⁹ D9 p8.

³²⁰ D9 p8.

³²¹ T413-414.

³²² T416.

³²³ D9 pp9-13.

³²⁴ D9 p9.

³²⁵ T363.

routines and transitions, Ms. MacCallum documented the Student's skills based on clinical data and her clinical observations, as well as referencing the PBMU FBA/BIP.³²⁶

143. Ms. MacCallum determined the Student demonstrated a significant fine-motor deficit and recommended special education related services in fine-motor based on the Student's performance and results of her standardized and non-standardized evaluation.³²⁷ She determined the Student would benefit from additional support with written work, with the computer used for assistive technology, as well as some areas of independence such as manipulating items, personal hygiene, eating and drinking.³²⁸

144. Ms. MacCallum recommended the Student receive "supplementary aids and supports of indirect occupational therapy" because she felt "it was significant that everyone that worked with the Student, paras and teacher, again, helped with the carryover of those skills."³²⁹

145. The May 2024 Assessment Revision made the following recommendations to the IEP team:³³⁰

1. Special Education services including specially designed instruction:

SDI	Area Assessed	Description
Adaptive/Self Help	Adaptive/Self-Help Skills	There is an on-going need for Specially Designed Instruction in this area.
Behavior	Behavior Management	There is an on-going need for Specially Designed Instruction in this area.

SDI	Area Assessed	Description
Math	Academic	There is an on-going need for Specially Designed Instruction in this area.
Reading	Academic	There is an on-going need for Specially Designed Instruction in this area.
Written Expression	Academic	There is an on-going need for Specially Designed Instruction in this area.
Social Skills	Social Skills	There is an on-going need for Specially Designed Instruction in this area.

2. Related services:

Fine Motor
Communication

3. Supplementary Aids and Services, Program Modifications, Supports for School Personnel:

³²⁶ T366.

³²⁷ D9 p13.

³²⁸ T366.

³²⁹ T367.

³³⁰ D9 pp13-14.

Indirect Occupational Therapy
Indirect Speech/Language Therapy

146. In her review of the May 2024 Assessment Revision, Dr. Tucker did not see anything in the document that indicated to her that the Student no longer required residential treatment.³³¹

147. The IEP team did not add any new assessment data related to behavior during spring 2024.³³² According to Ms. Tucker, the team was only focused on communication and fine motor skills in late April and May.³³³

148. By notice dated May 21, 2024, the District invited the Parent and the Student to participate in an IEP meeting on May 24, 2024, to review findings of the May 2024 Assessment Revision, develop extended school year services, review the current IEP, determine placement, and discuss the BIP.³³⁴

149. Prior to the May 24, 2024 IEP team meeting, Dr. Evans participated in “informal” pre-meeting discussions about the District’s ability to serve the Student.³³⁵ Dr. Evans met with Mr. Kinsman, Ms. Norrell, and Ms. MacCallum to discuss whether they could serve the Student. According to Dr. Evans, she and the others “were feeling really great that we could [serve him] and wanted to pursue serving him more minutes.”³³⁶

150. On May 23, 2024, Dr. Evans prepared an agenda for the May 24, 2024 IEP meeting (Agenda).³³⁷ The Agenda included the following language:³³⁸

- 3. IEP - Cody
 - a. Minutes for the rest of the school year
 - b. Minutes for ESY
 - c. Placement for Fall

Eastmont can serve [Student]:

³³¹ T792.

³³² T724.

³³³ T724.

³³⁴ D10.

³³⁵ T135.

³³⁶ T135.

³³⁷ D20; T71-72; T136-137.

³³⁸ D20 p2.

1. Changes in [Student]’s ability to self-regulate improved after Children’s Hospital stay

a. Success factors of [Seattle Children’s Hospital]

i. Consistent schedule

ii. Medication

iii. FBA and BIP plan

151. At the time she prepared the Agenda on May 23, 2024, it was the opinion of Dr. Evans that the Student’s placement should be in the District.³³⁹

152. On the morning of May 23, 2024, Dr. Evans emailed the Agenda to Ms. Tucker, Mr. Kinsman, Ms. MacCallum, and Ms. Norrell.³⁴⁰ Dr. Evans did not send a copy of the Agenda to the Father prior to the May 24, 2024 IEP meeting.³⁴¹ Copies of the Agenda were available “on the table” at the May 24, 2024 IEP meeting.³⁴²

153. On the afternoon of May 23, 2024, School Psychologist Mr. Bills received a telephone call from Ms. Tucker, informing him he should attend the Student’s IEP team meeting the next morning.³⁴³ Ms. Tucker told Mr. Bills that, “the District was going to recommend that the Student not go to treatment now and that the District can serve his needs.”³⁴⁴ According to Mr. Bills, “I was like, ‘Well what are you talking about?’ and so I expressed my concerns. That was very much worrying me and [I had] one of those sleepless nights.”³⁴⁵

154. Mr. Bills described a call he made to Ms. Tucker on the morning of May 24, 2024:³⁴⁶

I went early, and I called Katie and I told her that I would come to the meeting still, but that when asked directly I was going to say that I disagreed and couldn't support that decision. And Katie told me that she was going to excuse me from the meeting, that I didn't need to be there.

³³⁹ T137.

³⁴⁰ D20 p1; T136.

³⁴¹ T137.

³⁴² T726.

³⁴³ T560, T682.

³⁴⁴ T560.

³⁴⁵ T560.

³⁴⁶ T560.

155. On the morning of May 24, 2024, Mr. Bills informed his supervisor, the Eastmont High School Assistant Principal, Stacia Hardie, of his conversation with Ms. Tucker.³⁴⁷ Mr. Bills recalled that both Ms. Hardie and the high school's principal were present.³⁴⁸ Mr. Bills believed that Ms. Hardie shared his concerns about the proposed change in the Student's placement.³⁴⁹

156. As part of her role as assistant principal at Eastmont High School, Ms. Hardie manages the special education department.³⁵⁰ Ms. Hardie oversees the special education department staff, evaluates them, and works with them to align and plan curriculum.³⁵¹ She is responsible for helping to schedule the special education students into classes and assigning paraeducators to work with the students.³⁵²

157. Ms. Hardie recalled that Mr. Bills came to her office the morning of May 24, 2024, and he told her and the principal that "It has been nice working with you guys. I may get fired today."³⁵³ Mr. Bills told Ms. Hardie that he was going to an IEP meeting and, if asked, he would recommend that the Student be served in residential placement.³⁵⁴ Ms. Hardie suggested to Mr. Bills that he "make contact ahead of time and see if they still want you at the meeting."³⁵⁵ Ms. Hardie recalled that Mr. Bills left her office, then returned and reported that he had been "uninvited to the meeting."³⁵⁶ She did not know who "uninvited" Mr. Bills.³⁵⁷

158. Based on what she believed was the District's "inability to serve the Student and keep him safe," Ms. Hardie agreed with Mr. Bills' opinion that the Student required residential placement.³⁵⁸

³⁴⁷ T560.

³⁴⁸ T560-561.

³⁴⁹ T560-561.

³⁵⁰ T1138.

³⁵¹ T1138.

³⁵² T1138-1139.

³⁵³ T1146.

³⁵⁴ T1146.

³⁵⁵ T1146.

³⁵⁶ T1146-1147.

³⁵⁷ T1147.

³⁵⁸ T1147.

159. Ms. Hardie did not work with or observe the Student during the 2023-2024 or 2024-2025 school years.³⁵⁹

160. It was not typical for Mr. Bills to be excused from an IEP meeting if he had a dissenting opinion.³⁶⁰ Prior to May 2024, it had never happened to him during the 32 years he worked for the District.³⁶¹

161. According to Ms. Tucker, Mr. Bills told her on the morning of May 24, 2024, that he had met with the assistant principal and the principal and that “he was just not feeling comfortable attending the meeting.”³⁶² Ms. Tucker reported that she told Mr. Bills she would excuse him if he was not comfortable.³⁶³

162. In May 2024, Mr. Bills did not gather new behavior data on the Student, report new evaluation results on the Student, or change his position regarding residential placement for the Student.³⁶⁴ According to Mr. Bills,³⁶⁵

I didn't know how we would be able to meet his behavioral, academic,
and communication needs if we had never been able to do it in the past.
I didn't understand what had changed that we would now be able to.

163. Mr. Bills has not had any involvement in the Student’s education since he evaluated the Student in March 2024.³⁶⁶ Mr. Bills did not observe the Student receiving services in the District during the Spring 2024, ESY 2024, or the Fall 2024.³⁶⁷

164. Having considered all of the testimony and observed the witnesses testify, I find Mr. Bills’ testimony regarding the reason he did not attend the IEP meeting on May 24, 2024, to be more credible than Ms. Tucker’s. In addition to being consistent and earnest, Mr. Bills’ testimony was supported by credible testimony from Ms. Hardie, who echoed his description of events on the morning of May 24, 2024.³⁶⁸ Mr. Bills is retired

³⁵⁹ T1149.

³⁶⁰ T568.

³⁶¹ T568.

³⁶² T682.

³⁶³ T683.

³⁶⁴ T567.

³⁶⁵ T569.

³⁶⁶ T569, T575.

³⁶⁷ T575.

³⁶⁸ T1146-1147.

after working as a psychologist in the District for 32 years; he has no apparent motivation to mischaracterize his conversations with Ms. Tucker.

165. Based on the above, it is found that Ms. Tucker told Mr. Bills not to attend the May 24, 2024 IEP meeting after he informed her that he would not support the District's decision to change the Student's placement.

166. On May 24, 2024, the following individuals attended an IEP meeting to review the Student's May 2024 Assessment Revision and develop the Student's IEP (May 2024 IEP): Mr. Kinsman; SLP Ms. Norrell; the Parent; transition specialist Tina Gorman; OT Ms. MacCallum; assistant special education director Dr. Evans; DDA representative Ms. Shipman (attended virtually); and principal Ella Alailma-Daley.³⁶⁹ School psychologist Mike Bills was marked as "excused" from the May 24, 2024 meeting due to a "conflict."³⁷⁰

167. The IEP team determined the Student required the following "extras" to manage his behavior:³⁷¹

[A]dditional 2:1 adult support for safety while accessing reading content. In addition to special education services [Student] needs the following accommodations to experience success in his writing goal: allow breaks, alternative seating options, arranged environment for expectations, access to designated area with limited stimuli, first/then board, iPad with functional communication system, rewarded compliance, soft helmet, soft mats for blocking of self injurious behavior, detailed visual schedules, scheduled free-play time, visual choice wheel, and visual supports. Staff serving [Student] are equipped with training in Safety Care and Ukeru pads.

168. According to Dr. Evans, Safety Care is a ten-module course for staff members addressing de-escalation, understanding antecedents, and co-regulating with students.³⁷² Ukeru is a similar course, applying an all-hands-off approach using pads to support students and staff until a student is regulated.³⁷³ Any staff, including

³⁶⁹ D9 pp15-16.

³⁷⁰ D10 p7, p39.

³⁷¹ D10 p13.

³⁷² T74.

³⁷³ T75.

paraeducators, that interacted physically with the Student received training in these safety courses.³⁷⁴

169. The IEP team required two-to-one support for the Student based on his history of SIB.³⁷⁵

170. According to the Student's present levels in the May 2024 IEP, the Student engaged in SIB at school and at home, could not count to ten independently, could read/identify his and the Father's name, address, and phone number 50% of the time, and could not write his name.³⁷⁶ When transitioning from one activity to another, the Student demonstrated the ability to follow his daily routine and schedule with 0% frequency.³⁷⁷

171. The IEP team set the following behavior goal for the Student in the May 2024 IEP:³⁷⁸

By 06/04/2025, when given accommodations when transitioning to a new location or setting [Student] will demonstrate the ability to follow his daily routine and schedule (visual supports, visual schedules, etc) improving self-management and behavioral skills from 0% of opportunities to 50% of opportunities as measured by staff observation and data

172. The IEP team set the following math goal for the Student in the May 2024 IEP:³⁷⁹

By 06/04/2025, when given a budget and a shopping list [Student] will use the next dollar up strategy to make a purchase without overpaying improving mathematical problem solving skills and independence from 0% to 40% accuracy as measured by teacher created assessment, staff observation, and data collection.

³⁷⁴ T75.

³⁷⁵ T171.

³⁷⁶ D10 pp12-15,

³⁷⁷ D10 p12.

³⁷⁸ D10 p13.

³⁷⁹ D10 p14.

173. The IEP team set the following reading goal for the Student in the May 2024 IEP:³⁸⁰

By 06/04/2025, when given accommodations and a list of three or more items [Student] will find and select two out of the three items improving reading comprehension skills in a shopping scenario from 0% to 60% accuracy as measured by teacher created assessment, staff observation, and data collection.

174. The IEP team set the following written expression goal for the Student in the May 2024 IEP:³⁸¹

By 06/04/2025, when given chromebook and accommodations, [Student] will press 1-key commands on keyboard as requested with minimal assistance from maximum assistance improving fine motor skills from 0% accuracy (0/5 trials) to 80% accuracy (4/5 trials) as measured by OT data and clinical observation.

175. The IEP team set the following communication goal for the Student in the May 2024 IEP:³⁸²

By 06/04/2025, when given an opportunity to engage with others [Student] will demonstrate all four reasons to communicate (refuse, obtain, social, information) using functional communication skills (ex: verbal, behavioral, gestures, the use of technology, etc) improving functional communication from 2 of 4 reasons (refuse, obtain) to 4 of 4 reasons (refuse, obtain, social, information) as measured by data and observation.

176. The IEP team set the following fine-motor goal for the Student in the May 2024 IEP:³⁸³

By 06/04/2025, when given chromebook and accommodations, [Student] will navigate pointer with trackpad to click and drag with minimal assistance from maximum assistance improving fine motor

³⁸⁰ D10 p15.

³⁸¹ D10 p16.

³⁸² D10 pp17-18.

³⁸³ D10 p19.

skills from 0/5 trials to 4/5 trials as measured by OT data and clinical observation.

177. Ms. MacCallum developed the fine-motor goal for the Student.³⁸⁴ She focused on use of the Chromebook because she believed the Student would benefit from the use of assistive technology.³⁸⁵ She worked on getting him to understand what button correlated to what actions to start, and “the big picture goal is that he was able to access academic materials through the Chromebook as well.”³⁸⁶

178. The IEP team set the following adaptive/self-help skills goal for the Student in the May 2024 IEP:³⁸⁷

By 06/04/2025, when given accommodations after asked to do a non-preferred activity [Student] will demonstrate the ability to use his visual schedule to transition within his routine improving adaptive skills from 0% of opportunities to 50% of opportunities as measured by staff observation and data.

179. The IEP team set the following social skills goal for the Student in the May 2024 IEP:³⁸⁸

By 06/04/2025, when given accommodations after requesting unavailable item/activity [Student] will demonstrate the ability to choose from two or more items or activities using functional communication skills (ex: verbal, low tech choice board, [augmentative and alternative communication] on iPad, etc) improving social skills from 0% of opportunities to 50% of opportunities as measured by staff data and observation.

180. The May 2024 IEP service matrix provided for the following special education and related services for the Student from June 5, 2024, through August 27, 2024:³⁸⁹

³⁸⁴ T369.

³⁸⁵ T369.

³⁸⁶ T370.

³⁸⁷ D10 p20.

³⁸⁸ D10 p21.

³⁸⁹ D10 p30.

Services 06/05/2024 - 08/27/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Communication	SLP	SLP	30 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
No	Fine Motor	OT	OT	20 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
Special Education							
Yes	Written Expression	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
Yes	Math	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
Yes	Adaptive/Self Help	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
Yes	Social Skills	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
No	Behavior	Special Education Teacher	Special Education Teacher	70 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
No	Reading	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/05/2024	08/27/2024
Yes	Reading	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	06/05/2024	08/27/2024
No	Written Expression	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/05/2024	08/27/2024
No	Math	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/05/2024	08/27/2024
No	Adaptive/Self Help	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/05/2024	08/27/2024
No	Social Skills	Special Education Staff	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/05/2024	08/27/2024
No	Behavior	Special Education Teacher	Special Education Teacher	53 Minutes / 1 Times Daily	Special Education	06/05/2024	08/27/2024

Total minutes per week of building instructional time available for this student (excluding lunch):

120 minutes per week

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

1885 minutes per week

Percent of time in general education setting:

-1470.83% in General Education Setting

181. The May 2024 IEP matrix included errors (showing -1470.83% in general education and a full-day schedule of SDI) because of incorrect selections made on a drop down menu when the IEP was generated.³⁹⁰ As is addressed below, the IEP team developed an IEP in August 2024, in part to correct these errors retrospectively.³⁹¹ A September 6, 2024 PWN noted that IEPOnline (used to generate the IEP) did not allow the team to provide a corrected matrix for May 2024.³⁹² Therefore, the PWN provided the following summary of services the Student would receive under the June 5, 2024 to August 27, 2024 service matrix: 120 minutes of SDI per week, consisting of 70 minutes of behavior services with the special education teacher once per week, and 10 minutes each in written expression, math, adaptive/self-help, social skills, and reading each week, concurrently. The Student was also to receive related services of

³⁹⁰ T76-77.

³⁹¹ P38 p34.

³⁹² P38 p34.

communication, 30 minutes per week with an SLP, and fine motor, 20 minutes per week with an OT.³⁹³

182. Under the May 2024 IEP, the Student was to receive the following supplementary aids and services from June 5, 2024, through August 27, 2024, and from August 28, 2024, through June 4, 2025.³⁹⁴

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Transportation Aid	Paraeducator	Special Education Teacher	15 Minutes / 2 Times Daily	Special Education	06/05/2024	08/27/2024
No	1:1 Dedicated Paraeducator	Dedicated 1:1 Paraeducator	Special Education Teacher	363 Minutes / 5 Times Weekly	Special Education	06/05/2024	08/27/2024
No	Indirect Occupational Therapy	OT	OT	15 Minutes / 1 Times Monthly	Special Education	06/05/2024	08/27/2024
No	Indirect Speech/Language Therapy	SLP	SLP	15 Minutes / 1 Times Monthly	Special Education	06/05/2024	08/27/2024
No	Transportation Aid	Paraeducator	Special Education Teacher	15 Minutes / 2 Times Daily	Special Education	08/28/2024	06/04/2025
No	1:1 Dedicated Paraeducator	Dedicated 1:1 Paraeducator	Special Education Teacher	363 Minutes / 5 Times Weekly	Special Education	08/28/2024	06/04/2025
No	Indirect Occupational Therapy	OT	OT	15 Minutes / 1 Times Monthly	Special Education	08/28/2024	06/04/2025
No	Indirect Speech/Language Therapy	SLP	SLP	15 Minutes / 1 Times Monthly	Special Education	08/28/2024	06/04/2025

183. From June 5, 2024, through August 27, 2024, and from August 28, 2024, through June 4, 2025, the IEP team determined that the LRE placement option for the Student was 0% to 39% in general education and that the Student would receive services at Eastmont Junior High School in the District.³⁹⁵

184. By PWN dated May 24, 2024, the District proposed the following actions:³⁹⁶

1. Start services as detailed in the IEP created on 05/24/2024
2. Provide ESY - Extended School Year Services 06/18/2024 07/03/2024
3. Implement the [BIP] written by Seattle Children's Hospital 02/2024
4. Follow the [ERP] as written by Seattle Children's Hospital 02/2024
5. Add 1:1 dedicated paraeducator

³⁹³ D14 p2; P38 p34.

³⁹⁴ D10 pp31-32.

³⁹⁵ D10 pp33-34.

³⁹⁶ D10 p35.

185. The IEP team provided the following reasons for the proposed actions:³⁹⁷

1. [Student]'s present levels of performance suggest that his goals and services need to be updated.
2. [Student] has emerging skills that qualify him for ESY services to continue his growth trajectory.
3. A Behavior Plan is needed to keep [Student] safe at school.
4. An Emergency response protocol is needed when/if [Student]'s behavior escalates to an advanced level of self-harm.
5. [Student] needs two adults to support his access to his specially designed instruction. Having a 1:1 dedicated paraeducator accompany [Student] provides the number of adults needed to support [Student].

186. The IEP team considered and rejected the option of residential placement for the Student because,³⁹⁸

[b]ased on new data received from Seattle Children's Hospital and the Assessment Revision, we stand ready to serve [Student] here in Eastmont. [Student] is able to safely engage in learning in Eastmont when stabilized on medication as prescribed by his doctor and with trained staff who use the information provided by Seattle Children's Hospital. (Functional Behavior Assessment, Behavior Intervention Plan, and Emergency Response Protocol).

187. The Father did not agree with the IEP team's decision to serve the Student in the District at the junior high school.³⁹⁹ He continued to believe that residential placement was best for the Student.⁴⁰⁰ DDA advocate Ms. Shipman also disagreed with the plan to serve the Student in the District.⁴⁰¹ She believed the Student still required residential placement because "his behaviors hadn't changed". . . and "enough data hadn't been collected."⁴⁰²

³⁹⁷ D10 p35.

³⁹⁸ D10 p35.

³⁹⁹ D10 p35; T77.

⁴⁰⁰ D10 p35; T77.

⁴⁰¹ T77, T957, T972.

⁴⁰² T972.

188. Ms. Shipman did not observe the Student in school when he received ESY services in 2024 or during the 2024-2025 school year.⁴⁰³ She did not discuss the ESY services or the instruction the Student received in the 2024-2025 school year with the Student's special education teacher.⁴⁰⁴ Ms. Shipman based her opinion about the Student's special education services on three weeks' worth of Bobcat Daily reports⁴⁰⁵ sent home by school staff and on verbal reports from the Father.⁴⁰⁶

189. Mr. Kinsman understood at least one week before the May 24, 2024 IEP meeting that the District no longer wanted to recommend residential placement for the Student.⁴⁰⁷ No one specifically told Mr. Kinsman that residential placement would not be recommended; he pieced it together based on discussions with Ms. Tucker and Dr. Evans.⁴⁰⁸ Mr. Kinsman was open to residential placement for the Student; however, he believed the District could serve the Student at Eastmont Junior High School.⁴⁰⁹

190. Mr. Kinsman remembered that Parent was "shocked" to learn the District no longer planned to recommend residential placement for the Student.⁴¹⁰ Mr. Kinsman understood at the IEP meeting that, "the District's position was that we can serve the Student at Eastmont and that [residential placement] was no longer being offered as an option."⁴¹¹

191. The Father recalled that at the IEP meeting on May 24, 2024,⁴¹²

they just continued to talk about serving him and going around with all the different people that were in there. And I finally had to stop them and say, "They are ready for him at Bancroft." And then that's when Ms. Tucker stepped in and she started talking about how they really wanted to keep him in the community and work with him at school here. They didn't want to send him to a "stale environment" like Bancroft. And I just

⁴⁰³ T973-974.

⁴⁰⁴ T974-975.

⁴⁰⁵ The District's special education staff used Bobcat Daily activity reports to keep a record of the Student's daily progress and provided the Father with copies.

⁴⁰⁶ T975-976.

⁴⁰⁷ T227.

⁴⁰⁸ T228.

⁴⁰⁹ T231.

⁴¹⁰ T230.

⁴¹¹ T231.

⁴¹² T485.

said, “Really? You guys have waited all these months and you pull the carpet out right when it is time for him to go?”

192. Ms. Tucker recalled the following discussion about placement during the May 24, 2024 IEP meeting:⁴¹³

We were kind of getting towards the end of the meeting, Eastmont shared that we felt, based on [the Student] coming back from Children's just a new kiddo, and then by that I mean stabilized, directable, our team had been working with him for two months, and I realize it was only a couple of times a week for a short time, but we were seeing improvements and seeing him responding to our service providers in a positive way, so the team, based on the data we had in front of us, decided to recommend that we serve the Student in Eastmont in a 0 to 39% still, but that we serve him in Eastmont moving forward.

* * *

The Father was the only one on the team who expressed that he was not in agreement. Everyone else on the team, and it was a fairly large team, was in agreement with the placement.

193. The District did not present data during the May 24, 2024 IEP meeting to show how the Student's behavior had improved.⁴¹⁴

194. Ms. Tucker did not ask the Father if he shared the opinion that the Student was “more regulated and much more directable.”⁴¹⁵ She understood that the Father was “very much in favor” of placing the Student in a residential facility.⁴¹⁶

195. Ms. Tucker stressed during the May 24, 2024 IEP meeting that the Student should be around peers and have access to social interactions.⁴¹⁷ The District's plan was to transport the Student in a bus by himself and provide services in a room in which he would be alone with his paraeducators.⁴¹⁸

⁴¹³ T684, T685.

⁴¹⁴ T957.

⁴¹⁵ T720.

⁴¹⁶ T720.

⁴¹⁷ T599

⁴¹⁸ T599

196. Prior to the meeting on May 24, 2024, no one with the District told the Father or Ms. Shipman that the District was reconsidering residential placement for the Student.⁴¹⁹ According to Ms. Tucker, the IEP team was “still gathering information up until that morning.”⁴²⁰ Ms. Shipman did not believe the District took her or the Father’s opinion regarding residential placement into consideration at the meeting.⁴²¹

197. At the IEP team meeting on May 24, 2024, the team also developed a BIP for the Student (May 2024 BIP).⁴²²

198. Mr. Bills is listed as a participant in developing the Student’s BIP.⁴²³ Mr. Kinsman recalled that Mr. Bills was the psychologist on record for the Student; however, Mr. Kinsman had “never worked with Mike Bills for this case or ever.”⁴²⁴ Mr. Kinsman did not recall Mr. Bills participating in the meeting to create the Student’s BIP and he did not obtain Mr. Bills’ input on the BIP.⁴²⁵ Mr. Kinsman did not recall Mr. Bills attending any IEP team meetings for the Student.⁴²⁶

199. When creating the Student’s May 2024 BIP, the team considered observations from Seattle Children's Hospital and relied on the PBMU FBA/BIP created in February 2024.⁴²⁷

200. According to Dr. Tucker, the program developed by PBMU is not something that can be easily done.⁴²⁸ She noted that it is a “very clinical, highly prescriptive, very intense program” that requires staffing, skilled oversight, and caregiver training.⁴²⁹

201. Dr. Tucker has not seen a school district implement a hospital-created FBA “as-is,” without creating a supplemental FBA that is adapted to the individual.⁴³⁰ Dr. Tucker would not “plug in” a hospital-created FBA into a school BIP because it was developed

⁴¹⁹ T436, T484, T955.

⁴²⁰ T725.

⁴²¹ T959.

⁴²² D11.

⁴²³ D11 p3.

⁴²⁴ T258.

⁴²⁵ T258-256.

⁴²⁶ T259.

⁴²⁷ D11 p3; T257.

⁴²⁸ T776-777.

⁴²⁹ T776-777, T789.

⁴³⁰ T769, T789.

in an inpatient hospital setting, which is inherently different from a school setting or a home setting.⁴³¹

202. Dr. Andrea Lupas, BCBA and licensed psychologist with Seattle Children's Hospital Autism Center, testified as an expert at the hearing. Dr. Lupas became familiar with the Student in April 2024 when he was referred to the Seattle Children's Hospital biobehavioral outpatient crisis service line.⁴³² She understood that the Student was at the PBMU because "there had been a significant increase in aggression in the context of already severe and high levels of self-injury that had occasioned that visit."⁴³³

203. Dr. Lupas earned a bachelor's degree in psychology in 2014, a master's degree in educational psychology in 2017, and a Ph.D. in 2019 with a focus in developmental disability, intellectual disability, and autism.⁴³⁴ From 2018 to 2019, she had a two-round internship at Johns Hopkins, first in a pediatric developmental disabilities clinic, then in the neurobehavioral outpatient unit.⁴³⁵ She completed her post-doctorate work at Seattle Children's Hospital in 2021 in the biobehavioral outpatient program.⁴³⁶

204. Dr. Lupas worked with school teams or IEP teams as the junior school psychologist in an elementary school and a middle school.⁴³⁷ She performed testing and behavioral assessments at schools from 2014 to 2019.⁴³⁸

205. According to Dr. Lupas, schools will often implement a PBMU FBA/BIP as is, and they are expected to do so with fidelity.⁴³⁹ Schools are not required to follow PBMU's recommendations, but in general, Dr. Lupas has found that schools adopt the hospital's FBA/BIP, modifying it as needed, rather than doing their own.⁴⁴⁰ Schools will rely on the hospital FBA/BIP because Seattle Children's oftentimes has the experts in severe behavior that are not available to the school.⁴⁴¹

⁴³¹ T789.

⁴³² T887.

⁴³³ T888.

⁴³⁴ T882.

⁴³⁵ T883.

⁴³⁶ T883

⁴³⁷ T887.

⁴³⁸ T887.

⁴³⁹ T892.

⁴⁴⁰ T892.

⁴⁴¹ T892.

206. Dr. Lupas did not have a role in drafting the Student's PBMU FBA/BIP.⁴⁴² Dr. Lupas did not work with the Student while he was treated at PBMU.⁴⁴³

207. Dr. Lupas did not speak to the Student's special education teacher about the implementation of the Student's BIP.⁴⁴⁴ Dr. Lupas did not participate in any IEP meetings with the District and she did not observe the Student in an educational setting.⁴⁴⁵ She did not speak to anyone in the District about the Student's education and she did not review the Student's educational records.⁴⁴⁶

208. According to the May 24, 2024 BIP, "the target behavior is to avoid self-injurious and violent outbursts."⁴⁴⁷ The BIP does not identify aggression or vomiting as target behaviors.⁴⁴⁸

209. The BIP created by the IEP team took the reinforcement plan and response plan protocols entirely from the PBMU FBA/BIP.⁴⁴⁹

210. On May 24, 2024, the IEP team also developed an ERP for the Student.⁴⁵⁰ The team identified SIB such as "hand to head hitting, object to head hitting, head-banging, and hitting other parts of body with an open hand or closed fist" as target behaviors to address.⁴⁵¹ Secondary target behaviors were physical aggression ("grabbing, hitting, pinching, attempting to use the hands of others to his himself, flailing limbs and contacting others, head butting, and biting") and vomiting ("putting hands into mouth and inducing self-vomiting/emesis").⁴⁵²

211. The IEP team created the ERP by the taking protocols and response plans directly from the PBMU FBA/BIP.⁴⁵³

⁴⁴² T914.

⁴⁴³ T914.

⁴⁴⁴ T914.

⁴⁴⁵ T915-916.

⁴⁴⁶ T922-923.

⁴⁴⁷ D11 p.3

⁴⁴⁸ D11 p3.

⁴⁴⁹ D11 pp4-5;T78-79.

⁴⁵⁰ D12.

⁴⁵¹ D12 p3.

⁴⁵² D12 p3.

⁴⁵³ D12 p3.

212. On May 24, 2024, the IEP team developed an IEP for ESY (ESY 2024 IEP).⁴⁵⁴ The team determined the Student required the following services beyond the normal school year:⁴⁵⁵

ESY Services:

Concurrent	Service(s)	Service Provider	Service Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Adaptive/Self Help	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/18/2024	07/03/2024
No	Adaptive/Self Help	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/18/2024	07/03/2024
No	Social Skills	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	06/18/2024	07/03/2024

Transportation							
No	Transportation						

Total Minutes per week of ESY Services: 900 minutes per week

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Dedicated Paraeducator	Dedicated 1:1 Paraeducator	Special Education Teacher	240 Minutes / 1 Times Daily	Special Education	06/18/2024	07/03/2024

Transportation Consideration: ☐ Regular ☒ Special

213. The ESY 2024 IEP included the following goals for the Student:⁴⁵⁶

Goal Title: Adaptive/Self Help
when given accommodations after asked to do a non-preferred activity [REDACTED] will demonstrate the ability to use his visual schedule to transition within his routine improving adaptive skills from 0% of opportunities to 50% of opportunities as measured by staff observation and data

Goal Title: Communication
when given an opportunity to engage with others [REDACTED] will demonstrate all four reasons to communicate (refuse, obtain, social, information) using functional communication skills (ex: verbal, behavioral, gestures, the use of technology, etc) improving functional communication from 2 of 4 reasons (refuse, obtain) to 4 of 4 reasons (refuse, obtain, social, information) as measured by data and observation.

Goal Title: Behavior
when given accommodations when transitioning to a new location or setting [REDACTED] will demonstrate the ability to follow his daily routine and schedule (visual supports, visual schedules, etc) improving self management and behavioral skills from 0% of opportunities to 50% of opportunities as measured by staff observation and data

214. According to Ms. Tucker, the team chose to set goals in adaptive/self-help, communication, and behavior during ESY because those were the areas where they saw “a lot of growth” in April and May 2024.⁴⁵⁷

⁴⁵⁴ D13.

⁴⁵⁵ D13 pp3-4.

⁴⁵⁶ D13 p3.

⁴⁵⁷ T686-687.

215. By PWN issued to the Parent on May 30, 2024, the IEP team proposed initiating ESY services starting June 18, 2024, with special transportation provided, as well as a 1:1 dedicated paraeducator.⁴⁵⁸

216. In a letter to medical consultants, dated May 24, 2024, SLP Ms. Norrell and OT Ms. MacCallum provided medical justification for an augmentative communication device (ACD), specifically an iPad, with an augmentative and alternative communication (AAC) application and a protective case.⁴⁵⁹ This was a request to obtain an iPad for the Student through DDA.⁴⁶⁰

217. Ms. Norrell believed it was important for the Student to have an AAC device to use at home and at school and that people working with the Student at school and at home would have training on the device.⁴⁶¹ Ms. Norrell intended to train the Student's family on the iPad, but she did not hear from the family as to whether they received it.⁴⁶²

218. The Father received an iPad for the Student through DDA.⁴⁶³ The Student used the iPad mainly for entertainment purposes.⁴⁶⁴

219. On May 28, 2024, Mr. Kinsman administered to the Student a pictorial transition assessment provided by the District's transition program.⁴⁶⁵ The transition assessment consisted of a pictorial display of various tasks and the Student could indicate which interested him the most.⁴⁶⁶ This provided the Student's team with information about the Student's personal interests to direct their instruction.⁴⁶⁷ Christina Gorman, the District's transition service specialist, helped Mr. Kinsman score the Student's transition assessment.⁴⁶⁸ Ms. Gorman attended the IEP team meeting on May 24, 2024.⁴⁶⁹ She did not work directly with the Student.⁴⁷⁰ The Student was

⁴⁵⁸ D13 p8.

⁴⁵⁹ P33.

⁴⁶⁰ T427.

⁴⁶¹ T418.

⁴⁶² T428.

⁴⁶³ T447.

⁴⁶⁴ T447.

⁴⁶⁵ D17 p32; T177.

⁴⁶⁶ D21; T177, T184.

⁴⁶⁷ T177, T185.

⁴⁶⁸ T322.

⁴⁶⁹ D9 pp15-16; T322.

⁴⁷⁰ T322.

not taken out into the community to work on any of the tasks the Student showed interest in on the pictorial transition assessment at any point in 2024.⁴⁷¹

220. By email to the Father dated May 29, 2024, Shannon Duran with Bancroft confirmed that the District had rescinded its residential referral for the Student's admission to the facility.⁴⁷² Per Ms. Duran's email,

I was notified on Friday, May 24th that the Eastmont School District has rescinded their residential referral for [Student] from Bancroft. Although [the Student] was accepted and awaiting an admission date to our Linden's program, we are unfortunately no longer able to offer admission due to the lack of funding in place.⁴⁷³

221. From March 2024 through May 2024, the Student's SIB remained the same.⁴⁷⁴

222. The last day of school for the 2023-2024 school year was June 14, 2024.⁴⁷⁵

ESY 2024

223. The Student's ESY services were provided at Eastmont Junior High School, beginning on June 18, 2024 and lasting through July 3, 2024.⁴⁷⁶ The services provided to the Student at the junior high were the exact same services Mr. Kinsman would have provided were the Student placed at a high school.⁴⁷⁷

224. The District initially decided to serve the Student at Eastmont Junior High because of the anxiety the Student exhibited when he went to the high school with Father.⁴⁷⁸ The District also believed the junior high special education space was advantageous to serving the Student because it was a large area with a kitchen, a laundry facility, and large windows exposing the outdoors.⁴⁷⁹

⁴⁷¹ T321.

⁴⁷² P34.

⁴⁷³ P34.

⁴⁷⁴ T243.

⁴⁷⁵ D16, p1.

⁴⁷⁶ D14 p2; T81, T687.

⁴⁷⁷ T335.

⁴⁷⁸ T159.

⁴⁷⁹ T159

225. Ms. MacCallum assisted in setting up the Student's classroom at the junior high based on the PBMU FBA/BIP.⁴⁸⁰ The classroom had designated spaces for school work, for eating, and for taking a break.⁴⁸¹

226. During summer 2024, the Student received services three hours per day for four days per week. Mr. Kinsman, paraeducator Tobin Garcia,⁴⁸² and another paraeducator provided the Student with ESY services.⁴⁸³ Mr. Kinsman estimated the Student received at least 15 to 20 minutes per day each in reading, written expression, math, and adaptive/self-help.⁴⁸⁴ Mr. Garcia recalled that Mr. Kinsman was in the classroom with the paraeducators and the Student for the three hours of ESY each day.⁴⁸⁵

227. The Student did not have the tolerance during the ESY period to participate in 20 minutes of sustained work.⁴⁸⁶ As Mr. Kinsman described it, "within that 20-minute chunk of time for that instruction, it is maybe work for five minutes, take a three-minute break with 'slime time,' and then come back to reading."⁴⁸⁷

228. Ms. Tucker observed two or three of the Student's ESY sessions.⁴⁸⁸ She remembered that,⁴⁸⁹

We started off a little rough. . . We expected some hiccups. . . and then as the month went on, we just saw that he was responding to our staff while he was responding to directions. He was participating in activities . . . We definitely saw growth even in those three weeks.

229. Neither Ms. MacCallum nor Ms. Norrell provided services to the Student during ESY in 2024.⁴⁹⁰

⁴⁸⁰ T397.

⁴⁸¹ T397.

⁴⁸² Mr. Garcia is employed in his fourth year as a paraeducator at Kenroy Elementary School in the District. He has an associate's degree and is pursuing a bachelor's degree. T1067-1068.

⁴⁸³ D22 p2; T187, T1071-1072.

⁴⁸⁴ T237.

⁴⁸⁵ T1079.

⁴⁸⁶ T238.

⁴⁸⁷ T238.

⁴⁸⁸ T687-688.

⁴⁸⁹ T688.

⁴⁹⁰ T383, T426.

230. Mr. Garcia's previous paraeducator experience was at an elementary school working with elementary-aged students.⁴⁹¹ He did not have experience working with transition-aged students.⁴⁹² He was not familiar with the Student's transition plan.⁴⁹³

231. Prior to working with the Student, Mr. Garcia did not have experience working with a student who engaged in SIB.⁴⁹⁴ He had worked with students who were physically aggressive toward staff, but "not on that level."⁴⁹⁵ As part of his paraeducator training, Mr. Garcia received training in de-escalation and restraint.⁴⁹⁶ He has not received behavior analysis training.⁴⁹⁷

232. Before beginning to work with the Student, the District told Mr. Garcia that the Student "can be aggressive towards himself."⁴⁹⁸ Mr. Garcia could not recall if the District told him that the Student hit his body with fists or that the Student banged his head.⁴⁹⁹ Before beginning to work with the Student, the District told Mr. Garcia that "if he's escalated, [the Student] can hit other people."⁵⁰⁰ Mr. Garcia did not recall who with the District told him about the Student's behaviors prior to his work with the Student.⁵⁰¹ No one told Mr. Garcia that the Student sometimes makes himself vomit.⁵⁰²

233. Mr. Garcia described his responsibilities when working with the Student during ESY as doing his IEP goals, helping with snacks, and helping supervise.⁵⁰³ The Student's typical ESY schedule was to have breakfast in the morning, do some "little fun activities," and transition into "doing some numbers and counting."⁵⁰⁴

⁴⁹¹ T1068, 1070.

⁴⁹² T1093.

⁴⁹³ T1093.

⁴⁹⁴ T1070.

⁴⁹⁵ T1070.

⁴⁹⁶ T1070.

⁴⁹⁷ T1071.

⁴⁹⁸ T1073.

⁴⁹⁹ T1074

⁵⁰⁰ T1074.

⁵⁰¹ T1074.

⁵⁰² T1074.

⁵⁰³ T1121.

⁵⁰⁴ T1079-1080.

234. During summer 2024, Mr. Garcia saw the Student hit staff almost every day, at least once or twice a day.⁵⁰⁵

235. On June 20, 2024, the Father emailed Mr. Kinsman, Ms. Tucker, his attorney and the District's attorney.⁵⁰⁶ The Father attached three photographs of the top of Student's left hand, showing a red area that appeared slightly swollen.⁵⁰⁷ The Father included the following message:⁵⁰⁸

[Student]'s hand was badly bruised after his first day of summer school he was beating himself up badly and it sounded like he hit Cody as well which is not good. I took him in for x-rays. The helmet was unsuccessful sounds like when he was offered it he would not put it on.

236. The Student's hand was hurt after the Student struck Mr. Kinsman on June 20, 2024.⁵⁰⁹ Mr. Kinsman wrote a narrative explanation of what happened when the Student struck him and included it in a Bobcat Daily activity report.⁵¹⁰ The record does not include a copy of a June 20, 2024 Bobcat Daily report.

237. On June 20, 2024, the Student was "agitated quite a bit throughout the day on and off" and he "hit himself quite a bit [and] hit [Mr. Kinsman] quite a bit."⁵¹¹ The Student charged at Mr. Kinsman and hit Mr. Kinsman with a closed fist.⁵¹²

238. On June 24, 2024, four days after the Student repeatedly struck Mr. Kinsman, the Father sent the following email to his attorney and copied Ms. Tucker, Ms. Shipman, Dr. Evans, and the District's attorney:

Just wanted to let you know I had to pick [Student] up early from his half-day session Cody called this morning saying [Student] was hitting himself and there was nothing he could do to stop the behaviors [Student] was not wearing his helmet and they could not get him to wear it I would like to emphasize again that the district is not a proper place

⁵⁰⁵ T1082.

⁵⁰⁶ P35.

⁵⁰⁷ P35.

⁵⁰⁸ P35.

⁵⁰⁹ T273.

⁵¹⁰ T273.

⁵¹¹ T1081.

⁵¹² T1081-1082.

for [Student] this is a place that is unable to serve my son and his special needs⁵¹³

239. By letter directed to “Whom It May Concern,” dated July 5, 2024, Dr. Lupas, BCBA with Seattle Children’s Hospital Autism Center, recommended “out of home care” for the Student.⁵¹⁴

240. The Father provided a copy of Dr. Lupas’s July 5 letter to the District on or about August 26, 2024.⁵¹⁵ Seattle Children’s Hospital did not contact the District directly about the letter.⁵¹⁶

241. Dr. Lupas provided care to the Student and Father after the Student was released from Seattle Children’s Hospital PBMU.⁵¹⁷ She conducted five virtual sessions with the Father, beginning in April 2024, with the last session occurring in June or July 2024.⁵¹⁸ The last time she discussed what was occurring at school with the Father was during the last session that occurred in June or July 2024.⁵¹⁹

242. Dr. Lupas discharged the Student from her care after she wrote the July 5 letter. At that time, the Father reported to her that [the Student] was exhibiting SIB daily for up to an hour a day and that the behavior had significantly increased in tandem with the Student restarting school.⁵²⁰

243. Dr. Lupas wrote the July 5 letter at the request of Molina, the Student’s insurance.⁵²¹ She also wrote it because the Father demonstrated to her that he could not safely care for the Student at home alone and he expressed significant concern to her that the school could also not care for the Student.⁵²²

244. Dr. Lupas’s letter includes the following language:⁵²³

⁵¹³ P36.

⁵¹⁴ P37.

⁵¹⁵ T147, T692.

⁵¹⁶ T692.

⁵¹⁷ P37 p1; T915.

⁵¹⁸ P37 p1; T915.

⁵¹⁹ T915.

⁵²⁰ T898-899.

⁵²¹ T905.

⁵²² T905.

⁵²³ P37 pp1-2.

During our care, [Student] has engaged in significant self-injurious behaviors, defined as:

Self-Injurious Behaviors: Hand to head hitting, object to head hitting, head-banging, hitting other parts of body with open hand or closed fist.

He also engages in secondary target behaviors that are re-emerging after inpatient discharge, defined as:

Physical Aggression: May include grabbing, hitting, pinching, attempting to use the hands of others to hit himself, flailing limbs and contacting others, head butting, biting.

Vomiting: Putting hands into mouth and inducing self-vomiting/emesis.

His behaviors require multiple people to manage safely and cannot be managed by his current caregiver, his father, alone. His father has repeatedly stated that he is unable to safely care for [Student] at home and unable to manage his outbursts and self-injury without fear of injury. These difficulties persist even with prescribed medications, parent training, and inpatient psychiatric treatment. When in supported, structured, and predictable environments with 1:1 care, such as the inpatient psychiatry unit, [Student] is able to reregulate after escalating. However, he demonstrates that he requires this higher level of care. [Student]'s needs exceed what parent can provide safely in the family home. His father is unable to decrease his behaviors in order to keep him and his father safe in the home at this time.

* * *

Out of home care is recommended at this time. Lower intensity services have not been adequate for his care. He is displaying baseline disruptive behaviors that represent a chronic elevation of risk that is not modifiable by a short-term hospitalization and would most benefit from a higher level of care as recommended here. [Student] requires a higher level of care than can be provided within our hospital, which is geared towards short-term acute stabilization stays. The utility of an acute inpatient hospitalization stay is low as these stays are typically on the scale of 1-2 weeks, and [Student] would most benefit from enrollment in a long-term, structured environment.

245. Dr. Lupas recommended several long-term care options, including a “[r]esidential treatment facility that serves youth with high-needs severe autism and/or IDD and aggression (e.g., Devereux)” and a therapeutic educational boarding school “that serves youth with this combination of issues and problems.”⁵²⁴ According to Dr. Lupas,⁵²⁵

A beneficial setting would provide consistent levels of supervision that include 1:1 staffing with capability of flexing to 2:1 staffing as needed with therapists/behavioral coaches/aids that are able to provide continuity and build trust over time. Such a placement/service would provide more robust care and oversight, which would provide the needed supports to give [Student] the best chance at maintaining safe behaviors in a community-based setting.

246. Dr. Lupas intended the audience of her July 5 letter to be “the child’s insurance, school, and DDA case manager.”⁵²⁶ She believed residential treatment was necessary for the Student both medically and educationally, based on the Father’s report of what was occurring at school and at home.⁵²⁷ Her opinion about residential placement was also based on the information she’d received that, “in 2022, the Student’s behaviors hadn’t looked very different from what they were increasing to in the time of our treatment, so my impression was that that would have still been likely necessary.”⁵²⁸

August 2024 IEP

247. On August 27, 2024, the District conducted a virtual IEP meeting to develop an amended IEP (August 2024 IEP). The purpose of the meeting was to correct typographical errors in the May 2024 IEP.⁵²⁹

248. Virtual participants in the August 27, 2024 IEP team meeting included the Father, Ms. Shipman, attorney for the Student and Father, Mr. Kinsman, Dr. Evans, Ms. Tucker, Kim Browning (Executive Director of Teaching and Learning), and the attorney

⁵²⁴ P37 p2.

⁵²⁵ P37 p2.

⁵²⁶ T905.

⁵²⁷ T911.

⁵²⁸ T922.

⁵²⁹ P38; T82.

for the District.⁵³⁰ IEP team members Ms. MacCallum and Ms. Norrell were excused from the IEP meeting.⁵³¹

249. The IEP team did not take steps in response to Dr. Lupas's July 5, 2024 letter.⁵³² According to Dr. Evans,⁵³³

In the school environment, we were able to serve the Student and keep him safe and we were making – starting to make progress.

* * *

[The letter] reads more like it was difficult for dad at home with the Student, which I totally understand. But it didn't – this doesn't reflect what we learned to be able to do with the Student and grow his skills.

* * *

He stabilized on medication and we were able to serve him.

250. The District did not follow up with Dr. Lupas to determine if her recommendations applied to home or school, or both.⁵³⁴

251. Mr. Kinsman had not seen Dr. Lupas's July 5 letter prior to the hearing and did not recall discussing it when the IEP team made a placement decision for the Student on August 27, 2024.⁵³⁵

252. The August 2024 IEP provided the following special education and related services for the Student from August 27, 2024, through June 4, 2025: ⁵³⁶

⁵³⁰ D14 pp1-2; ; P38 pp33-34.

⁵³¹ D14 p1; P38 p33.

⁵³² T147.

⁵³³ T147-148.

⁵³⁴ T148, T905.

⁵³⁵ T297.

⁵³⁶ P38 p30.

Services 08/27/2024 - 06/04/2025

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Communication	SLP	SLP	30 Minutes / 1 Times Weekly	Special Education	08/27/2024	06/04/2025
No	Fine Motor	OT	OT	20 Minutes / 1 Times Weekly	Special Education	08/27/2024	06/04/2025
Special Education							
No	Written Expression	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	08/27/2024	06/04/2025
No	Math	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	08/27/2024	06/04/2025
No	Adaptive/Self Help	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	08/27/2024	06/04/2025
No	Social Skills	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	08/27/2024	06/04/2025
No	Behavior	Special Education Teacher	Special Education Teacher	53 Minutes / 1 Times Daily	Special Education	08/27/2024	06/04/2025
No	Reading	Special Education Teacher	Special Education Teacher	60 Minutes / 1 Times Daily	Special Education	08/27/2024	06/04/2025

Total minutes per week of building instructional time available for this student (excluding lunch):

1815 minutes per week

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

1815 minutes per week

Percent of time in general education setting:

0% in General Education Setting

253. The August 2024 IEP goals for math, reading, written expression, communication, fine-motor, adaptive/self-help, and social skills are identical to the corresponding goals in the May 2024 IEP.⁵³⁷

254. Dr. Tucker opined that the Student would require more than 53 minutes per day in behavior services, noting that his behaviors were “so complex and so severe that hospitalization was the only way that he was able to access an environment [and] interventions where he could make some measurable progress.”⁵³⁸

255. Dr. Tucker did not believe placement of 0%-39% in general education was more appropriate than placement in a residential treatment center for the Student in August 2024, noting she saw no documentation or other evidence that showed the Student no longer required residential placement.⁵³⁹

256. Based on her own experience creating IEPs, Dr. Tucker would expect to see the following before deciding that a student no longer required residential placement:⁵⁴⁰

It is usually based on achieving small goals with, for example, the goal being duration of time in a program or the number of behavioral

⁵³⁷ P38 pp14-21.

⁵³⁸ T804.

⁵³⁹ T806.

⁵⁴⁰ T810-811.

episodes as decreasing from one to another, so from 80 per hour to two per hour. And in this case, what I would have wanted to see is justification that he was no longer engaging in self-injury at high rates. That was never made clear. So, it's impossible to know, especially from the documentation that I was given in [the daily logs] . . . If I heard that he had gone from, let's say, 480 episodes a day down to one, I would think, "That's dramatic progress. This is working." I don't have that data. The data is not here.

257. In August 2024, the District did not ask the Father for data on the Student's SIB exhibited at home.⁵⁴¹

258. On September 6, 2024, the District issued a PWN proposing to change the service minutes provided in the previous IEP.⁵⁴² Actions proposed would be initiated September 9, 2024.⁵⁴³

259. As is addressed above in the discussion of the May 2024 IEP, the September 6, 2024 PWN corrected errors that appeared in the matrixes of the May 2024 IEP.⁵⁴⁴ The service minutes were duplicated in error on both matrixes in the May 2024 IEP and did not accurately reflect the services the Student was supposed to receive.⁵⁴⁵

260. The September 6, 2024 PWN also described the following option considered and rejected by the IEP team:⁵⁴⁶

[Student]'s father and his attorney requested a change of placement for [Student]. They are requesting a residential placement. [Student]'s father also informed the team that he intends to place [Student] at Devereux Pennsylvania Adult Services, an out-of-state residential program. He shared that [Student] will not receive educational services in the residential program.

* * *

The IEP team rejected the request for residential placement because Eastmont is able to provide an appropriate placement for [Student]. The

⁵⁴¹ T489.

⁵⁴² D14; P38 pp33-34.

⁵⁴³ D14 p2.

⁵⁴⁴ D14 p1; P38 p33.

⁵⁴⁵ D14 p1; P38 p33.

⁵⁴⁶ D14 p1; P38 p33.

District IEP team members do not believe that [Student] requires residential placement, or that it is the least restrictive environment where his needs can be met.

261. According to Ms. Tucker, the District rejected the Father's request for residential placement at Devereux because,⁵⁴⁷

we felt that we had had a positive experience at ESY and the Student had had a positive experience, so we were still feeling very confident and excited that we could serve the Student in Eastmont and continue that work that we were doing.

262. According to the September 6, 2024 PWN,⁵⁴⁸

The IEP Team used [Student]'s March 2024 reevaluation, his IEP, and data from both the spring of 2024 as well as ESY when making the decision to continue serving [Student] at Eastmont. The IEP team also considered input from all IEP team members and records from Seattle Children's Hospital that [Student]'s father provided.

The 2024-2025 School Year

263. Dr. Tucker believed the District's plan to provide services to the Student in the junior high during the school year was "fundamentally flawed" because the Student was high school-aged and the other students would be in seventh, eighth, and ninth grade.⁵⁴⁹ She also took issue with the fact that the Student required a transition plan and at a junior high, he would not have access to teachers specialized in writing and implementing transition plans, who are trained to collaborate with outside agencies, and teach him age-appropriate adaptive skills.⁵⁵⁰

264. Dr. Lupas would not have recommended that the Student be educated at a junior high or alone in a room, opining that, "generally, patients benefit most from being around peers, if possible to be safe in that environment."⁵⁵¹

⁵⁴⁷ T696.

⁵⁴⁸ P38 p33.

⁵⁴⁹ T801-802.

⁵⁵⁰ T801-802.

⁵⁵¹ T904-905.

265. Mr. Garcia continued providing paraeducator services for the Student during the 2024-2025 school year.⁵⁵²

266. Paraeducator McKade “Kade” Jackson⁵⁵³ began serving the Student in Fall 2024.⁵⁵⁴ Mr. Jackson first met the Student in or around 2017.⁵⁵⁵ The Father is a friend of Mr. Jackson’s family.⁵⁵⁶

267. Prior to beginning his work with the Student in Fall 2024, the District did not provide Mr. Jackson with training to deal specifically with the Student’s SIB, head banging, aggressive behavior, or self-induced vomiting.⁵⁵⁷ Mr. Jackson knew that the Student had special needs.⁵⁵⁸ Prior to working with the Student, he did not know the Student hit himself, that he would bang his head, that he could be physically aggressive, or that he sometimes forced himself to vomit.⁵⁵⁹

268. For the 2024-2025 school year, a bus would pick the Student up at 7:30 a.m., bring him to Eastmont Junior High School, and take him home around 2:15 p.m.⁵⁶⁰ The Student was accompanied by a paraeducator. No other students were on the bus.⁵⁶¹

269. Ms. Tucker described the Student’s interactions with other students as follows:⁵⁶²

He does interact with the other students when they come in to say hi. . . Sometimes they will just do an activity together where it involves baking or creating something, and so when the other students are doing that, he will participate. Sometimes it is more like parallel play, so again, if you think more of, like, a toddler, where he is there, he is with them, but

⁵⁵² T187-188.

⁵⁵³ Mr. Jackson is a high school graduate. He does not have a college degree. He began serving as a long-term substitute paraeducator in the District in Fall 2024 and was hired by the District as a permanent paraeducator in February 2024. Prior to his employment in the District, Mr. Jackson worked as a paraeducator for AmeriCorps. Mr. Jackson received some paraeducator training when he was hired by the District. T991-995.

⁵⁵⁴ T194, T992.

⁵⁵⁵ T996.

⁵⁵⁶ T996.

⁵⁵⁷ T998.

⁵⁵⁸ T997.

⁵⁵⁹ T997-998.

⁵⁶⁰ T698.

⁵⁶¹ D22.

⁵⁶² T700-701.

he is not necessarily engaging with other students there, but it is very typical of our students who are more highly impacted and have limited communication to do more of that parallel play as opposed to interacting with each other.

270. Mr. Jackson recalled that the Student was friendly to the junior high students, “but the Student is nonverbal, so there wasn’t really much communication between him and the students.”⁵⁶³

271. The August 2024 IEP required the special education teacher to provide 60 minutes each (not concurrent) of written expression, math, social skills and reading services to the Student each day.⁵⁶⁴ Mr. Kinsman himself did not deliver 60 minutes of each service each day; the paraeducators working under Mr. Kinsman would sometimes provide those services.⁵⁶⁵ Mr. Kinsman designed the SDI services provided to the Student and supervised the paraeducators who provided the services.⁵⁶⁶ Mr. Garcia recalled that Mr. Kinsman “was in and out” of the classroom and estimated that Mr. Kinsman spent “between half and three-quarters of the day” in the classroom with the Student.⁵⁶⁷

272. To work toward the Student’s math goal, Mr. Kinsman focused on identifying currency.⁵⁶⁸ His team used the “next-dollar-up” strategy with the Student.⁵⁶⁹ According to Mr. Kinsman, the Student was able to count well, “but when we ask him to comply with the next-dollar-up strategy, he typically is lost at like three or four dollars. He has hit his ceiling there.”⁵⁷⁰ By the fall of 2024, Mr. Kinsman believed the Student could identify one-dollar, five-dollar, and ten-dollar bills with less than 20% accuracy.⁵⁷¹

273. Mr. Jackson recalled that the Student’s progress in math consisted of counting from one to two dollars.⁵⁷² Mr. Garcia recalled that the Student could sometimes count to ten on his own and that the Student could count up to two dollars consistently and

⁵⁶³ T1028.

⁵⁶⁴ P38 p30.

⁵⁶⁵ T294-296.

⁵⁶⁶ T334.

⁵⁶⁷ T1079.

⁵⁶⁸ T182.

⁵⁶⁹ T179.

⁵⁷⁰ T192.

⁵⁷¹ T281.

⁵⁷² T1018.

could sometimes count up to three dollars.⁵⁷³ Mr. Garcia worked with the Student on the math goal anywhere from 20 minutes to an hour each day, depending on “how open [the Student] was to it.”⁵⁷⁴ “It was like we’d work on it for a little bit; he’s losing steam a little bit; we’d stop and come back to it a little bit later,” recalled Mr. Garcia.⁵⁷⁵

274. To work on the Student’s reading goal, staff started with pictures and then eventually paired pictures with words, with a plan to eventually “wean the pictures off” and focus on the words alone.⁵⁷⁶

275. By the fall of 2024, the Student was not able to identify an item using a word without the associated picture.⁵⁷⁷ Mr. Jackson recalled that the Student was able to match a physical item to a photo of the item, with a word description below the photo.⁵⁷⁸ Mr. Jackson did not recall the Student showing any indication that he knew any letters.⁵⁷⁹

276. Mr. Garcia remembered the Student identified the letters in his own name and a few other letters.⁵⁸⁰ Other than his own name, the Student could not identify a word if it did not correspond with a picture.⁵⁸¹ Mr. Garcia estimated that he worked with the Student on his reading goal for 30 to 40 minutes each day, depending on the Student’s willingness to participate.⁵⁸²

277. Mr. Kinsman described the written expression goal as,⁵⁸³

more of a typing goal. [Student] will take the prompt to type one key command at a time . . . The writing goal is simply so that he can learn to identify letters as symbols with the different phonograms.

⁵⁷³ T1093.

⁵⁷⁴ T1095.

⁵⁷⁵ T1095-1096.

⁵⁷⁶ T174.

⁵⁷⁷ T282.

⁵⁷⁸ T1020.

⁵⁷⁹ T1020.

⁵⁸⁰ T1094.

⁵⁸¹ T1094.

⁵⁸² T1096.

⁵⁸³ T175.

278. Mr. Jackson recalled that the program on the Student's communication device had some buttons with words and some with images.⁵⁸⁴ The team worked with the Student to get him to select the word or image that corresponded to what he wished to express.⁵⁸⁵ For example, selecting a button with an image of someone being pushed on a swing if the Student wanted to be pushed on the swing.⁵⁸⁶

279. To work on the Student's writing goal, staff gave the Student a "typing exercise" during which the Student would type a letter three times.⁵⁸⁷ If it was a new letter to the Student, staff would have to show him where the letter was on a keyboard, then it would take three or four days of this exercise before the Student could find the letter on his own.⁵⁸⁸ Mr. Garcia worked with the Student on the written expression goal for 15 to 30 minutes per day.⁵⁸⁹

280. To work toward the Student's adaptive/self-help skills goal, Mr. Kinsman and his team attempted to help the Student solve his own problems.⁵⁹⁰ For example, they taught him how to get himself a drink of water.⁵⁹¹

281. To work toward the Student's social skills goal, Mr. Kinsman focused on initiating social greetings properly.⁵⁹²

282. Ms. Norrell saw the Student progress during the time she served him in fall 2024.⁵⁹³ He increased his vocabulary and he would greet her on arrival and say goodbye when she left.⁵⁹⁴ Providing information outside his academics, like providing the Father's name and phone number, was a difficult communication goal for the Student.⁵⁹⁵

⁵⁸⁴ T1023.

⁵⁸⁵ T1022-1023.

⁵⁸⁶ T1022-1023.

⁵⁸⁷ T1094.

⁵⁸⁸ T1096.

⁵⁸⁹ T1096.

⁵⁹⁰ T192.

⁵⁹¹ T192-193.

⁵⁹² T193.

⁵⁹³ T414.

⁵⁹⁴ T414.

⁵⁹⁵ T414.

283. In providing fine-motor as a related service, Ms. MacCallum supported the Student's team throughout the Student's entire day to engage in fine-motor tasks.⁵⁹⁶

284. To provide occupational therapy as a related service, Ms. MacCallum met with the Student once per week for at least 20 minutes, but often for longer.⁵⁹⁷ She worked with the Student on using the Chromebook to access websites or programs to work on typing and clicking and dragging.⁵⁹⁸ She would also "demonstrate a fine-motor task such as cutting or constructing an item or referencing a visual, then the Student would be able to reproduce the steps and sequence, per [her] demonstration."⁵⁹⁹ Ms. MacCallum determined that 20 minutes weekly was the appropriate time for occupational therapy-related services for the Student based on his task endurance and his ability to participate in very specific challenging tasks.⁶⁰⁰

285. To provide "supplementary aids and supports of indirect occupational therapy," Ms. MacCallum asked the Student's teacher and paraeducators weekly how she could support the Student if they were trying to problem solve.⁶⁰¹ She assisted the team by providing visuals, technology services, or incorporating the Student's interests into his daily routine.⁶⁰² Providing indirect occupational therapy services included sensory processing, activities of daily living, fine-motor, and social/emotional skills.⁶⁰³ Sensory processing services were not listed in the Student's IEP, but Ms. MacCallum estimated that she spent 20 minutes per week supporting the Student's "sensory-based concerns."⁶⁰⁴

286. Mr. Kinsman believed that the PBMU FBA/BIP was created specifically for the educational team to provide direction on how to best serve the Student.⁶⁰⁵ Mr. Jackson did not recall ever seeing the PBMU FBA/BIP.⁶⁰⁶ Mr. Garcia did not recall having any documents to reference when he determined which strategy to use when addressing the Student's behavior; however, Mr. Garcia recalled that staff kept a copy of the PBMU

⁵⁹⁶ T366.

⁵⁹⁷ T371.

⁵⁹⁸ T372.

⁵⁹⁹ T372.

⁶⁰⁰ T378.

⁶⁰¹ T373.

⁶⁰² T373.

⁶⁰³ T394.

⁶⁰⁴ T394.

⁶⁰⁵ T257.

⁶⁰⁶ T1029.

FBA/BIP next to the Student's "goals binder."⁶⁰⁷ He estimated that he looked at it once or twice per week, but he did not "refer back to it every single time there was an issue or a problem or something like that."⁶⁰⁸ He believed that staff "would stick to the basics of it every day."⁶⁰⁹ He did not recall what the FBA/BIP said, or the "basics" of the FBA/BIP.⁶¹⁰

287. Mr. Jackson did not see the Student's BIP prior to working with the Student.⁶¹¹ He recalled that avoiding "self-injurious and violent outbursts" was a goal the team worked on with the Student; however, he did not recall what they were doing to work on that goal.⁶¹²

288. According to Dr. Lupas, the special education staff working with the Student should be "well-versed in behavior analysis, [with] training in that area or by a BCBA or psychologist. So, a behavior technician would have been appropriate, or an aide well versed in the FBA or BIP."⁶¹³ Dr. Lupas believed a BCBA or a psychologist should have been overseeing the Student's program because,⁶¹⁴

Oftentimes, the most evidence-based manner of intervention is implemented by BCBAs and psychologists. Outside of pharmacological intervention or medication as intervention, this has been demonstrated to be the most effective treatment.

289. Mr. Kinsman believed that the Student's SIB, his task avoidance, and his impatience interfered with the Student's ability to access his education.⁶¹⁵ If the Student wanted something that was not available, he would escalate by screaming, hitting himself, or hitting a wall.⁶¹⁶ The Student's SIB included hitting his head, banging his head, tapping his head, hitting his legs, and slamming up and down on a chair.⁶¹⁷

⁶⁰⁷ T1089-1090.

⁶⁰⁸ T1090.

⁶⁰⁹ T1091.

⁶¹⁰ T1091.

⁶¹¹ T1014.

⁶¹² T1015.

⁶¹³ T910.

⁶¹⁴ T911.

⁶¹⁵ T209, T226.

⁶¹⁶ T285.

⁶¹⁷ T328.

290. The Student exhibited SIB on a daily basis when served by Mr. Kinsman and the paraeducators.⁶¹⁸ The first time Ms. Tucker learned that the Student engaged in SIB on a daily basis was in December 2024 during the due process hearing.⁶¹⁹

291. During his time working with the Student, Mr. Garcia witnessed the Student hit himself on his sides or his legs with his fists, hit himself in the head, and bang his head on a hard object.⁶²⁰ Mr. Garcia thought that the Student “wanted attention from us, to know that he was frustrated, so he didn’t necessarily hit it very hard.”⁶²¹ Mr. Garcia described the Student’s “temper tantrums” as the Student jumping up and down pretty high and jumping across the room while yelling and banging on his legs.⁶²² The “temper tantrums” could last five minutes or up to 30 minutes.⁶²³ The Student struck a pad held by Mr. Garcia and struck Mr. Garcia in the hand.⁶²⁴ Mr. Garcia saw the Student strike a pad held by Mr. Jackson.⁶²⁵ Mr. Garcia did not witness the Student strike Mr. Jackson on his body.⁶²⁶ Mr. Garcia believed the Student’s behavior “escalations” decreased during the time he worked with him.⁶²⁷ Mr. Garcia based his opinion that escalations were decreasing on his observations while working with the Student. He did not base it on data collected by himself and the other staff members.⁶²⁸

292. During the time that Mr. Jackson worked with the Student, he witnessed the Student have “temper tantrums,” which he described as when the Student would get irate and hit himself. He noticed these get progressively worse.⁶²⁹ Mr. Jackson was struck by the Student approximately ten times.⁶³⁰ Mr. Jackson does not believe the District adequately prepared him to address the Student’s behaviors and reduce them.⁶³¹

⁶¹⁸ T211, T243.

⁶¹⁹ T721.

⁶²⁰ T1075-1076.

⁶²¹ T1077.

⁶²² T1078.

⁶²³ T1078.

⁶²⁴ T1082.

⁶²⁵ T1082-1083.

⁶²⁶ T1082-1083.

⁶²⁷ T1124.

⁶²⁸ T1127.

⁶²⁹ T998-999.

⁶³⁰ T1001.

⁶³¹ T1051-1052.

293. The Student's SIB resulted in him leaving bruises on his head and splitting his head open.⁶³² Mr. Kinsman estimated that he had to treat the Student's wounds or clean up the Student's blood at school twice per month.⁶³³ Mr. Garcia once saw the Student hit his own head with a fist and cause his head to bleed.⁶³⁴ On three or four occasions, Mr. Garcia saw bruises on the Student's legs that the Student caused by striking himself.⁶³⁵

294. Both Mr. Jackson and Mr. Garcia recalled an incident on September 23, 2024, when the Student struck his head on a wall with enough force to leave an "indent" in the wall.⁶³⁶ According to Mr. Garcia, "I think it was because he was waiting – someone was in the bathroom and he was waiting and he didn't want to wait."⁶³⁷

295. There is no testimony or documentary evidence showing the Student ever struck or showed aggression toward other students.

296. On several occasions Mr. Kinsman heard the Student making vomit noises in the bathroom and he believes staff made a record each time.⁶³⁸ Mr. Jackson heard the Student vomit, but does not know how many times.⁶³⁹ Mr. Garcia believed that, when the Student made himself vomit, there was "really nothing we could do."⁶⁴⁰

297. The Student's special education staff permitted him to sleep at school.⁶⁴¹ Mr. Kinsman believes the Student slept at school a few days per week, taking one to two hour naps, sometimes longer.⁶⁴² "There were instances where he slept all morning."⁶⁴³ Mr. Garcia recalled that after the Student slept an hour, "we would go and try to wake him. We would ask him if he wanted to, you know, wake up and do an activity and if he said no, we would continue to let him sleep."⁶⁴⁴

⁶³² T210.

⁶³³ T210, T243.

⁶³⁴ T1077.

⁶³⁵ T1078.

⁶³⁶ P41 p32; T1042-1043, T1118-1119.

⁶³⁷ T1119.

⁶³⁸ T213.

⁶³⁹ T1001.

⁶⁴⁰ T1088.

⁶⁴¹ T288.

⁶⁴² T288.

⁶⁴³ T288.

⁶⁴⁴ T1130.

298. The Student was permitted to shower at school “as many as four times a day or as little as none.”⁶⁴⁵ Mr. Jackson did not think the Student showered every day, but he noted that on a day the Student showered, he would typically take two or three.⁶⁴⁶ Mr. Kinsman obtained the Father’s permission to allow the Student to shower at school.⁶⁴⁷

299. The Student’s special education providers allowed the Student to [REDACTED] at school.⁶⁴⁸ This occurred sometimes once per day and sometimes not at all.⁶⁴⁹ Mr. Jackson was not told to record how many times the Student [REDACTED].⁶⁵⁰ Mr. Kinsman did not have the Father’s consent to allow the Student to [REDACTED] at school.⁶⁵¹ Mr. Kinsman estimated that the Student began [REDACTED] at school in June 2024 and continued the practice until November 2024, when the Father learned about it.⁶⁵² After he discovered the Student [REDACTED] Mr. Kinsman explained that,⁶⁵³

we didn’t know quite what to do, so we said, well, he is clearly fulfilling a need. We are not going to stop this for the risk of negative reactions. However, once the family learned of this and requested that we stop it, we immediately did.

300. The strategy most commonly employed by Mr. Kinsman and the paraeducators to manage the Student’s behavior was the “Wait Strategy.”⁶⁵⁴ The paraeducators had different understandings of what this strategy entailed. Mr. Jackson would use the Wait Strategy “sometimes” when the Student hit himself.⁶⁵⁵ Mr. Jackson described using the Wait Strategy when the Student was agitated. Mr. Jackson would wait for the Student to “mellow down” so he could re-prompt the Student.⁶⁵⁶ Mr. Garcia used the Wait Strategy with the Student when working on transitioning from a preferred to a nonpreferred activity, using the strategy to show the Student that he had to wait for

⁶⁴⁵ T289.

⁶⁴⁶ T1035.

⁶⁴⁷ T290.

⁶⁴⁸ T291.

⁶⁴⁹ T291.

⁶⁵⁰ T1041-1042.

⁶⁵¹ T291.

⁶⁵² T352.

⁶⁵³ T337.

⁶⁵⁴ T180.

⁶⁵⁵ T1038.

⁶⁵⁶ T1038.

the preferred activity.⁶⁵⁷ Mr. Garcia also used the Wait Strategy when the Student's behavior was escalated; then, Mr. Garcia would offer fidgets or other distractions to help the Student calm down.⁶⁵⁸

301. The Wait Strategy is taught within the District's Safety Care course.⁶⁵⁹ Mr. Kinsman did not believe the Student's BIP referred specifically to the Wait Strategy, but he believed the BIP described the same actions involved in the Wait Strategy.⁶⁶⁰

302. Mr. Garcia believed that the strategies used by staff to address the Student's behaviors were successful "part of the time."⁶⁶¹ Even with use of the Wait Strategy, the Student exhibited SIB on a daily basis.⁶⁶²

303. Ms. Tucker described what the Student's team has learned from using the Wait Strategy:⁶⁶³

What they have found, and they have collected data on this, what they have found is as soon as they disengage and do not give direct attention to the behavior, the behavior will stop, as opposed to immediately going hands-on with the Student, which is something we never want to do. Going hands on with the student is very, very restrictive and not recommended at all in most situations. And so, they are providing him with pads. They are making sure he is safe, but they are not actively engaging or giving attention to that behavior, but instead they are stepping away giving him space, giving him time, waiting, and they found typically that anywhere within 30 seconds to a minute, typically those behaviors stop.

304. The Student should have been wearing his helmet after the first instance of self-injury.⁶⁶⁴ Mr. Garcia estimated that he was able to get the Student to wear his helmet "maybe half [the time], maybe a little bit less."⁶⁶⁵ Mr. Garcia would offer the helmet, but sometimes would put a pad on the table and the Student would hit the pad

⁶⁵⁷ T1086-1087.

⁶⁵⁸ T1117.

⁶⁵⁹ T180.

⁶⁶⁰ D11 p5; T269.

⁶⁶¹ T1122, T1125.

⁶⁶² T211.

⁶⁶³ T731.

⁶⁶⁴ T896.

⁶⁶⁵ T1087.

instead.⁶⁶⁶ Mr. Jackson recalled that they would prompt the Student to wear his helmet when he would get “agitated” and was “self-harming.”⁶⁶⁷ The Student would typically not wear the helmet for more than a minute.⁶⁶⁸ There were some days when the staff did not take the helmet out of the Student’s bag that he brought from home.⁶⁶⁹

305. There were no mats on the walls in the Student’s special education room.⁶⁷⁰

306. The Student’s special education staff was not provided a helmet to wear as protection if needed when they worked with the Student.⁶⁷¹

307. Both Lorazepam and Hydroxyzine were given to the Student in response to increasing agitation.⁶⁷² Lorazepam and Hydroxyzine were also administered at home.⁶⁷³ The medications are meant to treat anxiety and to calm the Student and are intended to be given “as needed.”⁶⁷⁴ The records kept by District staff show the Student received a dose of Lorazepam or Hydroxyzine, or both, on 19 of the 43 days in which data was recorded.⁶⁷⁵

308. Mr. Jackson recalled that the Student usually received Lorazepam or Hydroxyzine when he was “agitated” and other interventions were not working.⁶⁷⁶ Staff would commonly ask the nurse to administer medication to the Student between 12:00 and 1:30 p.m.⁶⁷⁷ Staff did not always have the nurse administer medication to the Student in response to the Student’s behavior.⁶⁷⁸ The medication was administered “as needed,” but it was typically “used daily around the same time” at

⁶⁶⁶ T1087.

⁶⁶⁷ T1029.

⁶⁶⁸ T1030.

⁶⁶⁹ T1030.

⁶⁷⁰ T1031.

⁶⁷¹ T1031.

⁶⁷² T303.

⁶⁷³ T438.

⁶⁷⁴ T439.

⁶⁷⁵ P41 pp4-7, 10-21, 25-29, 33, 39, 45, 48-51, 54.

⁶⁷⁶ T1033.

⁶⁷⁷ T1111.

⁶⁷⁸ T1128.

the direction of Mr. Kinsman.⁶⁷⁹ If staff didn't give the Student the medication, "his afternoons were pretty rough."⁶⁸⁰

309. The Father did not see an improvement in the Student's SIB in the 2024-2025 school year.⁶⁸¹ The Father did not see a change in the frequency or the intensity of the Student's behaviors in that period.⁶⁸² The Father regularly saw bruises on the Student.⁶⁸³ He did not see the Student make progress on being able to wait for an item or a preferred activity.⁶⁸⁴

310. On December 6, 2024, the Father observed the Student during the school day. The Father watched the Student through a window for an hour and saw:⁶⁸⁵

There was a lot of him hitting his legs and hitting his head and self-injurious behavior during this time. They were making him a pizza in the oven and . . . he wanted it right now and wasn't happening. He was hitting the table and he didn't seem to be having a very good day there.

311. The Father did not witness the Student's special education staff intervene to stop the Student from the SIB.⁶⁸⁶

312. On or about December 9, 2024, the Father placed the Student at Devereux Behavioral Health, a residential facility in Pennsylvania.⁶⁸⁷ The Student receives behavioral health treatment at Devereux as well as speech and language therapy and occupational therapy.⁶⁸⁸ The Student is not receiving educational services at Devereux because they are not funded.⁶⁸⁹ The record does not establish whether educational services are available at Devereux.

⁶⁷⁹ T1128, T1132.

⁶⁸⁰ T1132.

⁶⁸¹ T490-491; T580.

⁶⁸² T580-581.

⁶⁸³ T491.

⁶⁸⁴ T581.

⁶⁸⁵ T583.

⁶⁸⁶ T584.

⁶⁸⁷ T440.

⁶⁸⁸ T441.

⁶⁸⁹ T441.

Data Collection: Progress Reports, Daily Logs, and IEP Goal Data

313. Based on the PBMU FBA/BIP and the May 2024 BIP, Dr. Tucker opined that the Student's special education staff should have collected data about the Student that included: 1) a fidelity check of all the procedures every day that were put in place to mitigate the behavior; 2) a frequency count of behaviors, showing how many times per hour self-injury, physical aggression, and vomiting occurred, including the triggers or the antecedents to those behaviors; and 3) incident reports generated when the behavior reached a point where the helmet or pads were needed, including which protocols were followed, how long the incident lasted, and the Student's reaction to interventions.⁶⁹⁰

314. According to Dr. Lupas, data reflecting "fidelity to the treatment" and the rate of behavior should be collected when implementing a plan like the PBMU FBA/BIP.⁶⁹¹ There are a number of different styles to collect data on rate of behavior (i.e. using a timer set to go off every five minutes, or using a clicker to collect the rate of self-injury that is occurring across the day), but Dr. Lupas opined that, in general, the fidelity to the treatment and the actual rate of the behavior are two essential pieces of data.⁶⁹² Dr. Lupas explained that collecting data on the rate of behavior is the only way for a team to know if they are meeting goals.⁶⁹³

315. The Student's special education providers, led by Mr. Kinsman, kept a record of the Student's daily progress on "Bobcat Daily" activity reports.⁶⁹⁴ Mr. Kinsman's intention was to send a Bobcat Daily form home to the Father each day.⁶⁹⁵

316. The record includes copies of Bobcat Daily reports for the period September 3, 2024, through October 7, 2024.⁶⁹⁶ The Bobcat Daily forms in the record have space to record information about the Student's morning mood, his food intake at breakfast and lunch, bathroom notes, his afternoon mood, notes in the morning and afternoon, as well as space for special announcements.⁶⁹⁷ All but one of the Bobcat Daily forms

⁶⁹⁰ T798-799.

⁶⁹¹ T893.

⁶⁹² T893.

⁶⁹³ T894.

⁶⁹⁴ P39; T182, T202.

⁶⁹⁵ T182, T202.

⁶⁹⁶ P39.

⁶⁹⁷ P39.

in the record show the District administered a dose of Lorazepam, Hydroxyzine, or both each day.⁶⁹⁸

317. The Bobcat Daily activity reports are where Dr. Evans believes the District tracked data on the Student's self-harm.⁶⁹⁹ The Bobcat Daily reports show one instance of reported self-harm: the Student tapping his forehead on September 19, 2024.⁷⁰⁰ The incident when the Student hit Mr. Kinsman multiple times on June 20, 2024, does not appear in the provided Bobcat Daily reports.⁷⁰¹

318. Because the Father requested more information than what appeared on the original Bobcat Daily activity reports, on or around October 15, 2024, Mr. Kinsman created a newer version that included the Student's specific objectives.⁷⁰² The record does not include copies of the newer Bobcat Daily forms or any Bobcat Daily activity reports outside the September 3, 2024, through October 7, 2024 date range. The newer version of the Bobcat Daily forms did not include a record of specific numbers of SIB and physical aggression each day.⁷⁰³

319. In the period of May 23, 2024, through October 22, 2024, the Student's special education providers kept a log of the Student's daily activities.⁷⁰⁴ This log consists of hand-written notes on notebook paper. Of the 65 school days in the period May 23, 2024, through October 22, 2024, the District kept a daily log for the Student on 43 days.⁷⁰⁵ The daily logs were kept for internal purposes, with "noteworthy highlights" reported on the Bobcat Daily forms.⁷⁰⁶ The Student's special education providers did not track or collect data on all the daily incidents of SIB that the Student exhibited.⁷⁰⁷ There is no evidence in the record of SIB data collected prior to May 23, 2024, or after October 22, 2024.

⁶⁹⁸ P39 pp1-7.

⁶⁹⁹ T143.

⁷⁰⁰ P39 p4.

⁷⁰¹ P39; T275-276.

⁷⁰² P41 p1; T203.

⁷⁰³ T302.

⁷⁰⁴ P41.

⁷⁰⁵ D16; P41.

⁷⁰⁶ T340.

⁷⁰⁷ T243, T721.

320. On all but eight days in the daily log, an incident of the Student's SIB, agitation, or angry behavior is recorded.⁷⁰⁸ These logs include the following descriptions of the Student's behavior:⁷⁰⁹

5/30/24	ESCALATED, HIT SELF, CALMED QUICKLY
6/4/24	ESCALATED, HIT STAFF, HIT SELF
6/6/24	HIT HEAD WITH FIST
6/11/24	ESCALATED ON BUS RIDE HOME, HIT HEAD, SCREAMED
6/13/24	HIT HEAD AND SHOWED FRUSTRATION; BECAME FRUSTRATED WHEN WAITING AND HIT HEAD, TOOK STAFF HAND AND HIT
8/28/24	ESCALATED TWICE
8/29/24	AGITATION WHEN DROPPED OFF, HIT SIDES AND HEAD; HIT STAFF'S IPAD
8/30/24	ARRIVED ESCALATED, HITTING HEAD AND RIBS, MORE HITS TO SELF; HIT RIBS AND HEAD AFTER WALK; AGITATED AND WORE HELMET ON BUS
9/3/24	AGITATED ON BUS; 27 MINUTE TEMPER TANTRUM
9/5/24	CAME OFF BUS ESCALATED, "USUALLY HITS HIMSELF THE WHOLE WAY" TO CLASSROOM
9/6/24	CAME OFF BUS AGITATED; HIT SELF WHEN NOT UNDERSTOOD; TEMPER TANTRUM, "WAITED IN HALL FOR HIM TO CALM DOWN" "LARGEST PHYSICAL OUTBURST THIS YEAR"
9/10/24	TEMPER TANTRUM, "MELT DOWN"; HIT SELF
9/12/24	AFTER NAP WOKE UP MAD AND HIT SELF; DENIED COOKIE AND HIT SELF
9/16/24	CAME IN A LITTLE AGITATED; ESCALATED WHEN CAMPUS BUSY
9/18/24	25 MINUTE ESCALATION
9/17/24	ESCALATED "VERY AGGRESSIVE WITH SELF AND JUMPING ON CHAIR"
9/19/24	"[STUDENT] BECAME ANGRY WHEN WORKING ON TYPING WASN'T ABLE TO FINISH. [STUDENT] IS BECOMING ANGRY WHEN ASKED TO DO ANY WORK"; "GOT MAD TO TRY AND GET OUT OF WORK"; TEMPER TANTRUM WHEN ASKED TO CLARIFY STATEMENT
9/20/24	ESCALATED IN AM ON ARRIVING, HIT SELF ALL THE WAY TO CLASS, HIT KADE'S PAD WITH CLOSED FIST. "[STUDENT] GETS FRUSTRATED AND A LITTLE UPSET WHEN PUSHED TO WORK"
9/23/24	CAME IN AGITATED AND UPSET; "BANGED HEAD ON WALL BY FRIDGE & LEFT MARK/HOLE IN WALL"
9/24/24	WHEN WALKING CART TO FILL BIRD FEEDERS "[STUDENT] BECAME ESCALATED WHEN I ASKED HIM TO STOP AT THE OFFICE DOOR. (HITTING HEAD & RIBS THEN SCREAMING.) WE REDIRECTED HIM OUTSIDE, HE HELPED COMPLETE THE JOB & RETURNED TO CLASSROOM. PHYSICAL OUTBURSTS THE WHOLE WAY."
9/25/24	HIT SELF IN BATHROOM
10/1/24	CAME IN AGITATED; "LAST TWO MORNINGS GETS AGITATED AND ANGRY WHEN HE DOESN'T GET [PEPSI]"
10/2/24	AFTER LAYING DOWN "HITTING HIMSELF IN BATHROOM HITTING HEAD AGAINST MIRROR THEN CAME OUT ANGRY HITTING HIMSELF" 20 MINS
10/3/24	"CAME IN ESCALATED HIT CODY'S PAD BEFORE THEY ENTERED BUILDING"

⁷⁰⁸ P41 pp2, 4-6, 9, 12-44, 46-48, 50-64.

⁷⁰⁹ P41 pp2, 4-6, 9, 12-44, 46-48, 50-64.

10/4/24	"BECAME UPSET FOR UNKNOWN REASONS"; BECAME UPSET WHEN WAITING FOR LUNCH PIZZA TO BE PICKED UP; [STUDENT] IS GETTING ANGRY
10/7/24	"[STUDENT] IS TRYING TO TELL ME WHAT HE NEEDS HELP WITH BUT IS HAVING A HARD TIME[,] TRIED TO USE WORDS ON IPAD WITH MY HELP BUT STILL COULDN'T GET THERE SO HE HAS BEEN VERY ANGRY"
10/8/24	ARRIVED AGITATED
10/9/24	"[STUDENT] HAS FALLEN INTO THE ROUTINE OF ENTERING IN A 'CRABBY' MOOD"
?	BECAME ANGRY AND HIT SELF WHEN TOLD OUT OF PIZZA
10/14/24	"CAME IN AGITATED"
10/16/24	"CAME IN AGITATED" LASTED 25 MINS; BECAME AGITATED SECOND TIME
10/17/24	BECAME ANGRY AND HIT SELF WHEN WAITING FOR PEPSI, LASTED 40 MINS
10/21/24	"CAME IN ANGRY"

321. The daily logs include the following six behavior events that are marked with a colored sticky note.⁷¹⁰

9/18/24	ESCALATED 1 HR 20 MINS
9/25/24	"BIG AGGRESSION TOWARDS SELF" 40 MIN ESCALATION
9/27/24	"[STUDENT] WAS MAD FROM THE MOMENT HE LEFT THE FRONT STEPS OF HIS HOUSE. HITTING HIMSELF IN RIBS & THIGHS" 12:20 "BIGGER ESCALATION" "TOOK CHAIR HE BROKE TO THE DUMPSTER DIDN'T LIKE THAT WAS VERY ANGRY ON THE WAY BACK. CONTINUED IN CLASS" 2:00 "PHYSICAL OUTBURST"
9/30/24	"CAME IN ANGRY" "BIG ANGER PHYSICALLY AGGRESSIVE FIRST THING IN THE MORNING 8:30"
10/1/24	ASKED TO WATER PLANTS "HIT KADE'S PAD WITH DOUBLE FISTS OUT OF NOWHERE WHEN ASKED TO WATER PLANTS"
10/7/24	"[STUDENT] ASKED FOR PEPSI RIGHT AWAY VERY ANGRY WHEN TOLD NO HIT SELF AND TABLE KNOCKED OVER WATER" "BIG PHYSICAL OUTBURST THAT HAS LASTED" "SAID SORRY MULTIPLE TIMES AFTER KNOCKING WATER ALL OVER TABLE AND GETTING MAD" ESCALATION LASTED 46 MINS, STARTED AGAIN 15 MINS LATER. "[STUDENT] SEEMS TO BE SLIGHTLY LIMPING MAYBE HURT HIMSELF DURING HIS ESCALATION" STILL BOTHERING HIM AN HOUR LATER BUT HE WOULD NOT STOP WALKING AND TRYING TO JUMP.

322. The Student's daily logs reflect the following instances of the Student sleeping at school:⁷¹¹

9/9/24	SLEPT
9/10/24	SLEPT
9/12/24	SLEPT FROM 9:35 - 11:30
9/16/24	SLEPT
9/17/24	SLEPT
9/18/24	SLEPT 1.5 HRS "SLEPT MOST OF THE MORNING"; LAY DOWN AGAIN AFTER ESCALATION

⁷¹⁰ P41 pp13-14, 21-29, 37.

⁷¹¹ P41 pp4-7, 9-11, 13-24, 27-29, 33-45, 55.

9/19/24	LAY DOWN TWICE. 10 MINS IN AM. SLEPT IN PM FOR 25 MINS
9/20/24	SLEPT 15 AND 30 MINS IN AM
9/25/24	SLEPT TWICE 20 MINS, 45 MINS
9/30/24	SLEPT THREE TIMES
10/1/24	SLEPT
10/2/24	SLEPT ONE HOUR 20 MINS
10/3/24	SLEPT 30 MINS
10/4/24	SLEPT
10/7/24	SLEPT THREE TIMES; SECOND TIME 25 MINS
10/9/24	"He usually lays on the couch for about 1/2 hr" when he comes in
?	SLEPT 1.5 HRS IN AM SLEPT AGAIN FOR 15 MINS
10/15/24	SLEPT 3HR 37 MINS
10/16/24	SLEPT 35 MINS
10/17/24	SLEPT 20 MINS

323. The Student's daily logs show the staff recorded the following three incidents of [REDACTED] or self-soothing.⁷¹²

9/17/24	[REDACTED]
9/24/24	[REDACTED]
9/25/24	[REDACTED]

324. On September 4, 2024, staff recorded in the log that the Student made "puking sounds" in the bathroom and "possibly threw up."⁷¹³ On September 6, 2024, staff recorded that Student "went to the bathroom showered and assumedly gagged himself for sensory input same as yesterday threw up as well."⁷¹⁴

325. The daily log shows the Student ate only the following food for breakfast, lunch, or snack, at school: pizza, chips, chicken, popcorn, barbecue sandwich, cookie, breakfast bar, crackers, and fries.⁷¹⁵

326. Mr. Kinsman's intention was to log all the Student's activities each day in the daily log; however, some days in the period May 23, 2024, through October 22, 2024, do not have an entry and some daily log entries do not reflect activity for a full day.⁷¹⁶ Mr. Kinsman stopped recording data in the daily logs after October 22, 2024, because the new Bobcat Daily activity reports, started on October 15, 2024, provided

⁷¹² P41 pp38, 33-34, 27-29.

⁷¹³ P41 p49.

⁷¹⁴ P41 pp46-47.

⁷¹⁵ P41 pp1-12, 15-49, 52, 55.

⁷¹⁶ T342.

“comprehensive data on [the Student’s] time at school.”⁷¹⁷ Mr. Kinsman acknowledged that he and the Student’s paraeducators did not record every incident of SIB and harm to others exhibited by the Student.⁷¹⁸ The incident when the Student hit Mr. Kinsman on June 20, 2024, is not recorded in the daily log.⁷¹⁹ In the daily log, Mr. Kinsman would indicate SIB incidents he felt “were of magnitude” or that were “out of the normal for the Student” using a colored sticky note.⁷²⁰

327. Mr. Garcia recalled that, in the daily logs, he was specifically instructed to track, “what we did with the Student, what he ate, what he drank, anger or positive or good things that he did – just things that we felt like we needed to take a note of.”⁷²¹ Mr. Garcia was not directed to record data in the daily logs about how many times the Student engaged in self-harm during the day. According to him,⁷²²

we would write down if it was, like, a big one. . . Typically, if I wrote it down, it was a little bigger than normal just like a little frustrated outburst.

So, if I wrote down that the student was angry, like on a normal piece of paper, that would have been a little bigger of a situation. But if I put a sticky note, that marks that that was a very big moment.

328. Mr. Jackson did not know what the sticky notes in the daily log indicated.⁷²³ Mr. Jackson did not know if there is a difference between a “melt down” and a “temper tantrum.”⁷²⁴

329. Dr. Tucker read all 67 pages of the daily log recorded by the Student’s special education staff.⁷²⁵ Dr. Tucker could not determine, from her review, whether the Student was making progress with his behaviors.⁷²⁶ Regarding the information

⁷¹⁷ P41 p1.

⁷¹⁸ T261-262.

⁷¹⁹ P41; T275-276.

⁷²⁰ T242-243, T355.

⁷²¹ T1114.

⁷²² T1114-1115.

⁷²³ T1045.

⁷²⁴ T1036.

⁷²⁵ T809.

⁷²⁶ T808.

recorded in the daily logs, Dr. Tucker took issue with several aspects.⁷²⁷ First, she noted that there is no frequency data regarding the number of times the Student hit his head, engaged in physical aggression, or how many times he engaged in self-vomiting. The daily logs record anecdotal data that cannot be equated with behavior.⁷²⁸ Next, Dr. Tucker found the staff's use of non-standard, undefined language like "temper tantrum" unhelpful and difficult to understand.⁷²⁹ Finally, Dr. Tucker saw no data collection related to identifying precursors to behavior and the protocols used by the team to address behavior.⁷³⁰

330. Dr. Tucker summarized the issues she found with the daily logs as follows:

What we don't know from looking at these is all the things that were in the Behavior Intervention Plan. They're not reflected in here at all. So, what I would want to see is that staff were giving data sheets that reflected exactly what was going on, that they were trained, that they were supervised, that they documented how many people were there each day, that the programming truly reflected what it is that was in that plan and in the IEP.

331. In the period of September 3, 2024, through November 22, 2024, the Student's special education providers collected data about the Student's work toward achieving his IEP goals.⁷³¹ Staff would "run trials with the Student and then record a plus or a minus sign on if the Student was able to complete the objective."⁷³² Mr. Kinsman described the marks on the IEP goal sheets as follows:⁷³³

So the plus sign means that yes, they practiced that objective for the day. A negative sign means that they were not able to practice that, whether it is because they chose not to, whether they couldn't quite get the skill with accuracy and independence. It just means yes, did they practiced that objective.

⁷²⁷ T807-808.

⁷²⁸ T807-808.

⁷²⁹ T807-808.

⁷³⁰ T807-808.

⁷³¹ P42; T195.

⁷³² T182.

⁷³³ T316.

332. Mr. Kinsman estimated that staff worked on IEP goals and recorded IEP goal data for an hour and a half in the mornings.⁷³⁴ If the Student required a break during that period, staff could come back to the task later.⁷³⁵ “Ten to fifteen minutes is when the Student hits the ceiling point, and that’s when we know we are going to want to back off, otherwise agitation will set in and we don’t want him to get hurt.”⁷³⁶

333. Mr. Kinsman intended to record IEP goal data daily, but “for one reason or another, it doesn’t happen every day.”⁷³⁷ If data is not recorded for a particular date, it could mean that either no data was collected or the goal was not worked on that day, or both.⁷³⁸ According to Mr. Jackson, if there is no IEP data on a specific day, it could mean that “someone wasn’t there” that day.⁷³⁹

334. Mr. Garcia typically worked on and collected data for the four academic IEP goals, while Mr. Jackson collected data for the behavior, social skills, communication, and adaptive/self-help goals.⁷⁴⁰

335. Once collected, the team used the IEP goal data to “derive future instruction.”⁷⁴¹ Mr. Kinsman estimated that he reviewed the IEP data sheets every couple of weeks.⁷⁴²

336. Mr. Garcia did not collect any IEP goal data other than what he recorded on the IEP goal sheets in Exhibit P42.⁷⁴³

Witness Credibility Determinations and Related Findings

337. Dr. Lupas has extensive education, training, and experience as a psychologist working with individuals with developmental disabilities, intellectual disabilities, and autism, and with families who support them.⁷⁴⁴ Dr. Lupas’s testimony regarding her experience working with the Student and her recommendations for him are highly credible, with the following exception. Dr. Lupas’s knowledge of the Student’s special

⁷³⁴ T195.

⁷³⁵ T195.

⁷³⁶ T195.

⁷³⁷ T316.

⁷³⁸ T316.

⁷³⁹ T1053.

⁷⁴⁰ T196, T1054-1056, T1119-1120.

⁷⁴¹ T196

⁷⁴² T197.

⁷⁴³ T1122.

⁷⁴⁴ T882-884, T887.

education programming is informed solely by her review of records and information she received from the Parent. She did not speak with District staff to learn their perspective, has never observed the Student in an educational setting, is not familiar with and has no knowledge of the District's special education programming, and has no personal knowledge of the Student's educational programming.⁷⁴⁵ This impacts the reliability of her opinion testimony regarding the District's development of the Student's IEP, the adequacy of the District's services to the Student, and the appropriateness of the Student's goals, which is therefore given little weight.

338. Dr. Tucker is a doctorate level BCBA and has almost 30 years' experience in special education, including teaching special education students. She has extensive experience both working in and teaching ABA.⁷⁴⁶ Therefore, Dr. Tucker's testimony and opinions regarding the PBMU FBA/BIP, the District's FBA, and the District's data collection/reporting are highly credible, with the following exception. Like Dr. Lupas, Dr. Tucker's knowledge of the Student's special education programming is informed solely by her review of records and information she received from the Parent. Dr. Tucker did not speak with District staff to learn their perspective, did not observe the Student in an educational setting, is not familiar with and has no knowledge of the District's special education programming, has no personal knowledge of the Student's educational programming, and did not know the Student when the District developed his IEP and FBA in May 2024.⁷⁴⁷ This impacts the reliability of her opinion testimony regarding the District's development of the Student's IEP, the adequacy of the District's services to the Student, and the appropriateness of the Student's goals, which is therefore given little weight.

CONCLUSIONS OF LAW

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 under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

⁷⁴⁵ T914-916, T922-923

⁷⁴⁶ T748-750.

⁷⁴⁷ T758, T817-828.

2. The IDEA is silent as to which party bears the burden of proof in the due process hearing. In *Schaffer v. Weast*, 546 U.S. 49, 51 (2005), the United States Supreme Court considered this issue and held that “the burden lies, as it typically does, on the party seeking relief.” In Washington state, the legislature recently enacted a law that places the burden of proof on school districts in due process hearings. Senate Bill 5883 (SB 5883), which adds a new section to RCW 28A.155, was signed by Governor Jay Inslee on March 13, 2024, and took effect on June 6, 2024. The U.S. Supreme Court and Washington courts have generally held that the standard of proof in an administrative proceeding is a preponderance of the evidence.⁷⁴⁸ Therefore, the District’s standard of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.”⁷⁴⁹

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is 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.”⁷⁵⁰

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent’s right to be involved in the development of their child’s educational plan.⁷⁵¹ Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or

⁷⁴⁸ *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Thompson v. Dep’t of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep’t of Social & Health Services*, 172 Wn.2d 1, 4 (2011).

⁷⁴⁹ *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

⁷⁵⁰ *Rowley*, 458 U.S. at 206-07.

⁷⁵¹ *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

(III) caused a deprivation of educational benefits.⁷⁵²

6. “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.”⁷⁵³ The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs.⁷⁵⁴ The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”⁷⁵⁵ Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.”⁷⁵⁶ Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances”⁷⁵⁷

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.”⁷⁵⁸ The determination of reasonableness is made as of the time the IEP was developed.⁷⁵⁹ An IEP is “a snapshot, not a retrospective.”⁷⁶⁰

ISSUE 2: Whether the District violated the IDEA and denied the Student a FAPE by failing to develop IEPs that were appropriate in the areas of specially designed instruction, related services, accommodations, behavior supports, and placement, in light of the Student’s circumstances, from June 2022 to the present

8. In developing an IEP, a student’s IEP team must consider the student’s strengths, the parents’ concerns for enhancing their student’s education, the most recent evaluation results, and the student’s academic, developmental, and functional needs.⁷⁶¹ The team must also consider special factors unique to the student.⁷⁶² If a

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

⁷⁵³ *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.* at 1000.

⁷⁵⁷ *Id.*

⁷⁵⁸ *Id.* at 999 (emphasis in original).

⁷⁵⁹ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

⁷⁶⁰ *Id.*

⁷⁶¹ WAC 392-172A-03110(1).

⁷⁶² WAC 392-172A-03110(2).

student's behavior impedes their learning or that of others, the IEP team must consider the use of positive behavior interventions and supports to address behavior.⁷⁶³

9. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the student's disability affects involvement and progress in the general education curriculum.⁷⁶⁴ In addition, an IEP must include a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from their disability to enable them to be involved in and make progress in the general education curriculum and to meet each of the student's other educational needs that result from the student's disability.⁷⁶⁵ There must be a relationship between the present levels of performance and the goals and objectives.⁷⁶⁶ Moreover, goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.

10. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need.⁷⁶⁷ An IEP need not contain every goal requested by a parent or recommended by the parent's experts.⁷⁶⁸

11. In addition, an IEP must include a statement of the special education and related services needed to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other non-academic activities, and to be educated and participate with other students, including nondisabled students.⁷⁶⁹

12. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address

⁷⁶³ WAC 392-172A-03110(2)(i).

⁷⁶⁴ WAC 392-172A-03090(1)(a).

⁷⁶⁵ WAC 392-172A-03090(1)(b).

⁷⁶⁶ *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

⁷⁶⁷ See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction).

⁷⁶⁸ See *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's significant needs while excluding those it deemed unnecessary or not age appropriate).

⁷⁶⁹ WAC 392-172A-03090(1)(d).

the student's unique needs that result from the student's disability and to ensure the student's access to the general education curriculum.⁷⁷⁰

13. "Related services" are transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, including SLP and OT services, and parent counseling and training.⁷⁷¹

March 2022 IEP

14. As stated above, the determination of reasonableness of an IEP is made as of the time the IEP was developed; therefore, the appropriateness of the March 2022 IEP is not addressed by the tribunal because it was developed outside the relevant time period in this case (which begins in June 2022).

The November 2023 IEP Was Not Reasonably Calculated to Enable the Student to Make Progress Appropriate in Light of His Circumstances

15. The November 2023 IEP called for the Student to be placed in a residential placement. In the interim, while the District worked to find such a placement, the Student was to receive two 30-minute sessions in the home each week.

16. According to the District, the IEP team's decision to provide the Student with only two 30-minute sessions per week in November 2023 was based on the District's perception of the Student's tolerance levels at the time. The team believed the Student did not have the stamina to participate in 60 minutes of SDI in all areas each day and they offered the interim services as a first step to get to know the Student and his behaviors. The District presented no data on which they relied to make this decision about the Student's tolerance. The District also did not provide evidence to show why 10 minutes per month of related services of communication, monitored by an SLP, was sufficient when the March 2022 Evaluation called for a program made up of over 50% functional communication training. The data the District had, the March 2022 Evaluation, showed that when the Student was last served by the District, he tolerated two-hour daily sessions in school with the BCBA and her team. The March 2022 Evaluation did not suggest that the Student would only tolerate two 30-minute sessions per week outside the school setting. Dr. Tucker agreed that it was a significant step backwards to serve the Student for 30 minutes twice per week in his home when

⁷⁷⁰ WAC 392-172A-01175; 34 CFR §300.39(b)(3).

⁷⁷¹ WAC 392-172A-01155(1).

he had previously received a highly specialized program for two hours each day in school.

17. A preponderance of the evidence shows that, at the time the District developed the November IEP 2023, the Student required and could tolerate more than one hour per week of SDI services, more than one hour per week of behavior services, and more than 10 minutes per month of SLP-monitored services. The Student's LRE placement in November 2023 was in a residential facility; consequently, his IEP should have provided sufficient intensive behavioral services and SDI to support a student with such a placement need, even in the interim. It did not do so. For these reasons, it is concluded that the services provided under the November 2023 IEP did not approach the intensity of services the Student would have received in a residential placement; therefore, the IEP as a whole was not reasonably calculated to enable the Student to make appropriate progress in light of his circumstances.⁷⁷² The Father is entitled to a remedy for this denial of FAPE, as addressed below.

The May 2024 IEP Was Not Reasonably Calculated to Enable the Student to Make Progress Appropriate in Light of His Circumstances

May 2024 Placement

18. The May 2024 IEP changed the Student's placement from a residential facility (with interim services in the home) to 0% - 30% in general education. The Parent argues that the Student's change in placement from residential to the school setting was inappropriate based on the evidence of his continued behavioral and educational needs. The District argues that residential placement in May 2024 was not the LRE for the Student, that it provided an appropriate program for the Student, and that staff was able to appropriately deliver the Student's services in the school setting. For the reasons discussed below, the District has failed to prove that changing the Student's placement from a residential facility to serving him in the school setting was appropriate.

19. School districts must ensure that special education students are served in the "least restrictive environment."⁷⁷³ This means students should be served: ⁷⁷⁴

(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and

⁷⁷² *Endrew F.*, 580 U.S. at 399.

⁷⁷³ WAC 392-172A-02050.

⁷⁷⁴ WAC 392-172A-02050.

(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.

20. The IEP team must consider the terms of WAC 392-172A-02060 when determining a student's placement:⁷⁷⁵

(1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

21. The Ninth Circuit has developed a four-part test to determine whether a student's placement represents the least restrictive environment, as first set out in *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994).⁷⁷⁶

⁷⁷⁵ See 34 CFR 300.116(b)(2).

⁷⁷⁶ *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1137 (9th Cir. 2003) (cleaned up).

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

22. School districts must “ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.”⁷⁷⁷ As discussed by the Ninth Circuit, “[t]his ‘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 services to a child with a disability.’”⁷⁷⁸

23. Just like the standard for FAPE, districts are not required to implement residential placements simply to maximize educational benefits.⁷⁷⁹ However, a lack of progress in a less restrictive placement can show the necessity of a residential placement.⁷⁸⁰

24. Behavior problems are not a basis for residential placement unless they become so severe that they interfere with the student's ability to obtain an educational benefit in a typical school setting. Typically, such behavior threatens the welfare of the student or other individuals and cannot be effectively managed anywhere other than a 24-hour environment with specially trained staff.⁷⁸¹

⁷⁷⁷ WAC 392-172A-02055(1).

⁷⁷⁸ *M.S. v. L.A. Unified Sch. Dist.*, 913 F.3d 1119, 1136 (9th Cir. 2019) (emphasis added).

⁷⁷⁹ See, e.g., *Kerkam v. Superintendent, D.C. Pub. Schs.*, 17 IDELR 808 (D.C. Cir. 1991); and *District of Columbia Pub. Schs.*, 123 LRP 13715 (SEA DC 03/30/23).

⁷⁸⁰ *Independent Sch. Dist. No. 284 v. A.C.*, 35 IDELR 59 (8th Cir. 2001). But see *CN v. Katonah Lewisboro Sch. Dist.*, 78 IDELR 11 (2020) (a private evaluator's recommendation that a high school student with bipolar disorder receive "24/7" care did not negate the fact that the teen was making progress in a significantly less restrictive environment and did not convince the U.S. District Court that the teen needed to be placed in a residential facility to receive FAPE.)

⁷⁸¹ See, e.g., *J.B. v. Tulumne County Superintendent of Schs.*, 78 IDELR 188 (E.D. Cal. 2021) (records indicating that interventions failed to address the dangerous and escalating behaviors of a fourth-grader whose pockets and socks had to be searched daily showed the district should have offered the student a residential placement.); *Agawam Pub. Schs.*, 63 IDELR 29 (SEA MA 2014) (finding that the extremely dangerous behaviors of a student with autism, which led to two long psychiatric hospitalizations and a reduction in educational services, called for residential placement); and *District of Columbia Pub. Schs.*,

25. Generally, behavior problems that are limited to the home environment or manifest themselves almost exclusively in that setting do not warrant residential placement. A parent's inability to manage a student at home will not in itself demonstrate a need for a residential placement.⁷⁸²

26. The District claims that the Student emerged from his stay at Seattle Children's Hospital stabilized, directable, and "just a new kiddo." Ms. Tucker did not collect "formal data" on the Student's behavior from April 8, 2024, through June 4, 2024, but based on the District's communications with the Father, the District believed the Student was doing much better at home. This conflicts with the Father's and Ms. Shipman's testimony that, shortly after his return home from the hospital, the Student's SIB was as severe as his had been when he entered the hospital. It also conflicts with Ms. Tucker's own testimony that she did not ask the Father if he believed the Student was "more regulated and much more directable." The District did not collect behavior data as part of the May 2024 Assessment Revision and the record shows that the District gave little consideration to the recommendation for residential placement made by Mr. Bills, the school psychologist, in the Student's March 2024 Evaluation. Additionally, the May 2024 IEP shows that the Student's present levels included engagement in SIB at school and at home. The District pointed to no data to support a claim that in early May 2024 the Student's SIB and aggressive behavior was reduced in the school setting, that the Student was more stabilized and directable, or that his SIB and aggressive behavior no longer interfered with his ability to access his education.

27. Application of the *Rachel H.* factors supports residential placement at the time of the development of the May 2024 IEP. With respect to the first factor, which focuses on the educational benefits of placing the Student in a regular classroom, the District struggled to support the Student in terms of his behaviors involving SIB and aggression, to the point that not only was he not making meaningful progress in resolving those behaviors, but his behaviors also interfered with his ability to access

118 LRP 48950 (SEA DC 09/28/18) (noting that because a student with violent behaviors was repeatedly hospitalized in a psychiatric treatment facility, he needed a residential placement to access consistent educational services)

⁷⁸² See, e.g., *Ashland Sch. Dist. v. Parents of Student R.J.*, 53 IDELR 176 (9th Cir. 2009) (holding that a district did not have to pay for a high schooler's placement in a residential facility when that placement stemmed from her "risky" and "defiant" behaviors at home); *L.G. and K.G. v. School Bd. of Palm Beach County*, 48 IDELR 271 (11th Cir. 2007) (noting that the student's aggressive and violent behaviors occurred outside of school); and *Braydon K. v. Douglas County Sch. Dist. RE-1*, 76 IDELR 207 (D. Colo. 2020) (noting that most of the student's documented behavioral offenses occurred outside of school, the district established that it could meet the student's educational needs in a highly structured therapeutic day program).

his education. Additionally, his behaviors posed significant barriers for him to be able to learn the skills he needed to have in order to enjoy a meaningful life after high school. The record lacks evidence of data showing the Student made progress on his IEP goals in the 2023-2024 school year. Notably, in fall 2024, the Student was unable to count past two or three dollars, he could not identify a word without an associated picture, and he did not know his letters.

28. The second and third *Rachel H.* factors focus on whether a student will receive a non-academic benefit from the placement and the impact on the teacher and children in the regular class. While the District acknowledged the benefit of disabled students being educated among peers and reportedly sought to avoid the “stale environment” of a residential facility, the IEP called for the Student to be transported on a bus by himself and served alone in special education room in a junior high school, providing him with no interaction with high-school-aged peers. Neither Dr. Tucker nor Dr. Lupas recommended educating the 18-year-old Student at a junior high or alone in a room. A residential facility would be able to meet the Student’s behavioral needs, which is a necessary predicate to his ability to transition after leaving school, and would likely provide the Student with less isolation from peers than he experienced when isolated in the junior high school. At the time of the May 2024 IEP, the Student exhibited SIB daily at home and at school, and there is no evidence showing the District managed those behaviors leading up to the development of the May 2024 IEP. Not only did these behaviors prevent the Student from making academic progress, but they also prevented him from participating in the general education community, or even the special education community, and obtaining the non-academic benefits of that participation.

29. The record does not include evidence of the cost of residential placement for the Student; though, it can be assumed that educating the Student in a residential facility will be a significant expense to the District. However, in light of the other *Rachel H.* factors, the facts weigh in favor of residential placement as the Student’s LRE.

30. The preponderance of the evidence shows a lack of progress with the Student’s behaviors after his release from the hospital, that the Student’s welfare continued to be threatened by his daily behavior, and that the Student’s self-injurious behavior continued in the home environment and when served by the school. Based on this evidence, the District should have concluded the student’s behavioral problems were impacting his ability to access his education and recognized the necessity of a residential placement. There is no evidence that the IEP team discussed the continuum of placement options available to meet the Student’s needs, considered the restrictiveness of the environment in which it placed him, or discussed whether the Student required a residential placement to obtain an educational benefit. For the

reasons discussed, the District's decision to change the Student's placement from residential to service in the District was a denial of FAPE.

May 2024 IEP Services

31. The Student received services under the May 2024 IEP in the brief period of June 5, 2024, through June 14, 2024 (the last day of school in the 2023-2024 school year). The Parent argues that the services and supports provided under the May 2024 IEP were inappropriate. The May 2024 IEP provided for 70 minutes per week in behavior services; 10 minutes each, concurrently, in other SDI; and weekly related services with an SLP for 30 minutes and an OT for 20 minutes.

32. Despite the District's position that it could serve the Student properly in spring 2024, the District failed to provide evidence to support the decision to provide the Student with little more than two hours per week of services under the May 2024 IEP. Based on the District's experience with the Student from November 2023 through May, 2024, on the March 2024 Evaluation, and on information it could have gathered from the Father, the District knew, or should have known, that the Student continued to exhibit SIB behavior on a daily basis, and continued to exhibit aggressive behavior in that period, including after his stay in the hospital. The District was aware the Student had recently left an intense hospital program during which he received 24/7 care from professionals to manage his serious behavior issues. Despite its claim that the Student emerged as a "new kiddo," the District presented no data to support that conclusion. On the contrary, Mr. Kinsman testified that the Student's SIB continued to occur daily and did not decrease from March 2024 through May 2024. Based on the May 2024 Assessment Revision, the District understood that the Student was a complex communicator, with little to no functional communication skills, and with a significant fine-motor deficit. The District did not provide evidence to show how providing a total of 50 minutes of related communication and fine motor services per week would properly serve the Student in those areas. The evidence shows that in May 2024, the Student's behavioral, communication, and fine motor needs required more than two hours and 50 minutes of service each week. Dr. Tucker opined that, if the District believed the amount of service it offered in May 2024 was all the Student could tolerate, the District should have found an educational placement where the Student could receive more intensive services for longer amounts of time. Based on her BCBA and ABA doctorate-level credentials and her 29 years' experience in special education, including assisting districts with highly aggressive students, Dr. Tucker's opinion is given great weight. Based on the above, the services in the IEP were inappropriate for the Student, resulting in a denial of FAPE.

33. The Parent argues the BIP developed along with the May 2024 IEP was inappropriate because it was based exclusively on the FBA/BIP developed by Seattle Children's Hospital/PBMU in the hospital setting and did not take into consideration the Student's circumstances in the school setting.

34. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.⁷⁸³ "A functional behavior assessment is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors."⁷⁸⁴

35. Under WAC 392-172A-01031, a behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes:

(1) The pattern of behavior(s) that impedes the student's learning or the learning of others;

(2) The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;

(3) The positive behavioral interventions and supports to:

(a) Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;

(b) Ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities;

(4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

⁷⁸³ 20 USC § 1414(d)(3)(B)(i); 34 CFR. § 300.324(a)(2)(i).

⁷⁸⁴ *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 *10 (E.D. Cal. June 14, 2016); see *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007).

36. The IDEA does not set forth any substantive requirements for BIPs; however, based on the standard of FAPE, a BIP is appropriate if it is reasonably tailored to meet the student's disability-related needs at the time of its formation.⁷⁸⁵

37. To establish the inappropriateness of the District's BIP, the Parent relies almost exclusively on testimony from Dr. Tucker in which she opined that it was inappropriate for the District to accept the PBMU FBA/BIP "as-is." According to Dr. Tucker, because the hospital setting and the educational setting are different, the District should have looked at the data provided by PBMU and developed a BIP that applied the PBMU BIP protocols to the school setting and individualize the BIP to the Student. Other than pointing to the difference between a hospital and school setting, Dr. Tucker did not describe specifically what the District should have changed in the PBMU BIP in order for it to work in the educational setting. The Parent argues that modifications should have been made to the PBMU BIP to individualize it to the Student, but does not specify what should have been modified. There was no claim that the PBMU BIP, on which the District BIP was based, was not reasonably tailored to meet the student's disability-related needs.

38. In contrast, Dr. Lupas testified that districts will often implement a PBMU FBA/BIP as is, and will adopt the PBMU recommendations rather than creating their own. According to Dr. Lupas, because Seattle Children's has experts in severe behavior and school districts often do not, a district will implement the PBMU BIP as written and modify as needed. Notably, the PBMU FBA/BIP does not specify that it is intended to be implemented only in a hospital setting. Based on the above, the District has proved that the BIP it created with the May 2024 IEP, relying on the PBMU BIP, was reasonably tailored to meet the student's disability-related needs at the time of its formation. Therefore, the District's BIP was appropriate.

Summary of the May 2024 IEP Development

39. Viewed as a whole, the District has not demonstrated that the May 2024 IEP was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances because 1) it changed the Student's placement despite the preponderance of evidence showing residential placement was necessary; and 2) the services and supports provided were inappropriate in light of the knowledge the District had about the Student at the time. This resulted in a denial of FAPE. Accordingly, the Parent is entitled to a remedy as discussed below.

⁷⁸⁵ *Bouabid v. Charlotte Mecklenburg Schs. Bd. of Educ.*, 121 LRP 41291 (W.D.N.C. 12/10/21).

The ESY 2024 IEP Was Not Reasonably Calculated to Enable the Student to Make Progress Appropriate in Light of His Circumstances

40. WAC 392-172A-02020 provides for ESY services as follows:

(1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

(a) Beyond the normal school year;

(b) In accordance with the student's IEP; and

(c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

41. The ESY 2024 IEP included a behavior goal that focused on transitions during the daily routine and improving self-management. Notably, the IEP did not provide for SDI in behavior services, nor did the behavior goal address the Student's primary target behavior of SIB or his secondary target behaviors of aggression and vomiting. Although the District did not collect "formal data" on the Student's behavior from April 8, 2024, through June 4, 2024, as is addressed above, the District knew, or should have known, that the Student continued to exhibit SIB based on the District's experience with the Student in spring 2024, on the March 2024 Evaluation, and on information it could have gathered from the Father. The purpose of ESY services is the maintenance of the student's learning skills or behavior. The record does not show how the District planned under the ESY 2024 IEP to maintain the Student's positive behaviors if his problematic behaviors were not addressed daily under the IEP. According to Ms. Tucker, the District wanted to stabilize the Student's behavior during the short time the District could serve him during ESY; however, the evidence does not show how the District planned to stabilize the Student's SIB and other targeted behaviors if the District was not addressing them under the IEP by providing behavior services as SDI or as part of the IEP behavior goal. The District has not demonstrated that the ESY 2024 IEP was reasonably calculated to enable the Student to make appropriate progress in light of his circumstances. This resulted in a denial of FAPE. Accordingly, the Parent is entitled to a remedy as discussed below.

The August 2024 IEP Was Not Reasonably Calculated to Enable the Student to Make Progress Appropriate in Light of His Circumstances

August 2024 Services

42. Under the August 2024 IEP, the District provided the Student with 60 minutes daily SDI in reading, math, writing, math, adaptive/self-help, and social skills, but only 53 minutes per day in behavior.

43. The District failed to provide sufficient evidence to support its decision to provide only 53 minutes per day in behavior services to a student who, the record shows, could not access educational benefits because of his severe behavior issues. During ESY 2024, the Student exhibited SIB on a daily basis and frequently showed aggression toward staff. As is discussed below, the District did not collect sufficient formal data about the frequency and severity of the Student's behavior; however, the District had access to enough informal data in its Bobcat Daily reports, daily logs, and anecdotal information about the Student's behavior in August 2024 to show it should

have understood that the Student's serious behavior needed to be addressed. The District also failed to show why it believed that a student with complex communication issues, who had essentially no functional communication skills, was best served with only 30 minutes per week of related communication services. The District SLP testified to the importance of functional communication for the Student's own safety. The District should have understood at the time of the development of the August 2024 IEP that the Student's behavior and communication needs required more than was offered under the IEP created at that time. The preponderance of the evidence in the record shows the services provided to the Student under the August 2024 IEP were not appropriate at the time the IEP was developed.

August 2024 Placement

44. For the same reasons considered above as part of the analysis of the May 2024 IEP, and for the additional reasons addressed below, the District's decision under the August 2024 IEP to choose placement in the District, rather than residential placement, was inappropriate.

45. The IEP team claimed that it relied on the March 2024 Evaluation, the Student's IEP, and data from both the spring of 2024 as well as ESY 2024 when it decided to continue to serve the Student in the District. However, the March 2024 Evaluation and data available to the District at the time support a conclusion that the Student required residential placement in August 2024.

46. First, the March 2024 Evaluation recommended residential placement for the Student. The District did not specify why it disregarded the recommendation made in the evaluation. Next, the District had a letter from Dr. Lupas, who had been treating the Student since his release from the hospital, that specifically recommended placement outside the home. Ms. Tucker asserted that she distributed Dr. Lupas's letter to the team at the August 27, 2024, IEP meeting; however, Mr. Kinsman had not seen the letter prior to the hearing and did not recall the IEP team discussing it prior to making a placement decision in August 2024. Receiving the letter the day before the meeting was not an excuse to ignore the letter. Ms. Tucker herself acknowledged that in May 2024, the IEP team gathered data up until the morning of the IEP meeting. There is no evidence showing why the IEP team could not have done the same in August 2024 after receiving Dr. Lupas's letter. The District also claimed that it did not give much weight to Dr. Lupas's letter because it believed she based her conclusion on the Student's behavior at home, and that the District did not have the same experiences with the Student in school. The preponderance of the evidence shows otherwise. The Student punched and charged Mr. Kinsman on the first day of ESY and

continued to exhibit SIB and aggressive behavior throughout the time he received services in summer 2024.

47. Information about the Student's behaviors that was collected by staff while serving the Student in spring 2024 and during ESY also supported a conclusion that residential placement was necessary in August 2024. While the record shows the District did not collect complete data regarding rates of behavior for the Student, the District had some records kept by staff that reported serious incidents of the Student's SIB and aggression and had access to anecdotal information. In the period of May 30, 2024, through June 13, 2024, there are records of incidents of SIB and/or aggression toward staff on five days. Additionally, although it is not recorded in the daily logs or in a Bobcat Daily report in the record, there is no dispute that the Student injured his hand on June 20, 2024, after striking Mr. Kinsman. Also, on June 24, 2024, the Father picked the Student up from school because he was exhibiting SIB and staff could not stop the behavior. As is addressed above, staff who worked with the Student prior to the August 2024 IEP meeting reported witnessing the Student engage in SIB on a daily basis and hitting staff daily, sometimes twice a day, during ESY. While Ms. Tucker claimed the Student and the District both had "a positive experience" during ESY 2024, and that the District "definitely saw growth" in the Student during ESY, there is no evidence showing the Student's behavior improved or even stabilized while being served by the District prior to August 2024.

48. Despite the evidence existing prior to August 2024, and despite the additional information available to the team in August, there is no evidence that the team considered other placement options for the Student at the August IEP meeting. As with the earlier IEP, there is no evidence that the IEP team in August discussed the continuum of placement options available to meet the Student's needs or discussed whether the Student required a residential placement to obtain an educational benefit. There is no evidence available to the IEP team in August 2024 that would change the result from the tribunal's earlier application of the *Rachel H.* factors. The Father asked the IEP team to consider residential placement at the August IEP meeting, but the District rejected the request because it was "able to provide an appropriate placement" for the Student and the team did not believe the Student required residential placement or that it was the least restrictive environment. The record does not show that the District considered the persistent, daily injurious behavior exhibited by the Student when making its placement decision.

August 2024 BIP

49. The BIP in place under the August 2024 IEP was the same BIP in place under the May 2024 IEP. As is addressed above, the District has proved that the BIP was

reasonably tailored to meet the student's disability-related needs at the time of its formation. Therefore, the District's BIP was appropriate.

Summary of the August 2024 IEP Development

50. Viewed as a whole, the District has not demonstrated that the August 2024 IEP was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances because 1) it decided to place the Student in the District despite the preponderance of evidence showing residential placement was necessary; and 2) the educational SDI and the behavioral services and supports provided were inappropriate in light of the knowledge the District had about the Student at the time. This resulted in a denial of FAPE. Accordingly, the Parent is entitled to a remedy as discussed below.

ISSUE 3: Whether the District violated the IDEA and denied the Student a FAPE by inhibiting meaningful parental participation by rescinding their offer for residential placement — thereby changing the Student's placement — in May 2024 without the Parent's knowledge and outside of the IEP team

51. The Parent framed this issue as the District "rescinding" a previous offer of residential placement, resulting in a change of placement. In two IEPs prior to May 2024, the IEP team determined the LRE for the Student was residential placement, with interim services to be provided outside the school setting. In the May 2024 IEP, the District changed the Student's placement to 0%-39% in general education. It is clear, based on the facts, that the District changed the Student's placement in May 2024, and that is how the issue is addressed below.

52. The Father argues that, prior to the May 24, 2024, IEP meeting and without input from him, the District made the decision that the Student's placement would be in the District, rather than in a residential facility as it had been under his previous IEP; thereby, predetermining the Student's placement and denying the Father an opportunity to participate in the IEP process.

53. The District argues that the District team members discussed their ability to serve the Student and his placement options prior to the IEP meeting but did not make a placement decision until the IEP team meeting after considering input from the Father.

54. Parental participation in the IEP process is an essential component of the IDEA.⁷⁸⁶ The IDEA requires that parents have the opportunity to "participate in

⁷⁸⁶ See *Amanda J.*, 267 F.3d at 890-91.

meetings with respect to the identification, evaluation, and educational placement of the child.”⁷⁸⁷ 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.”⁷⁸⁸

55. A district violates this procedural requirement if it predetermines a student’s placement, meaning that it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.”⁷⁸⁹ Likewise, a district “may not enter an IEP meeting with a ‘take-it-or-leave-it’ approach.”⁷⁹⁰ Preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination.⁷⁹¹ A District may research and gather information about placement options without violating a Parent’s right to participate in decisions about the Student’s placement. The District must keep an open mind and be willing to consider the Parent’s proposals.⁷⁹² Also, parents do not have veto power over individual provisions or the right to dictate any particular educational program.⁷⁹³

56. The actions of the District surrounding the May 24, 2024, IEP meeting show the District made a decision about the Student’s placement prior to the meeting. This conclusion is supported firstly, and most persuasively, by the fact that Ms. Tucker informed Mr. Bills the afternoon before the IEP meeting that the District would be changing the Student’s placement from residential and would now serve him in the District. Further, when Ms. Tucker found out the next morning that Mr. Bills would not support the District’s decision in the meeting that day, she told Mr. Bills not to attend the meeting. These facts show the District made a decision about placement outside the IEP meeting without the Father’s input.

57. Next, Dr. Evans prepared an IEP meeting agenda, with input from other District IEP team members, that reflected a conclusion that the District could serve the Student. The District distributed the agenda on May 23, 2024, a day before the meeting, to District IEP team members, but did not provide the Father with a copy of

⁷⁸⁷ WAC 392-172A-03100; 34 CFR §300.322.

⁷⁸⁸ *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

⁷⁸⁹ *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003).

⁷⁹⁰ *Id.*

⁷⁹¹ *Lee’s Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012).

⁷⁹² *R.L. v. Miami-Dade County Sch. Ed.*, 757 F.3d 1173 (11th Cir. 2014); *Deal v. Hamilton County Bd. Of Education*, 392 F.3d 840 (5th Cir. 2004).

⁷⁹³ *Ms. S.*, 337 F.3d at 1131.

the agenda prior to the IEP team meeting, despite the fact that he was a member of the Student's IEP team.

58. The District's actions during the IEP meeting further support a conclusion that the District made a placement decision prior to the IEP meeting. Mr. Kinsman understood during the meeting that the District was not open to residential placement for the Student, that the District's position was that it could serve the Student in the District, and that residential placement was no longer being offered as an option. There is no evidence that the District discussed placement options during the meeting; rather, the evidence shows the District explained the services the Student would receive in the District under the IEP, and only after the Father questioned them about the plan to place him at Bancroft did the District announce the decision to change placement, leaving the Father feeling "shocked" by the news.

59. When considered collectively, the evidence shows the District made the decision to change the Student's placement outside the IEP meeting. This is not a case in which the District engaged in planning prior to the IEP meeting but was willing to consider other placement options.⁷⁹⁴ To the contrary, the evidence clearly demonstrates that the District had made up its mind regarding the Student's placement prior to the May 24, 2024 IEP meeting and did not present placement options the team should consider, or even discuss the Student's placement needs. This constitutes a procedural violation of the IDEA.

60. As discussed above, procedural violations warrant a remedy only if they⁷⁹⁵

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

61. In this case, there is no question that the IEP team predetermined the Student's placement without meaningful parental participation. The District's predetermination that the Student would be served in the District, with no discussion of whether the Student required placement in a residential facility or in some other program, significantly impeded the Father's opportunity to participate in the decision-making process. At the time of the meeting, the Student was still exhibiting incidents of SIB

⁷⁹⁴ E.g., *K.D. v. Dep't of Educ.*, 665 F.3d 1110, 1123 (9th Cir. 2011).

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

both at home and during the time he was served by the District. Accordingly, it was important for the IEP team to discuss the continuum of placement options available to meet the Student's needs, and it was the District's obligation to determine an appropriate placement for the Student based on those needs. On balance, the District's predetermination of the Student's placement significantly impeded the Parent's participation in the decision-making process. Accordingly, he is entitled to a remedy as discussed below.

62. In his complaint, a change in placement is the only District action that the Father alleged prevented his meaningful parental participation in the IEP process. However, the Father presented a second argument in the Parents' Post Hearing Brief that he believes supports a claim that the District substantially interfered with his opportunity to participate.⁷⁹⁶ In his brief, the Father argues that the District, based on the Mother's request that the District not communicate with the Father, failed to communicate with him about the Student's circumstances and placement options in the period June 2022 through October 2023; thereby, denying him the ability to make an informed decision about the placement.

63. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees.⁷⁹⁷ "Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise."⁷⁹⁸ This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object.⁷⁹⁹ An exception to this rule is when an issue was actually tried by the parties at an administrative hearing.⁸⁰⁰

64. The Father asserted a claim that was not raised directly in the issue statement, that the parties did not agree to address, and that was not actually tried by the parties

⁷⁹⁶ Parents' Post Hearing Brief, pp20-21.

⁷⁹⁷ WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B).

⁷⁹⁸ *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019), *aff'd* sub nom. *Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (upholding ALJ's refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing).

⁷⁹⁹ WAC 10-80-130.

⁸⁰⁰ *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-19 (E.D. Cal. Mar. 7, 2019), *aff'd* 810 Fed. Appx. 588 (9th Cir. 2020); see also *L.C. v. Issaquah Sch. Dist.* at *37 (holding that parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: "[b]oth sides in *Antelope Valley* 'presented extensive evidence,' including witness testimony, regarding the omitted claim").

at the hearing; therefore, it is not proper to address this issue. However, even if the issue were properly raised, the evidence does not support the Father's position.

65. There is no dispute that the Mother resided in the same house with the Father and the Student from March 2022 until she left the home in August 2023. The District sent PWNs to the Parents' home, with at least one identifying only the Mother on the "To" line and others identifying both Parents. Ms. Lewman's practice when she was special education director in 2022 was to send a PWN through registered mail. While there is no evidence of the return receipts from the registered mail, there was no testimony disputing that the PWNs were delivered to the home.

66. The record shows the Mother asked the District not to communicate with the Father sometime in 2022 or 2023, but Ms. Lewman informed the Mother that the District could not honor that request. While Ms. Coble acknowledged that the District typically contacted the Mother if the District reached out the family, there is no evidence showing that the District had been communicating with the Father prior to the Mother's request and then stopped doing so, or that the District contacted the Mother in an effort to avoid communication with the Father. Rather, the evidence shows that while the Mother was in the home, she was the primary caregiver for the Student and was the primary point of contact for the District, both before and after she asked the District not to communicate with the Father. There is no evidence that the District changed its communication practices with the family before the Father reengaged with the District in 2023 and the District learned the Mother was out of the home.

67. The evidence shows the District invited both Parents to the March 2022 IEP meeting and to a meeting in October 2022 to discuss reengagement with Student, and the evidence shows that neither Parent attended either meeting. The District is required under 34 CFR 300.322 to take steps to ensure that one or both of the parents of a child with a disability are afforded the opportunity to participate in decisions about the child's education. Providing the Parents with notices at their shared address and communicating with one parent as a primary contact satisfies that requirement. The Father's position seems to be that, because he and the Mother were not communicating with each other about the Student from March 2022 to August 2023, it was the District's responsibility to be aware of that and make efforts to reach out to the Father directly. The District is not under a burden to ensure the Parents are communicating effectively regarding their decisions about the Student's education. If the Father believed he was "out of the loop" regarding his son's education and if he had concerns about the fact that his son was home with the Mother all day and not receiving services from the District, he could have contacted the District. There is no evidence in the record showing that he did so prior to October 2023.

68. Additionally, testimony from Ms. Lewman and Ms. Meiners demonstrates that the Father had knowledge of, and formed an opinion about, residential placement prior to engaging with the District in Fall 2023.

69. The evidence in the record does not support a conclusion that the District failed to properly communicate with the Father during the period of June 2022 through October 2023, in violation of the IDEA.

ISSUE 1: Whether the District violated the IDEA and denied the Student a FAPE by failing to materially implement the Student's IEPs from June 2022 to present

70. If a school district fails to implement an IEP, the question is whether that failure was material.⁸⁰¹ 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.⁸⁰² Only a material failure to implement an IEP violates the IDEA.⁸⁰³

71. The Ninth Circuit has made clear that minor discrepancies in the services required by the IEP do not violate the IDEA.⁸⁰⁴

“[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.⁸⁰⁵

Implementation of the March 2022 IEP from June 2022 through October 2023

72. Because the disenrollment of the Student in March 2022 occurred outside the relevant time period in this case, the tribunal will not address the appropriateness of

⁸⁰¹ *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007).

⁸⁰² *Id.* at 821-22.

⁸⁰³ *Id.* at 822.

⁸⁰⁴ *Id.*

⁸⁰⁵ *Id.* at 821-22 (*italics in original*).

the disenrollment of the Student. The question before the tribunal is whether the Student's March 2022 IEP was properly implemented in the period June 2022 through October 2023. The unusual circumstances of this case require a determination of whether the District was obligated to implement the March 2022 IEP while the Student was unenrolled from the District between June 2022 and October 2023. The District argues it was not obligated to implement the Student's March 2022 IEP in that period. The Father argues that the District was required to continue working to find an appropriate program for the Student as long as he resided within the District.

73. Every school district in the State of Washington "shall provide" each student three to twenty-one years of age a free appropriate public education (FAPE) program.⁸⁰⁶ Once a student is determined eligible for special education services (SDI, related services, accommodations, modifications, etc.) a school district must have an IEP in place that is reasonably calculated to offer a student a FAPE given his unique circumstances.⁸⁰⁷

74. WAC 392-172A-03105(1) requires that each school district have an IEP in effect for each student eligible for special education services that it is serving through enrollment in the district. An "enrolled student" is defined in WAC 392-121-106 as a student that is eligible to enroll because they reside in the district, and:

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's . . . appropriate official to be entered on the school district's . . . rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-172A-108.

⁸⁰⁶ WAC 392-172A-02000.

⁸⁰⁷ WAC 392-172A-03090; WAC 392-172A-03105; *Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. 386, 137 S.Ct. 988, 999 (2017).

75. A student who is absent from school for more than 20 consecutive days shall not be counted as an enrolled student until attendance is resumed, meaning that a District must unenroll a student who has missed more than 20 days of school in a row.⁸⁰⁸

76. There is no dispute that the Student resided in the District from June 2022 through October 2023 and that he was unenrolled from the District in that period.

77. While the events occurring prior to June 2022 regarding implementation of the March 2022 IEP are not necessarily relevant to the question before the tribunal, they are noteworthy when considering the District's later actions and conclusions. The evidence in the record shows that in and around March 2022, the Parents communicated to the District that they rejected the placement offered under the March 2022 IEP, which was placement in a private residential facility with interim placement at home. The Parents did not attend the March 2022 IEP meeting, but based on communication with the Parents, the District understood that the Parents did not agree to the placement offered by the District. An email from the Mother to Ms. Coble on March 4, 2022, reported that the Parents disagreed with each other about placement, with Mother supporting it and Father against it. There is no evidence either Parent asked the District to move forward with inquiries from a list of residential facilities provided by Ms. Coble. Ms. Lewman had an in-person conversation with the Father in March 2022 during which the Father told her he was not willing to send the Student anywhere. Based on the communication with the Parents in March 2022, the District reasonably understood that the Parents rejected both the residential placement and interim in-home placement offered under the March 2022 IEP

78. The Parents' refusal of services continued in 2022. In June 2022, Ms. Coble emailed the Mother, offering to assist her with contacting facilities. The record does not include a response to Ms. Coble from either Parent. The Student's family informed the District on September 26, 2022, and October 12, 2022, that they were concerned over the Student not being in school, they did not agree with the current placement, and they intended to enroll the Student in a different school district. In October 2022, the District invited the Parents to a meeting to discuss re-engaging with the district; the Parents did not attend the meeting. The record shows that in October 2022, the District understood that the Parents rejected the District's offer of placement because the Parents did not believe the placement was in the best interest of the Student.

79. The preponderance of the evidence shows that under WAC 392-172A-03105(1), the District did not have an obligation to implement the Student's March

⁸⁰⁸ WAC 392-121-108(1).

2022 IEP during the period in which he was not enrolled. The evidence shows that the Parents prevented the District from serving the Student according to the IEP, and that the District was always prepared to serve the Student if the Parents returned the Student to the District. Given these facts, the evidence fails to show that the District was obligated to implement the Student's March IEP or denied the Student FAPE on that ground.

The District Failed to Implement the November 2023 IEP

80. It was concluded that the November 2023 IEP was not reasonably calculated to enable the Student to make appropriate progress in light of his circumstances. Notwithstanding this failure in development, the District also failed to implement the IEP as written.

81. The November 2023 IEP was effective November 14, 2023. Under the IEP, the Student should have received at least 120 minutes of services from the District each week (60 minutes per week of reading, writing, math, behavior, adaptive/self-help, and social skills, to be served concurrently; 60 minutes per week of behavior services). The Student's placement was in a private residential facility, with in-home placement in the interim, consisting of two 30-minute sessions per week.

82. The record shows the District served the Student three times between November 29, 2023 (when their sessions with the Student started), and January 13, 2024 (when the Student entered the hospital). Mr. Kinsman testified that he served the Student initially with a 30-to-45-minute session once per week and Dr. Evans testified that they provided two 30-minute sessions each week. Based on Mr. Kinsman's and Dr. Evans' testimony, on the District's 2023-2024 holiday schedule, and because the Father cancelled two schedule sessions in January 2024, the evidence shows the District served the Student less than three hours in the period November 14, 2023, through January 13, 2024, (a 45-minute session on November 29, and 60 minutes each in the first two weeks' of December = 2.75 hours, or 165 minutes, served).

83. Based on the services called for in the November 2023 IEP, excluding the Thanksgiving and winter holidays and the first two weeks of January when the Student was sick, the Student should have received 600 minutes of service from November 14, 2023, through January 13, 2024, under the IEP as written (5 weeks x 120 minutes). Instead, the Student received 165 minutes of services in that period. Therefore, the Student missed at least 435 minutes of the special education services provided by the November 2023 IEP as written.

84. The Student was released from the PBMU on March 20, 2024, and the District began serving the Student again beginning April 8, 2024, after the spring break. The May 2024 IEP would become effective on June 5, 2024; therefore, the District served the Student under the November 2023 IEP from April 8, 2024, through June 4, 2024. The record does not include evidence of the Student's absences during this period. This results in a total of 8 weeks, or 960 minutes of service required under the IEP in that period.

85. The record shows that from April 8, 2024, through June 4, 2024, the District initially served the Student with 30-minute sessions twice per week. The District eventually increased the sessions to two 45-minute sessions per week. The record does not show when the increase occurred. Assuming the District increased the length of the Student's sessions half-way through the April to June period, the District provided 10 hours, or 600 minutes, of service from April 8, 2024, through June 4, 2024. Therefore, the Student missed at least 360 minutes of the special education services provided by his November 2023 IEP in that period.

86. Additionally, the record shows that the District failed to provide communication and fine motor services under the monitoring of an SLP and OT before April 30, 2024. While the special education teacher did provide those services as called for under the IEP, the record shows an SLP and OT did not begin serving the Student until the end of April 2024. The record also shows that the Student received social skills and behavior services from April 8 through June 4, but did not receive SDI in reading, math, or adaptive/self-help.

87. The Student's placement under the November 2023 IEP was in a private residential facility (once one could be located) and the record shows the Father agreed to residential placement in November or December 2023; therefore, to properly implement the IEP, the District must have been attempting to locate a suitable residential placement for the Student as called for under the IEP.

88. A preponderance of the evidence shows the District made efforts to locate a residential facility for the Student from November 2023 through May 2024. The record shows that Dr. Evans and Ms. Tucker contacted facilities on the OSPI list of placement options and that Ms. Tucker shared some facilities with the Father. Email communication shows that in January 2024, Ms. Tucker was working with the Father to schedule some medical appointments so that she could move forward with the application process for a residential facility. In late January 2024, the Father signed a consent form allowing the District to refer the Student for placement at Lakemary. The Father, not the District, located Bancroft, but the District assisted the Father in investigating Bancroft as a residential option for the Student. Finally, the District asked

the Father to consider Adelbrook while he was waiting for a response from Bancroft. Based on the evidence in the record, during the time the November 2023 IEP was in place, and after the Father agreed to residential placement, the District sought placement for the Student in a residential facility as was required under the IEP.

89. In conclusion, a preponderance of the evidence shows the District materially failed to implement the Student's November 2023 IEP by denying the Student at least 435 minutes of the special education services from November 14, 2023, through January 13, 2024, and at least 360 minutes of the special education services from April 8, 2024, through June 4, 2024, and by failing to provide services required under the IEP, resulting in a denial of FAPE. A remedy is discussed below.

The District Failed to Implement the May 2024, ESY 2024, and August 2024 IEPs

90. It was concluded that the May 2024 IEP, the ESY 2024 IEP, and the August 2024 IEP were not reasonably calculated to enable the Student to make appropriate progress in light of his circumstances. In addition to this failure in development, a preponderance of the evidence shows the District materially failed to implement the Student's IEPs from May 2024 through December 2024, when the Student left the District.

91. A behavioral intervention plan is a plan incorporated into a student's IEP; therefore, like the IEP, if a district materially fails to implement a BIP, the district has denied the student FAPE.⁸⁰⁹ The record shows the District materially failed to implement the Student's BIP under the May 2024, ESY 2024, and August 2024 IEPs.

92. First, the District failed to provide the Student with staff appropriately trained to address the Student's unique behavior and with the experience necessary to properly implement the BIP. The BIP itself does not require specific staff members for the Student; however, the fact that staff supporting the Student at PBMU included two BCBA, a supervising psychologist, and several behavior technicians, should have indicated to the District that the Student required experienced supervision. As Dr. Tucker opined, the PBMU created a highly clinical, highly specialized program that required skilled oversight and appropriate caregiver training. Dr. Lupas echoed Dr. Tucker's opinion, noting that she would expect the Student to be served by staff trained in behavior analysis, with a BCBA or psychologist overseeing the program. Based on the credentials and extensive experience of both Dr. Tucker and Dr. Lupas, the tribunal gives their opinions considerable weight.

⁸⁰⁹ WAC 392-172A-01031; *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007).

93. Here, there is no evidence that a District BCBA ever worked directly with the Student or provided oversight to the Student's special education team. There is no evidence that the IEP team considered providing the Student with a BCBA to consult or provide direct services. The Student's team consisted of a special education teacher with less than five years' experience; one paraeducator with four years' experience working exclusively with elementary age students and no experience working with students who exhibit SIB or aggressive behavior on the level of the Student's; and a paraeducator with a high school education who had been a fulltime paraeducator for less than a year and had no formal training as a paraeducator. Additionally, neither paraeducator was given adequate training specific to the Student. Neither Mr. Garcia nor Mr. Jackson were informed about the Student's SIB and aggressive behavior, other than that the Student could be "aggressive towards himself" and "can hit other people." Neither paraeducator was told about the Student's self-induced vomiting. Mr. Jackson did not recall ever seeing the Student's BIP and Mr. Garcia did not recall having any documents to reference when he determined which strategy to use with the Student, despite the fact that he understood where the Student's BIP was kept. While the paraeducators no doubt did their best to serve the Student, the District did not provide them with the specific training necessary to appropriately serve the Student's complex needs and behavior issues.

94. The District also failed to collect the data necessary to properly monitor the Student's progress under the BIP. While the BIP did not specifically prescribe what data collection should occur, Dr. Lupas stated that she would expect to see data reflecting fidelity to the treatment and the rate of behavior when implementing a plan like the Student's BIP. As an example, she described collecting data using a timer set to go off every five minutes and recording information in each interval about what self-injury occurred.⁸¹⁰ As Dr. Lupas opined, collecting such data on the rate of behavior is the only way to determine if treatment is effective and if it is having a meaningful effect on the behavior goal. Dr. Tucker echoed Dr. Lupas's expectations regarding data collection, noting that she would expect to see a fidelity check daily of procedures put in place to mitigate behavior; a frequency count of SIB, aggression, and vomiting; and incident reports of times when the helmet or blocking pads were required. Again, based on their knowledge and experience, Dr. Tucker's and Dr. Lupas's opinions about data collection are given great weight.

95. In this case, the District did not collect reliable or accurate data about the Student's fidelity of treatment, rate of behavior, or incidents of SIB, aggression, and vomiting. The District's team did not record important behavior-related information about the Student every day with fidelity. When staff did make records, they tended to

⁸¹⁰ Notably, the BIP also specifically described using a timer when responding to SIB behaviors.

record things like when the Student slept, when he ate and drank, and what he ate and drank. Staff logged only some of the Student's serious behavior, using non-standard, undefined, and unhelpful language like "temper tantrum," "meltdown," and "outburst." Mr. Garcia was not instructed to record every incident of SIB and only made note of them when they were "bigger than normal." The team also used colored sticky notes to indicate when SIB was of "magnitude" or "out of the normal." This type of record keeping was not part of the BIP and was not used with fidelity, considering that Mr. Jackson was unaware of the significance of the colored sticky notes. Also, there was no reliable data reflecting use of the Student's helmet. Of the 39 behavior-related incidents appearing in the Student's daily log, only one mentions the Student's helmet, indicating the team was either not using the helmet, or was not tracking their use of the helmet.

96. Staff also used medication in a way that was not called for under the Student's BIP. The Student had medication available that was intended to be provided "as needed." The BIP did not call for daily administration of medication to the Student. However, the record shows it was the team's practice to have a nurse administer medication to the Student each day around midday in order to avoid the Student having a "pretty rough" afternoon. The record shows that rather than using the Student's medication as needed, the Student's team used it as a way to keep the Student placated.

97. Finally, the record shows that the District failed to implement important and necessary aspects of the Student's program provided under the BIP. The BIP provided the Student's caregivers with triggers for, and warning signs of, the Student's self-injurious behavior and his aggressive behavior. There is no evidence in the record showing the Student's special education team was aware of the triggers and warning signs, that they watched for them, or that they tracked them as part of their data collection. The BIP called for vertical mats to be used to partition areas and limit the Student's movement; however, vertical mats were not used by the team and there is no evidence that these mats were available. The BIP called for the Student to be presented with his soft helmet at the first sign of SIB; however, the record shows there were some days the helmet never made it out of the Student's bag, despite the fact that the Student showed SIB daily. Similarly, the BIP required a soft helmet to be available for caregivers to protect them during incidents of the Student's aggression, but no caregiver helmets were provided to the team. The BIP provided specific guidance for responding to SIB incidents. In reality, the Student's team relied almost exclusively on the Wait Strategy when responding to the Student's SIB. This reliance on the Wait Strategy is problematic primarily because it is not provided in the BIP as a suggested response to the Student's behaviors. Additionally, the evidence shows a lack of understanding from the team about what the Wait Strategy required and when

to use it. Mr. Garcia acknowledged using the Wait Strategy when the Student's behavior escalated, but he also described using it to help the Student transition from a preferred to a nonpreferred activity, explaining that the Wait Strategy was used to show the Student he had to wait. Mr. Jackson used the Wait Strategy sometimes, and described it as waiting for the Student to "mellow down" so he could re-prompt him. The District's reliance on the Wait Strategy is also questionable because there is no evidence in the record showing that it worked. Ms. Tucker claimed that the District collected data that showed that as soon as the team applied the Wait Strategy, disengaged, and did not give the Student "direct attention," the Student's behavior stopped within 30 seconds to a minute; however, there is no such data in the record. Mr. Kinsman testified that, even with regular use of the Wait Strategy, the Student continued to exhibit SIB on a daily basis. There is no evidence to support a claim that the Wait Strategy successfully addressed the Student's dangerous behaviors.

98. Viewed as a whole, a preponderance of the evidence shows the District materially failed to implement the May 2024 IEP, the ESY 2024 IEP, and the August 2024 IEP by failing to implement the Student's BIP as follows: 1) it failed to provide the Student with staff who had the Student-specific training and experience necessary to implement the BIP; 2) it failed to collect the data necessary to properly monitor the Student's progress under the BIP; 3) it administered medication as a way to placate the Student; and 4) it failed to implement important and necessary aspects of the Student's program provided under the BIP. This resulted in a denial of FAPE. Accordingly, the Parent is entitled to a remedy as discussed below.

Summary of Violations

99. The District violated the IDEA and denied the Student FAPE by:

- a. Failing to develop appropriate IEPs in November 2023, May 2024, ESY 2024, and August 2024;
- b. Inhibiting meaningful parental participation by predetermining the Student's placement in May 2024; and
- c. Failing to materially implement the November 2023 IEP, the May 2024 IEP, the ESY 2024 IEP, and the August 2024 IEP.

100. 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.

Remedies

101. When a parent proves a violation of the IDEA, a tribunal may “grant such relief as the court determines is appropriate.”⁸¹¹ The Parent has proven that the District violated the IDEA and denied the Student FAPE by failing to develop appropriate IEPs in November 2023, May 2024, ESY 2024, and August 2024; by inhibiting meaningful parental participation by predetermining the Student’s placement in May 2024; and by failing to materially implement the November 2023 IEP, May 2024 IEP, ESY 2024 IEP, and August 2024 IEP. Accordingly, the Parent is entitled to remedies.

102. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE.⁸¹² 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.”⁸¹³ Because compensatory education is an equitable remedy, 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.”⁸¹⁴

103. An ALJ may fashion individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:⁸¹⁵

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

104. In the present case, the Parent seeks compensatory education to make up for lost educational opportunity from June 2022 through December 2024. The Parent

⁸¹¹ 20 U.S.C. § 1415(i)(2)(C)(iii).

⁸¹² *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 370, 105 S.Ct. 1996 (1985); *Parents of Student W. v. Puyallup School Dist.*, No. 3. 31 F.3d 1489, 1496 (9th Cir. 1994).

⁸¹³ *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir 2011).

⁸¹⁴ *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

⁸¹⁵ 631 F.3d at 1126.

asks that the Student be permitted to access the compensatory hours after he is discharged from his current facility. In the alternative, the Parent asks for the equivalent of 2.5 years of additional FAPE after the Student reaches age 22 years.

105. Four hundred and forty-two hours of compensatory education is hereby awarded to the Student. The award of 442 hours is calculated as follows:

- a. It was concluded that the District did not have an obligation to serve the Student from June 2022 until his re-enrollment in the District in fall 2023; therefore, the Parent is not awarded compensatory education for that period.
- b. In the period November 14, 2023, through June 4, 2024, the District denied the Student FAPE by serving him through an IEP that was not appropriate in light of his circumstances and by failing to implement that IEP as written. Excluding school holidays, the Student's illness, and the Student's hospitalization, the Student should have been served by the District on a total of 62 days during that period. Based on the data available to the District, it was reasonable for the District to serve the Student for two hours each day. Accordingly, from November 14, 2023, through June 4, 2024, the Student should have been served for two hours per day for a total of 62 days, or 124 hours. The District provided the Student with less than three hours of services during that period and there is no evidence of benefit the Student received during those few hours. Therefore, 124 hours of compensatory education are awarded for November 14, 2023, through June 4, 2024, and the amount is not reduced.
- c. In the period June 18, 2024, through July 3, 2024, the District denied the Student FAPE by serving him through an IEP that was not appropriate in light of his circumstances and by failing to implement that IEP as written. Based on the school calendar and the evidence in the record, the District should have served the Student for 11 days during ESY 2024. The record shows the District served the Student on 11 days during that period, for three hours per day; however, the Student received minimal benefit at most from the services he received during ESY 2024. Therefore, 33 hours of compensatory education is awarded for June 18, 2024, through July 3, 2024, and the amount is reduced by 25% to 25 hours (rounded up from 24.75), to account for the services the Student received from the District during that period.

- d. In the period August 28, 2024, through December 6, 2024, the District denied the Student FAPE by serving him through an IEP that was not appropriate in light of his circumstances and by failing to implement that IEP as written. Based on the school calendar and the evidence in the record, the District should have served the Student for 65 days from August 28, 2024, through December 6, 2024. During that period, the District served the Student on approximately 65 days, typically for six hours per day; however, the Student received minimal benefit at most from the services he received during fall 2024. Therefore, 390 hours of compensatory education is awarded for August 28, 2024, through December 6, 2024, and the amount is reduced by 25% to 293 hours (rounded up from 292.5), to account for the services the Student received from the District during that period.

106. The record shows that the Student continues to require extensive services. At this point, it is unclear when the Student will be discharged from his current residential facility or what his precise needs will be at that time. However, based on the evidence in the record, the Student's required services will likely include ABA support and Parent training, SLP and occupational therapy services, social skills support, and services for transitioning from the residential facility to his home and community.

107. As compensatory education for the services the Student missed from November 14, 2023, through December 6, 2024, it is appropriate to provide the Student with the services he will require when he is discharged from the residential facility. Before making a decision about the areas in which the Student will receive services, the Parent and the District shall seek input from the Student's medical and behavior support provider(s) at his current residential facility, obtain written recommendations from the provider(s), and consider the recommendations. The District shall provide 442 hours of services in the areas of: ABA therapy, SLP services, occupational therapy services, social skills support, functional academics, services for transitioning from a residential facility to home and community, and/or the services recommended by the provider(s) in the Student's current residential facility. The District shall pay for services from providers selected by the Parent who have the required education, training and experience to serve the Student's needs, at a maximum rate of \$150.00 per hour. The District shall contract with the chosen providers, so long as the providers are available and willing to provide services, and the services shall be available to the Student within 20 days after the Parent notifies the District that the Student is ready to receive services. The services will be delivered at any time during the two calendar years following the date of the Student's discharge

from the residential facility. Services shall be provided at the duration and frequency determined appropriate by the Parent and the service providers.

108. The Parent requests that the District be ordered to prospectively place the Student in a residential treatment center such that the Student's IEP placement is "residential treatment center." The Parent does not request a specific residential treatment center. To best serve the Student's needs, the Parent requests a residential treatment facility option that has a specific focus on behavior and functional communication training.

109. As set forth above, the Student required residential placement as his LRE as of June 5, 2024. A preponderance of the evidence compellingly demonstrates that the Student continues to require a residential placement in order to benefit from his education. After a careful review of the record, it is concluded that the Student requires prospective placement, pursuant to a new IEP, at a residential treatment facility. Within 60 days of the date of this order, the parties shall identify a mutually agreeable residential facility suitable to meet the Student's needs. The residential treatment facility should have a specific focus on behavior and functional communication training. The cost of the facility will be paid by the District, including non-medical care and room and board.

110. IEPs are reviewed each year because a student's needs change over time. Consequently, prospective placement of the Student beyond the one-year term of a new IEP will not be ordered. At the time of the required yearly review of the Student's IEP, the IEP team shall seek input from a representative of the Student's residential placement facility, obtain written recommendations from the representative, and consider the recommendations before making a decision regarding the Student's placement. The residential treatment center will be the Student's stay put placement during the pendency of any such due process proceeding.

111. The Student is entitled to services in the time period between the date of this order and the date when a suitable residential treatment center can be located and admission to the facility is secured. The Parent did not request specific compensatory services for that period. Additionally, the record does not include evidence of what services the Student has access to at his present facility or the amount of services he can tolerate while placement is sought. Therefore, as part of the new IEP, the District, with input from the Parent and the Student's current medical and behavior support providers, shall determine the services the Student should receive during the period between the date of this order and when he enters a residential treatment facility under the new IEP.

112. Nothing in this order precludes the Parent and the District from agreeing to an alternative method for delivering the Student's compensatory education award.

ORDER

1. The Parent has proven by a preponderance of the evidence that the Eastmont School District violated the IDEA and denied the Student FAPE in multiple ways, as set forth above.
2. The District is ORDERED to provide compensatory education as set forth in Conclusions of Law 105-107 and 111.
3. The District is ORDERED to develop a new IEP for the Student that places him in a residential treatment center 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 15 days of the date of this order for the purpose of developing the new IEP.
4. The District is ORDERED to reimburse reasonable expenses incurred for the Student to travel to the residential treatment facility under the new IEP. This includes reimbursement for the Parent or other adult to accompany the Student during travel and for the Parent or other adult's return trip.
5. The District is ORDERED to reimburse the reasonable travel, meals, and lodging expenses (lodging in the vicinity of the residential treatment facility is not to exceed four nights per visit) for the Parent to visit the Student four times per year while he is placed at the residential treatment facility under the new IEP. Receipts for such travel shall be provided by the Parent.
6. The District is ORDERED to reimburse reasonable expenses incurred for the Student to return to Washington State at the end of his placement at Devereaux (his current facility) and at the end of his placement at the residential treatment facility under the new IEP. This includes expenses for the Parent or other adult to travel to either facility and accompany the Student home.
7. The District is further ORDERED to reimburse reasonable expenses incurred for one trip by the Student to Washington State if the residential treatment facility under the new IEP determines the Student needs to return home as part of a transition plan, at any point in time while he is placed at the residential treatment center. This includes reimbursement for the Parent or other adult to accompany the Student during travel.
8. Reimbursements ordered herein for travel shall be made within 30 days of the District receiving receipts from the Parent.

9. The residential treatment center under the new IEP 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.



Jill H. Brown
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 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:

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via First Class Mail

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Dated July 16, 2025, at Spokane Valley, Washington.

Jazmyn Johnson
Representative
Office of Administrative Hearings
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cc: Administrative Resource Services, OSPI