

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 09-2024-OSPI-02363

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0132

A due process hearing was held before Administrative Law Judge (ALJ) David LeMaster on February 10 through 13, 2025, via videoconference. The Parents of the Student whose education is at issue¹ appeared and were represented by Jenna Schuenemann and Katherine Hurt, attorneys at law. The Seattle School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Nazik Youssef, Senior General Counsel, and Gordon Fowlds, Special Education Supervisor, Southwest Region.

STATEMENT OF THE CASE

Procedural History

The Parents filed a due process hearing request (Complaint) on September 20, 2024. The matter was assigned to ALJ Jacqueline Becker. Judge Becker held a prehearing conference on October 17, 2024, and set the due process hearing for February 10 through 13, 2025. Judge Becker granted the Parents' October 31, 2024, motion to amend the Complaint, effective November 1, 2024. On November 22, 2024, Judge Becker entered an order setting the issues for hearing.

On November 20, 2024, the Parents filed a Motion for Summary Judgment requesting an Independent Educational Evaluation (IEE) at public expense. The District filed a response on December 11, 2024. The Parents filed a reply on December 13, 2024. On January 7, 2025, Judge Becker granted the motion, finding that the District failed to provide an IEE or initiate a due process hearing within fifteen days of the Parents' request for an IEE, as required by WAC 392-172A-05005. Judge Becker ordered the District to provide an IEE at public expense and struck issue (a)(viii) from

¹ To ensure confidentiality, names of parents and students are not used. Instead, they are referred to as "Parents," "Ms. Parent," "Mr. Parent," or "Student." The Student's mother was present for the hearing. The Student's father was not present.

the Order Setting Issues for Hearing.² The case was reassigned to ALJ David LeMaster on January 31, 2025.

Due Date for Written Decision

The due date for a written decision is May 7, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1 – D16

Parents' Exhibits: P1 – P2; P5 – P6; P8 – P15; P17 – P23; P26 – P32; P34 – P44; P47 – P55; P56-R; and P57 – P61

Witnesses Heard:

Ms. Parent

Dax Thomas – District Principal (Pathfinder K-8)

Nicole Filatov – District Speech Language Pathologist

Trisha Hodapp – District General Education Teacher

Michael Holland – District Band Teacher

Jennifer Dickens (now known as Everman) – District Assistant Principal

Andrew Darring – District General Education Teacher

Norman Brownstein – District School Psychologist

Ellen Want – District Assistant Principal

Clarissa Resendez – District General Education Teacher

Lucie McKee – District School Nurse

Julia Barta, Psy.D. – School Psychologist/Mental and Behavioral Health Provider

ISSUES

The following issues were heard at the due process hearing:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) from September 20, 2022, to the present by:

² The IEE issue stricken by the court's order and the corresponding remedy requested are indicated using a strikethrough under the Issues section below and will not be further addressed in this order.

- i. Failing to comply with Child Find requirements during the 2022-23 school year.
- ii. Significantly impeding the Parents' right to meaningfully participate in the Student's educational program during the 2023-24 school year by failing to meaningfully consider relevant Parent and school information during the special education referral and evaluation processes by:
 - (a) Failing to appropriately consider the Student's numerous behavioral outbursts, instances of violent and aggressive behavior, and elopement;
 - (b) Failing to consider the Parents' request for a functional behavioral assessment;
 - (c) Failing to appropriately consider the Student's school refusal behaviors;
 - (d) Failing to appropriately consider the August 2023 independent evaluation by Dr. Robin Ballard; and
 - (e) Failing to appropriately consider information provided by the Parents regarding the Student's epilepsy and absence seizures and their impact on her ability to access her education.
- iii. Significantly impeding the Parents' right to meaningfully participate in the Student's educational program during the 2023-24 school year by:
 - (a) Failing to include the Parents in REACH meetings;
 - (b) Failing to abide by IDEA timelines for special education referrals;
 - (c) Failing to abide by IDEA timelines for special education evaluations; and
 - (d) Predetermining the Student would not qualify for special education and related services during the referral and evaluation processes.
- iv. Significantly impeding the Parents' right to meaningfully participate in the Student's educational program during the 2024-25 school

year by failing to meaningfully consider relevant Parent and school information when deciding whether to conduct an evaluation of the Student based on two community referrals by:

- (a) Failing to appropriately consider that the Student continued to have violent and aggressive behaviors at school;
 - (b) Failing to appropriately consider that the Student continued to elope from school; and
 - (c) Failing to appropriately consider that the Student continued to exhibit school refusal behaviors.
- v. Significantly impeding the Parents' right to meaningfully participate in the Student's educational program during the 2024-25 school year by:
 - (a) Predetermining that the Student would not qualify for special education and related services during the evaluation and referral processes; and
 - (b) Denying the Parents access to the Student's educational records.
- vi. Failing to conduct an appropriate evaluation of the Student during the 2023-24 school year by:
 - (a) Failing to include complete information about the Student's aggressive behaviors and elopement during the 2022-23 and 2023-24 school years, including that the Student was isolated by the school principal;
 - (b) Minimizing the Student's aggressive behaviors and elopement, for example by stating that punching an adult in the face, punching a child so hard in the head that it gave him a concussion, and eloping from field trips were "potentially unsafe behaviors;"
 - (c) Failing to appropriately consider and incorporate information and diagnoses from the Student's August 2023 evaluation with Dr. Robin Ballard;
 - (d) Failing to appropriately address the Student's masking at school;

- (e) Failing to appropriately address how the Student's epilepsy and absence seizures adversely impacted her ability to access her education;
 - (f) Failing to conduct a functional behavioral assessment;
 - (g) Failing to appropriately consider the Student's autism diagnosis;
 - (h) Failing to appropriately address the Student's school refusal behaviors;
 - (i) Failing to appropriately assess the Student in the areas of study/organizational skills;
 - (j) Failing to appropriately assess the Student in the area of social/emotional/behavior;
 - (k) Predetermining the eligibility decision before the evaluation was completed and without input from the evaluation team and Parents; and
 - (l) Failing to find the Student eligible for special education and related services.
- vii. Failing to find the Student eligible for special education and related services in April 2024 when the District's own evaluative data showed that the Student had a disability, her disability had an educational impact, and the Student was in need of specially designed instruction.
- ~~viii. Failing to initiate a due process hearing within 15 days of the Parents' Independent Educational Evaluation (IEE) request, and subsequently failing to ensure that an IEE is provided at public expense without unnecessary delay, in violation of WAC 392-172A-05005.~~
- b. And, whether the Parents are entitled to their requested remedies:
- i. Declaratory relief that the District violated the IDEA.
 - ii. Declaratory relief that the Student was denied FAPE by the District's actions.
 - ~~iii. An IEE at public expense.~~

- iv. Reimbursement to the Parents for the cost of private evaluations and services from September 2022 to the present.
- v. Compensatory education and supplemental services to allow the Student to obtain the educational benefits she would have received but for the District's failure to provide a FAPE during the 2022-23 and 2023-24 school years.
- vi. An order directing the District to develop an Individualized Education Program (IEP) that meets the requirements of WAC 392-172A-03090 and is appropriate and reasonably calculated to meet the Student's unique needs; and
- vii. Other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student is currently [REDACTED] and in sixth grade at Pathfinder K-8 (Pathfinder) in the District, where she has attended school since Kindergarten. TR222; P60, p1; D12, p1.³
2. Ms. Parent is a certificated teacher. She frequently substitute teaches at Pathfinder. TR115-116; P60, pp1, 2, 8.
3. Both Parents and the Student's teacher noticed that the Student began having sensory processing issues when she was in first grade (2019-20 school year). The Student's teacher recommended private occupational therapy. The Student received private occupational therapy for these issues. P60, p2.
4. The Parents requested a special education evaluation in October 2019 due to their concerns about the Student's speech intelligibility and articulation skills. On October 8, 2019, the Student was referred for a special education evaluation. P60, p2; TR228. The District issued a Prior Written Notice (PWN) dated the same day, proposing to initiate an evaluation of the Student in the area of communication. The PWN indicated the District had used or planned to use standardized assessments, parent and teacher reports, a speech sample, and observation in making its determination. P6. The District ultimately decided not to proceed with the evaluation

³ Exhibits are cited by party ("P" for Parents, "D" for District), exhibit number, and page number, e.g. P60, p1 is a citation to Parents' exhibit 60 at page 1. The hearing transcript is cited as "TR" with references to the page of the cited testimony. For example, a citation to "TR222" is to the testimony at page 222 of the transcript.

at that time because the District wanted to wait to see if the occupational therapy the Student was already receiving resolved the issues. P60, p2. There is no evidence in the record that the Parents provided a signed consent for the Student to be evaluated.

2022 – 2023 (4th Grade)

5. Pathfinder uses a “looping” method with its classes, where the students stay with the same cohort and teacher for two years. TR356. Andrew Darring⁴ was the Student’s teacher for both fourth and fifth grade. TR369-370.

6. Mr. Darring’s direct involvement and interactions with the Student and the Parents during the two years he spent as the Student’s teacher gave him an in-depth view of the Student and her educational needs. Substantial weight is therefore given to Mr. Darring’s testimony.

7. Mr. Darring reported that the Student worked hard but would get frustrated when she did not understand what was going on and that working with other people was sometimes difficult for her. TR371-372 & 389-390. He recalled that math was a particularly stressful subject for her in the fourth grade and more so in the fifth grade. TR372 & 391. There were times, especially in math, where the Student’s frustration and stress over not understanding something got in the way of finishing her work, which she would occasionally destroy by tearing it up. She would sometimes tear up assessments as well. At other times, the Student would become very quiet. TR372 & TR388-391. Mr. Darring emphasized that the Student’s level of anxiety and stress in class impacted her learning. TR390-391. He intervened in a wide variety of ways, including checking in with the Student and trying to figure out what was going on, so he could work through the problem. He would also modify assignments. TR372; 390-391.

8. Mr. Darring was frustrated with his limited ability to intervene and support the Student when her stress and anxiety were impacting her learning. He was able to support her and help her become more successful in a lot of ways. However, he believed, from a social emotional standpoint, the Student needed additional support that – as her general education teacher - he was not able to provide. TR451-452.

9. Mr. Darring was also concerned with the Student’s eloping⁵ from his classroom and from field trips. TR373-374. He talked frequently with Ms. Parent about where

⁴ Mr. Darring is a general education teacher at Pathfinder. He has been teaching at Pathfinder for 23 years. Mr. Darring graduated from Loyola University with a dual degree in history and philosophy in 1989. He received his master’s degree in teaching from Evergreen State College in 2000. TR369.

⁵ “Eloping” is a term used by the witnesses in this case. It also appears in the exhibits. For purposes of this order, the term “eloping” and its variations, mean leaving a classroom, the school building or a field trip without permission.

the Student could go and which adults she felt safe with if she needed to leave the classroom. These discussions took place in the spring of Student's fourth grade and the fall of fifth grade. TR377-378. One third of the students in Mr. Darring's class during the Student's "loop" had an Individualized Education Program (IEP). The Student was one of three students who eloped at some point during the two years he taught that group of students. TR383.

10. Over the course of her time with him, Mr. Darring noticed that the Student's not wanting to come to school was increasing and getting more complicated. He had conversations with the Parents about this school avoidance, which he understood from the Parents was due to a lot of anxiety about the transitions getting out of the house and out of the car to come to school. These issues would cause the Student to be late. TR447. Mr. Darring understood from the Parents and his own observations that among the factors contributing to the Student's anxiety were peer interactions, concern about being successful and being able to regulate her emotions. TR429.

11. Mr. Darring had long conversations with the Student about elopement, physical aggression, and emotional regulation. He emphasized that there were times when he wanted a clear plan in place to address elopement issues and to keep the Student's classmates safe because the Student had, on more than one occasion, hit somebody, apparently in frustration. TR388-389 & 398-399. During these conversations, the Student described the elopement and the aggression as coming from the same kind of feeling of being overwhelmed and unable to regulate herself, which would cause her to react. TR398-399.

12. Mr. Darring observed that the Student's major escalations and incidents were concentrated at the very beginning and end of each school year but noted that the time period between these episodes was not stress free. TR381-382.

13. The first day of school for the Student's fourth-grade year was September 14, 2022. P1, p1.

14. In the fall of 2022, the Student became overwhelmed at recess and hit some of her peers. TR404-405.

15. In February 2023, Ms. Parent began noticing that the Student was experiencing blank spells where she would stare into space. The Student also had occasional urinary accidents that occurred both outside of school and at school. TR331-332.

16. In the spring of 2023, Ms. Parent noted that the Student was becoming very dysregulated and frequently acted out at home by destroying items and being aggressive with her brother. TR806.

17. On March 3, 2023, the Student hit a peer during recess, giving him a concussion. The incident report indicated that she had become overwhelmed when a small group of students was trying to take a flag she was guarding during a game of Capture the Flag. She reacted by tackling one of the students and hitting him in the head several times before running into the school building where she was found sitting in the hallway outside of a classroom. She reported feeling nauseous after the incident. Under the “Extenuating Factors” section of the incident report, the first item listed is “Pattern of similar misconduct.” P9⁶; P60, p3; TR327-328; TR580. Mr. Darring talked to the Student after the incident when he found her sitting on a bench outside his classroom door. Ms. Parent learned of this incident from Mr. Darring. She also saw the injured student sitting in the office after the altercation. TR797-798.

18. Mr. Darring reported that what had happened during the March 3, 2023, incident and what the Student reported to him was a good example of a typical behavioral pattern for her. The Student would get overwhelmed, become frustrated, physically hurt someone and then immediately flee the situation. TR402-403.

19. Following the March 3, 2023, incident, the Parents followed up with the Student’s primary care provider regarding the Student’s blank spells and aggressive behavior. The Student’s primary care provider referred the family to a psychiatrist for evaluation. TR331-333; P10.

20. The Parents followed up with the referral to a psychiatrist and had the Student evaluated by Arjun Bansal, M.D. on May 2, 2023. Dr. Bansal’s clinical impression was that the Student presented with a history of emotional and behavioral dysregulation. He diagnosed her with Generalized Anxiety Disorder. Dr. Bansal could not rule out attention deficit hyperactivity disorder (ADHD) but suspected that many of the Student’s symptoms might recede with better emotion regulation and anxiety control. Dr. Bansal observed several occasions during the examination where the Student became momentarily unresponsive, flatly staring. The Student reported to Dr. Bansal that she tended to get mad when feeling overwhelmed, such as when there is a lot to do or a lot happening around her. The Parents reported that the Student was doing well academically and had a good teacher but wanted a plan in place in case this changed in future academic years. Dr. Bansal suggested potential neurology follow up for evaluation of “absence seizures” and recommended cognitive behavioral therapy. He prescribed an anti-anxiety medication for the Student. He also provided resources

⁶ The incident report was created by Britney Holmes on July 17, 2023. Britney Holmes was the principal at Pathfinder during the 2022-23 and 2023-24 school years. She left Pathfinder in May 2024. TR63, 606 & 609.

regarding collaborative problem solving and flexible thinking and a diagnostic confirmation letter to assist with 504 planning. P10.

21. The Parents provided a copy of Dr. Bansal's report to Mr. Darring and discussed it with him shortly after the evaluation. The conversation related to the anti-anxiety medication that had been prescribed by Dr. Bansal. P60, p4; TR333-334.

22. In late May 2023, the Student eloped during a class field trip to the Center for Wooden Boats. She left the group of students she was with to join a different group after being told not to do so by the adult chaperones. The group she went to join was in a different part of the facility. TR374-375.

23. On June 7, 2023, during an end-of-the-year overnight camping trip with her fourth-grade class, the Student had another behavioral incident. The Student threw other students' shoes around the campsite and punched an adult chaperone in the face. P60, p4; TR346-349 & 351. When Ms. Parent, who was one of the chaperones, came upon the scene, the Student was screaming and crying and refusing to leave the tent. P60, p4; TR346-349. The incident was triggered by a disagreement about whether the students could keep their belongings in the tent with them. TR350; TR406-408.

24. On June 20, 2023, the Student left Mr. Darring's classroom without permission and without saying anything to Mr. Darring, who did not realize she was gone. Ms. Parent learned of the incident when she received text messages from the school asking if Ms. Parent had seen the Student. The Student was ultimately located on the playground and returned to class. P60, p4; P13 & P14.

25. On June 20, 2023, Ms. Parent sent an email to Mr. Darring regarding the elopement from his class that day. She expressed her desire to come up with a plan due to her concern that things were escalating and not safe. P13. Ms. Parent met with Mr. Darring the following day to discuss the elopement and a safety plan. They also discussed the Student's aggression toward other students. TR343-344.

26. The Student eloped again on June 29, 2023, this time, during a walking field trip with her class. When the group walked past her house, the Student left the group and hid in the garage. Mr. Darring did not know the Student was gone until being told by other students. TR374-375. Mr. Darring could not locate the Student. Mr. Parent, who was working from home, ultimately found the Student. P60, pp4-5; P15. The Student had to cross a busy road to get to her house. TR344-345.

27. The last day of school was June 30, 2023. P1, p1.

28. The Student expressed hesitation to Ms. Parent about going to school, off and on, throughout her fourth-grade year. TR211.

29. Mr. Darring completed the Student's report card on July 20, 2023. The report indicates that the Student met or exceeded expectations in all academic areas. Social and Emotional Learning was part of the curriculum. Under the Social Emotional "Skills and Learning Practices" section, Mr. Darring rated the Student as "Developing" in the following categories:

Identifies their emotions, strengths, areas for growth, and resources.

Makes safe and constructive choices about behavior and interactions.

Regulates emotions, thoughts and behaviors.

"Developing"⁷ means that the Student applies skills in most subjects and settings. D10, p1. Mr. Darring commented that he could tell how much the Student had been working on regulating her emotions in the winter and that it was not always easy, but that he had seen growth. He also noted that managing her emotions in the spring had been challenging for the Student. D10, p6.

30. The Parents did not request a special education evaluation during the Student's fourth-grade school year. TR104.

Robin Ballard, Ph.D.'s Evaluation

31. Over the summer of 2023, the Parents further investigated their concerns about the Student's behavior by obtaining a psychological evaluation. P60, p5.

32. Robin Ballard, Ph.D.⁸, conducted a psychological evaluation of the Student on August 3, 2023, to clarify the Student's psychiatric diagnoses, assess for autism and attention-deficit/hyperactivity disorder, and provide treatment recommendations. Dr. Ballard interviewed the Student and the Parents and reviewed some of the Student's academic and medical records and assessments. P17, p1.

33. Dr. Ballard observed that the Student was initially shy and made poor eye contact. She was shy about speaking and nearly non-verbal for the first 30 minutes, preferring to draw instead of talk. Over the course of the evaluation, the Student's eye contact remained avoidant, but she did become quite talkative, speaking rapidly and sometimes blurting out the answers before the questions were finished. At one point,

⁷ There are only 3 possible ratings. The other two are "Emerging, beginning to apply Skills in some subjects and settings" and "Strength, consistently uses skills across subjects and settings." D10.

⁸ Dr. Ballard is a licensed psychologist. P17, p8.

the Student left the waiting room and went down the stairs without permission when she was left alone. The Student was cooperative and appeared to put forth a good effort during the testing session. P17, p4.

34. Dr. Ballard administered the following testing instruments:

Autism Diagnostic Observation Schedule, Second Edition (ADOS-2)

Behavior Assessment System for Children, Third Edition (BASC-3)

Brown Executive Function/Attention Scales, Self-Report (Brown EF/A)

Monteiro Interview Guidelines for Diagnosing the Autism Spectrum, Second Edition (MIGDAS-2)

Social Responsiveness Scale, Second Edition (SRS-2)

Trauma Screen and PTSD Checklist

Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V)

35. The Student's Full Scale IQ composite score on the WISC-V was in the High Average Range. The Student scored in the High Average Range on the Verbal Comprehension Index, and the Fluid Reasoning Index as well. She scored in the Average Range on the Visual Spatial Index, the Working Memory Index and the Processing Speed Index. P17, p4.

36. The Parents completed the parent scales on the Brown EF/A, which measures executive functioning. The Parents reported that the Student had severe difficulties with emotion regulation and moderate difficulties with regulating her physical actions. They also noted that, at a mild level, she has trouble sustaining focus. They did not see her as having problems with getting started with work, sustaining effort over time, or with her working memory. Her overall score fell in the mild range. P17, pp4-5.

37. The BASC-3 measures multiple aspects of behavior and personality. On the parent scales, the Parents reported that the Student had problems in the clinically significant range for hyperactivity, aggression, and adaptability. They reported problems at an elevated level with conduct, anxiety, somatization, atypicality, and withdrawal from others. The Student's self-report indicated problems in the elevated range with hyperactivity. She reported that she often has trouble sitting still and standing still in lines, being too noisy, and doing things without thinking. P17, p5.

38. The SRS-2 is a 65-item scale that measures symptoms associated with autism, including social awareness, social cognition, social communication, social motivation, and restricted and repetitive interests. The Student's total score fell in the moderate

range, which indicates deficiencies in social behavior that are clinically significant and lead to substantial interference with everyday social interactions. P17, p5.

39. The ADOS-2 is used to aid in the identification and diagnosis of autism. It is comprised of a series of standard activities, which are tailored to an individual's developmental level and chronological age. The Student's score fell in the autism classification range, indicating that she has autism. In the Communication domain, the quantity of her conversation was reduced compared to other children her age, with fewer back and forth turns. In the Reciprocal Social Interaction Domain, the Student exhibited some unusual eye contact and a limited range of facial expressions. She typically made appropriate social responses but made no social overtures and had little sustained reciprocal social communication, leading to stilted rapport. In the Restricted and Repetitive Behaviors domain, the Student showed some unusual sensory interests in materials (repetitively feeling the table with her hand). P17, pp5, 7.

40. The MIGDAS-2 is a parent questionnaire used to aid in the identification and diagnosis of autism. The Parents reported that the Student has extreme emotional reactions to teasing and unfair treatment, which escalate into physical violence and running away. She does better interacting with others in structured environments, like sports teams. The Student gets irritated and anxious when things are rearranged at home. She is irritated by repetitive noises but makes noises that annoy others. She is overwhelmed by crowds and struggles with transitions and changes in her routine. P17, p6.

41. Dr. Ballard concluded that the Student struggled with both social and emotional functioning. She noted that the Student's day-to-day executive functioning was rated as a mild problem, with two areas of significant difficulty: emotional regulation and physical self-regulation. Dr. Ballard diagnosed the Student with Autism Spectrum Disorder, without accompanying language or intellectual impairment, requiring substantial support for social communication and restricted, repetitive behaviors. She also diagnosed the Student with generalized anxiety disorder. P17, p7.

42. Dr. Ballard recommended a consultation with a neurologist about the Student's staring spells. She also recommended Applied Behavior Therapy to curb dangerous eloping behaviors and physical aggression, and individual therapy to learn coping skills for managing her anxiety and practicing advanced social communication skills. She also concluded that the Student would benefit from an IEP to better support her learning in school. P17, p8.

43. On August 28, 2023, Ms. Parent emailed a copy of Dr. Ballard's evaluation to Mr. Darring. P60, p6. Ms. Parent also notified Mr. Darring via text on August 28, 2023, that the Student had been diagnosed with autism spectrum disorder. P15.

44. Shortly after providing Dr. Ballard's report to Mr. Darring, the Parents met with him to discuss it. In that meeting, the Parents requested that the Student be evaluated for special education services. TR412. They also asked Mr. Darring to contact the school administration to start the process. TR359-360; P60, p6. Mr. Darring could not recall at the due process hearing whether he provided Dr. Ballard's report to anybody else. TR415.

45. Based on the recommendation of both Dr. Bansal and Dr. Ballard, the Parents had the Student evaluated by a neurologist for possible absence seizures on August 29, 2023. Following an EEG performed on September 5, 2023, the neurologist diagnosed the Student with childhood absence epilepsy. This condition causes recurrent seizures that need to be controlled by antiseizure medication. P60, p6; P18, p3.

2023 – 2024 School Year (5th Grade)

46. The first day of the Student's fifth-grade year was September 6, 2023. P1, p2.

47. It was the Parents' understanding, based on their meeting with Mr. Darring about Dr. Ballard's report, that they had requested a special education evaluation by the first day of the school year. TR471. It was also their understanding that Mr. Darring was going to pass Dr. Ballard's evaluation on to school psychologist Norm Brownstein;⁹ the Pathfinder principal; as well as Ellen Want,¹⁰ the assistant principal. TR674.

48. On September 6, 2023, Ms. Parent notified Mr. Darring and Lucie McKee¹¹ via email of the Student's absence seizure diagnosis. P18, pp2-3. On September 7, 2023, Ms. McKee sent an email to Ms. Parent attaching a draft emergency care plan for the Student. P18, p1. Ms. McKee finalized the emergency care plan on September 26, 2023, for the Student's seizure condition. The plan noted that the Student took daily antiseizure medication and that she was at risk for grand mal seizures. The plan

⁹ Mr. Brownstein is a school psychologist for the District. He has been a school psychologist for 25 years. He was responsible for coordinating Pathfinder's evaluation team for special education services. In a given school year, he conducts over 40 evaluations or reevaluations. TR498 & 501-502; 520.

¹⁰ Ms. Want was the Assistant Principal at Pathfinder from approximately July or August 2022 until May 1, 2024, when she went on maternity leave. She resigned in July 2024. TR606.

¹¹ Ms. McKee is the school nurse at Pathfinder. She has been with Pathfinder for the past three years. She also serves on the building safety and the multi-tier system of support (MTSS) teams. She has a master's degree in nursing from Vanderbilt University and is a certified nurse practitioner. Ms. McKee has known the Student since the Student was about six months old because she was in her son's day care. TR742-747.

provided for the administration of medication if a seizure lasted more than 3 minutes. TR751-752; P11.

49. On September 12, 2023, Ms. Parent was notified that the Student had two incidents at school that day. In the first incident, the Student struck a classmate and then eloped from the classroom. In the second incident, she eloped from a field trip. P60, p7.

50. On September 19, 2023, Ms. Parent was notified that the Student had eloped from her classroom. P60, p7.

51. Pathfinder has a Care Team that tracks students of concern. The Team met weekly to discuss supports and next steps for students in the school who were being tracked. The District maintains notes with respect to each student being tracked (Care Team Notes). TR582, 608-609; TR615-616; P12. The Care Team began meeting regarding the Student after she was brought up for concern by Mr. Darring. TR536; TR616. The first entry relating to the Student is dated September 13, 2023. Under the “follow—up section” of the September 13 meeting, the plan was to “schedule reach meeting.” P12, p13. Parents do not participate in Care Team meetings. TR617.

52. Mr. Brownstein was a member of the Care Team and had access to the Care Team notes relating to the Student. TR533 & 536.

53. On September 20, 2023, Ms. Want, Silvee Islam¹², Mr. Darring and Chelsea Bogrow¹³ (REACH Team) held a REACH meeting to discuss the Student. P8. A REACH meeting is an internal school team meeting to discuss students once they come up for concern. REACH meetings were specific to the particular student and were part of a pre-referral process. The purpose of the REACH meetings was to discuss students of concern in-house before setting up interventions or tracking progress. These meetings did not involve parents or family members. Pathfinder no longer holds REACH meetings. TR303-304; TR522; TR590; TR610-611. Ms. Want took notes at the REACH meetings that were held for the Student. TR611-612; P8.

54. On September 18, 2023, Mr. Darring completed a form entitled “REACH/SIT Data Collector” in preparation for the first REACH meeting. P8, p4. Mr. Darring listed the following behavioral concerns regarding the Student: physically aggressive, easily distracted and argumentative/defiant. P8, p7; TR446-447. The form also indicated that the problems occurred in the classroom, hallway, school grounds and on field trips. P8, p5. Mr. Darring noted that previous interventions had included problem-

¹² Ms. Islam was a Special Education Teacher at Pathfinder. P60, p9; TR418-419.

¹³ Ms. Bogrow is a school counselor. P60, p7; TR475.

solving conferences and parent conferences that had been ongoing since the prior year. The form indicated that the Student's behavior was better for a long time in fourth grade but that there had been "a lot of regression at the end of the school year." P8, p7; TR423-424. Mr. Darring completed the form in response to the Parents' request to him that the Student be evaluated for special education services. TR424 & TR446-447.

55. The September 20, 2023, REACH notes document that, per Parent report, the Student had been diagnosed with ADHD and epilepsy and that she had a history of trouble dealing with anger. P8, p1. The notes also confirmed that the Student had been diagnosed with autism spectrum disorder based on an outside evaluation and that the evaluator had recommended an IEP for social/emotional issues. The notes document that the Parents wanted an IEP. P8, p2. The REACH notes acknowledge that there were a couple big incidents in the fall of 2022 "not reported through form," including anger issues, and lashing out at peers when things did not go her way, as well as a couple of minor elopements. The notes indicate that the Student settled down in late fall 2022 and that things went smoothly with occasional, but typical peer conflict. In the spring of 2023, more incidents started happening. These incidents involved attempting elopement when overwhelmed, physical confrontation, struggling when interacting with unknown adults, ignoring adult redirection when upset, being quick to anger when tired, and exhibiting difficulty with flexibility. The following specific examples were documented:

Hitting a peer during capture the flag

Leaving a field trip, crossing a road and going home (6/29/23)

Hitting an adult during a camping trip

Leaving group to be with another group on a field trip, ignoring adult redirection

Difficulty on field trip (9/19/23) – rigid thinking, trouble accepting redirection

P8, pp1-2. The notes also indicated that the Student had expressed a desire to have a safe space to go in the building. P8, p2.

56. The plan established at the September 20, 2023, REACH Team meeting was for Ms. Want to send the outside evaluation and the Parent's evaluation request to Mr. Brownstein. P8, p2; TR421. The REACH Team also decided to develop and implement an elopement plan. Mr. Darring was tasked with identifying a safe space for the Student. It was also decided that he would call the office whenever the Student left his classroom. The REACH Team also developed a recess plan, which consisted of notifying the recess supervisors about the Student's behavior and asking them to check-in/check-out with the Student. The plan moving forward also included regular check-ins with the Student by Ms. Bogrow. The notes also indicate that Ms. Parent

was attending two upcoming field trips, but that a different safety plan would be needed if she could not go on future field trips. Mr. Darring was to ask the Parents if the Student exhibited similar behaviors at home when she was upset. P8, pp2-3.

57. On September 20, 2023, Ms. Parent sent an email to Ms. Bogrow asking her to check in on the Student. She filled Ms. Bogrow in on the Student's diagnoses and on the stress the family and the Student were under due to the death of Ms. Parent's cousin over Labor Day Weekend. Ms. Parent also asked for Ms. Bogrow's help getting counseling for the Student. She also expressed interest in any social group/social skills possibilities because this had been recommended by Dr. Ballard as part of the Student's autism diagnosis. P19; P60, p7.

58. On September 20, 2023, Ms. Parent also sent an email to Mr. Darring informing him that for the first time ever, the Student did not want to go to school because she was feeling excluded and being treated unkindly by a peer. Ms. Parent reported that she had told the Student that she could take a break during school when she wants if she is uncomfortable, as long as she let Mr. Darring know first. Ms. Parent also indicated that they were dealing with grief due to the recent death in the family. P20; P60, p7.

59. On September 21, 2023, Mr. Parent sent an email to Mr. Darring regarding the Student's anxiety and apprehension about attending the field trips scheduled for that day and the next. Mr. Parent also expressed his hope that there would be outreach to the school administration to kick off the IEP/504 process, but that "we're glad to do it and take it off your plate as we know the field trips are time consuming." P20. Twenty-five school days from September 21, 2023, was October 27, 2023. P1.

60. Ms. Parent attended the field trips on September 21 and September 22, 2023. P60, p8.

61. During the September 22, 2023, walking field trip, the Student began to get dysregulated and repeatedly separated herself from the group. Mr. Darring rerouted the group's path to avoid the location where the Student had eloped during the June 29, 2023, field trip. TR387; TR480; P60, p8.

62. The REACH Team met again on October 4, 2023. The meeting notes indicate that the outside evaluation and the Parents' request for an IEP had not been provided to Mr. Brownstein because the District needed to try "these interventions first (elopement plan, recess check in/out, etc)." The team noted that the recess supervisors still needed to be asked to do check-ins and check-outs. Mr. Darring had not asked the Parents about the Students' behaviors at home. P8, pp1-3.

63. The REACH Team met for a final time on October 18, 2023. P8, p1. The plan was still for Ms. Want to pass along the REACH notes to Mr. Brownstein and ask him about an evaluation, which had not yet occurred. The REACH team also discussed potential safe places for the Student, check-in options, and potential questions to ask the Student to prepare her for recess. The Student was to start meeting with Ms. Bogrow on Tuesdays during math. Mr. Darring had still not spoken with the Parents about the Student's behaviors at home. The plan was to schedule a meeting with the Parents to discuss check-ins, review the elopement plan, and discuss field trips. P8, pp1-3.

64. The Parents had not been invited to any of the REACH meetings and were unaware that they were taking place. TR470; P8, p1; P60, p8. The Parents learned that the REACH meetings had taken place after Ms. Parent asked about the status of scheduling a Student Intervention Team (SIT) meeting in the fall of 2023. TR470-471.

65. The school's Care Team continued to meet after the REACH Team stopped meeting to discuss the Student.

66. The Care Team Notes on October 25, 2023, confirmed that the Parents were requesting an IEP, but indicated that a "504 would make more sense for her." These notes also indicate the next meeting would be a SIT meeting and Mr. Brownstein would attend. P12, p12.

67. On November 8, 2023, the District scheduled a SIT Meeting for December 8, 2023. P12, p12; P60, p9.

68. On November 20, 2023, Ms. Want sent an email to Ms. Parent, copying the SIT team, but not including Ms. McKee (the school nurse). The email contains portions of the REACH meeting notes, which described interventions that the District had been tracking and would be discussing at the upcoming meeting. Ms. Want advised Ms. Parent that the team would also go through the SIT process and assess the next steps at the meeting. Ms. Parent forwarded the email to Ms. McKee, expressing frustration that she had not been copied on the email. P21.

69. At some point before the SIT meeting, Mr. Brownstein approached Ms. Parent in the staff room at Pathfinder and shared his opinion that the Student "probably wouldn't qualify [for special education services] and that anything she needed would be covered by a 504" or something to that effect. Mr. Brownstein's comments made Ms. Parent feel like the District had already decided whether the Student should be eligible for an IEP. TR477-478; P60, p8.

Referral for Evaluation

70. On December 8, 2023, the District convened the SIT meeting. The Parents, Mr. Brownstein, Mr. Darring, Ms. Islam and Ms. Want participated. TR526&528. The notes from the meeting indicate that the Student had eloped from class on October 18, 2023, to go to the nurse but that there had been no reported or observed incidents of inappropriate conduct during recess or with Capture the Flag. P12, p11. The Parents noted continuing bullying issues and reported that school refusal was becoming an increasing issue. The Parents shared examples of school avoidance behavior, including the Student refusing to get out of the car upon arrival at the school. On several occasions, Ms. Parent would have to leave the Student at home and Mr. Parent would bring her to school late.

71. During the SIT meeting, the Parents requested that the Student be evaluated in the area of communication to assess her need for specially designed instruction (SDI) in social/pragmatic speech. P60, pp9-10.

72. The SIT meeting notes document the following remarks by Mr. Brownstein concerning the Student: “Goes along, doing fine, then has an incident” and “when she needs, she really needs, but when she doesn’t, she doesn’t.” The meeting notes indicate that Mr. Brownstein questioned if they would be able to “capture that” in terms of a need for SDI because there wasn’t a consistent pattern of behaviors, just isolated incidents. TR529.

73. The SIT team decided to move forward with the evaluation but indicated that it may not show the need for SDI. P12, pp11-12. According to Ms. Parent, Mr. Brownstein mentioned many times that he did not think the Student would qualify for special education. Ms. Parent felt that Mr. Brownstein was dismissive of the Parents’ concerns and annoyed by their advocacy. P60, p10.

74. During the SIT meeting, the Parents asked the District to conduct a Functional Behavioral Assessment (FBA). P60, pp9-10.

75. An FBA is a broad term for an assessment tool used to identify behaviors and look at causes of those behaviors in order to develop a plan to address them. Where a student has a continuing pattern of behaviors, an FBA is appropriate. TR595-596. An FBA is typically performed after a Student has been found eligible for special education services but can be performed before eligibility has been determined. TR530; 586. The process of identifying the antecedent, or cause of the behavior, involves investigating when the behavior occurs, whether it occurs during a certain class or activity, who is present, and other circumstances surrounding the behavior. TR597. An FBA can be used to look at just about any behavior in school that is

potentially impacting a student's learning or the learning of others. It can be helpful in tracking data to determine what is happening right before the behavior occurs and the resulting consequences. In addition to being appropriate when there is an existing pattern of behavior, an FBA can also be used to identify patterns of behavior. TR906-907.

76. At the time of the SIT meeting, Mr. Brownstein did not believe the data showed a consistent pattern regarding the Student's behavioral incidents but emphasized that "that's why we do the evaluation." TR528-529.

77. Mr. Brownstein did not conduct an FBA because he did not think it was relevant to the Student's evaluation. TR530; 586. He did not believe the Student's behaviors warranted an FBA because there was no consistent pattern. TR586.

78. The evaluation team decided to evaluate the Student for special education services at the end of the December 8, 2023, SIT meeting. P60, p10. The District sent a special education referral notice to the Parents that same day. In the PWN attached to the referral notice, the District documented that its decision to evaluate the Student was due to significant behavior concerns and health issues and a need to look beyond general education interventions. D1, p. 1 & 4. The District proposed the following areas of evaluation: general background, math, medical-physical, reading, written language, social/behavior and study/organizational skills. D1, p5.

79. Ms. Parent signed the evaluation consent form and provided it to the District on December 12, 2023. TR475-476; P23, p1; P60, p10. Ms. Parent requested that the District assess the Student in the additional areas of listening comprehension (poor working memory), multi-step processes (working memory); communication (ASD,¹⁴ GAD¹⁵), and vision (accommodative esotropia). D2, p. 2. Ms. Parent also indicated in the comments section of the consent form that Ms. McKee, the school nurse, needed to be included on all communications and meetings due to the Student's multiple medical diagnoses. D1, p5.

80. Under the IDEA, the District had thirty-five school days from the date the consent is received to complete the evaluation. Thirty-five school days from December 12, 2024, was February 15, 2024. TR531-533.

81. Mr. Brownstein attended the Care Team meeting on January 24, 2024. He reported to the team that the Student "will not qualify, average." TR535-536; P12, p11. The evaluation had not been completed at this point. TR537-538; P30, p1-2.

¹⁴ Autism Spectrum Disorder. TR105.

¹⁵ Generalized Anxiety Disorder. TR106.

82. On February 3, 2024, the District notified the Parents that the Student had been found eligible for Advanced Learner services in reading during the 2023-24 school year. This determination was made by the District's Advanced Learning department after considering the Student's academic performance, as well as her MAP (Measures of Academic Progress) and SBA (Smarter Balanced Assessment) scores.¹⁶ D9.

83. On February 7, 2024, the Student chased another student into the office of Pathfinder's principal, Dr. Britney Holmes. The Student hit the other student several times and destroyed the office. P12, pp6-10. Dr. Holmes called Mr. Darring and asked him to come help calm the Student down. When Mr. Darring arrived at the scene, Dr. Holmes and the Student were in the office, which was in disarray with plants, dirt, and papers thrown everywhere, and items knocked over. The Student agreed to go with Mr. Darring back to his classroom. She held onto his arm, left the office and burst into tears in the hallway. TR430-433. This incident was discussed at the Care Team meeting that day. The Care Team Notes describe the incident as arising out of a basketball game during recess. TR542; P12, pp6-10.

84. Dr. Holmes completed an Isolation and Restraint Report on February 7, 2024. That report documents that, during the escalation cycle in her office, the Student was placed in a hold two different times, each lasting no more than 10 seconds. The report indicated that Dr. Holmes attempted to verbally de-escalate, physically stand between the Student and the peer, and remove the peer from the space, but that she ultimately had to restrain the Student after she struck the peer multiple times. The report also indicates that Dr. Holmes had to stop the Student from running after the other student. The Student screamed for the duration of the incident threw objects around the office. P27.

85. Later, on February 7, 2024, Dr. Holmes sent an email to the Parents about the incident, explaining what had happened and that she had to restrain the Student because the Student was striking another student multiple times. Dr. Holmes reported that the incident was triggered during a basketball game due to what she characterized as a "simple miscommunication," which resulted in the Student hitting a friend; chasing, hitting and kicking another peer; and destroying Dr. Holmes' office. Dr. Holmes noted that the situation was addressed by having a restorative conversation with those involved and that she planned to follow up with the Student. P26, pp2-4.

86. On February 9, 2024, Ms. Parent sent a reply email, requesting a copy of the restraint report and asking to be included in any follow-up conversation with the

¹⁶ Mr. Brownstein testified that the MAP test is a computerized test that is given multiple times throughout the year. TR506. There is no further evidence in the record concerning the MAP or SBA.

Student about the incident. Dr. Holmes provided a copy of the restraint report via email attachment on February 11, 2024, and asked for dates when the Parents would be available to participate in the follow-up discussion with the Student. P26, pp1-2. Ms. Parent and Dr. Holmes ultimately met and discussed the incident on March 13, 2024. TR482; P12, p4. The follow-up conversation with the Student never occurred. TR793-794.

87. On February 7, 2024, Mr. Brownstein provided a draft evaluation report to the Parents and scheduled an evaluation meeting for February 9, 2024. The draft report included an eligibility decision indicating that the Student did not qualify for special education services. TR541. The draft report did not contain any data regarding assessments for communication or listening comprehension. It did not contain any input from Ms. McKee about the Student's medical issues. P60, p10. Mr. Brownstein testified that at the time he sent the draft report, it was incomplete. TR537-538.

88. On February 7, 2024, Ms. Parent sent an email to Mr. Brownstein expressing her concern that Ms. McKee and Ms. Bogrow should be included in the evaluation meeting, which needed to be rescheduled due to scheduling conflicts. Ms. Parent also noted that the draft report did not include an evaluation for speech/communication, which the Parents had added as an area to be assessed on the consent form. P30, p2.

89. Mr. Brownstein sent an email to Ms. Parent on February 8, 2024, thanking her for pointing out the missing evaluation pieces relating to communication and listening comprehension and requesting an extension of the evaluation process so that those areas could be addressed. Mr. Brownstein informed Ms. Parent that the evaluation could be extended for "up to 35 more school days," which Mr. Brownstein indicated would be April 5. Mr. Brownstein noted that Ms. Bogrow and Ms. McKee usually are not part of "these meetings" but were welcome to attend. Mr. Brownstein asked the Parents to let him know if they consented an extension. P30, p1.

90. The Parents did not consent to an extension. TR667; P31, p3; P60, p11. Mr. Brownstein believes that they did consent based on a conversation he believes he had with Ms. Parent. He did not specify when this conversation occurred and there is no documentation confirming any agreement to extend the deadline. TR538.

91. The February 9, 2024, entry in the Care Team Notes indicates that the District still needed to evaluate the Student in the areas of communication, listening comprehension and vision. The notes also indicate that more observations needed to be conducted, as well. The notes document that Ms. Parent was not happy with the draft evaluation concluding that the Student did not qualify. The notes also indicate that Ms. Parent agreed to an extension on the evaluation until April 5, 2024. P12, p6.

92. On February 9, 2024, speech language pathologist Nicole Filatov¹⁷ began testing the Student's communication skills. TR148; D3, p6.

93. The week after the email exchange concerning the draft evaluation report, Mr. Brownstein approached Ms. Parent in the staff lounge at Pathfinder. He apologized for failing to complete parts of the evaluation that were agreed upon telling her "sorry about that, my bad, but she's not going to qualify anyway and all this can be covered under a 504 plan." P60, p11.

94. The Student broke her leg in mid-February 2024 and was in a cast for several months. She used a wheelchair for the first month and then used crutches. TR663-664; P12, pp5-6.

95. On March 1, 2024, Ms. Parent emailed Mr. Brownstein and the evaluation team requesting an update on the status of the speech and vision evaluation and the additional observations of the Student. Ms. Parent expressed her concern that one observation was not representative of the challenges the Student faces with her disability. Ms. Parent suggested that times of transition, stress, and field trips would be more useful times to observe her. She also informed the team that the Student had broken her leg and would be in a cast for 3-4 months but that she did not want her injury to slow down the process. Ms. Parent asked for an updated completion date for the evaluation, noting that a "two-week extension would put us at March 8th." P31, pp6-7; TR668-669. This email was incorporated into the District's Care Team Notes. P12, pp4-5. Mr. Brownstein did not respond to the email. P60, p12.

96. On March 4, 2024, Nicole Filatov responded to Ms. Parent's March 1, 2024, email. She informed Ms. Parent that the Student had left the room without warning while Ms. Filatov was finishing the final subtest of the social language development evaluation. Ms. Filatov shared with Ms. Parent that she had told the Student she could say "pass" or take a break if something was too difficult, but that the Student needed to let her know before she leaves. Ms. Filatov noted that the class had a substitute that day, which may have played a part. Ms. Filatov expressed her desire to finish the test, as well as "gather more qualitative information from staff/those close to the Student." P31, p5.

97. Ms. Parent replied to Ms. Filatov's March 4, 2024, email on March 5. She informed Ms. Filatov that she had spoken to the Student, who was willing to finish the testing as long as she can "pass" if she doesn't understand something. Ms. Parent noted that the Student had been particularly tired due to her broken leg and indicated

¹⁷ Ms. Filatov is a speech language pathologist. She has worked for Seattle Public Schools for five years. TR129.

that the Student's not being able to tolerate the testing was information that was relevant to the evaluation. P31, pp4-5.

98. On March 12, 2024, Ms. Filatov emailed Ms. Parent, stating her agreement that leaving the speech office mid-testing was "definitely data!" She noted that she had completed the formal assessment but would like to collect a bit more qualitative data from those who know the Student well. Ms. Filatov also addressed Ms. Parent's question about the "extension date" in Ms. Parent's March 1, 2024, email. Ms. Filatov indicated that it "looks like we have until 4/5 (a 35-school day extension)." P31, p4. By reply email that same day, Ms. Parent informed Ms. Filatov that she and her husband did not authorize a 35-day extension, or any extension for that matter, but since there were pieces of the evaluation that were missing those "obviously need to be completed." Ms. Parent asked Mr. Brownstein, who was copied along with the rest of the team, to provide an update and a reasonable date of completion, noting that the process had been initiated before the school year had started. P31, p3.

99. On March 13, 2024, Mr. Brownstein emailed Ms. Parent to let her know that he still needed to do the listening comprehension testing and that the team should be able to meet the week of March 25, 2024. P31, p3. That same day, Ms. Parent proposed meeting dates for the week of March 25, 2024. P31, p3. On March 15, 2024, Mr. Brownstein sent an email to the Parents and the team setting the evaluation meeting for March 26, 2024, at 4:00 p.m. P31, p1.

Drafts of the Initial Evaluation Report

100. On March 22, 2024, Mr. Brownstein send a draft evaluation report to the Parents via email entitled "EW evaluation report draft" with a proposed meeting date of March 26, 2024. P60, p12; P32. The summary section indicated the Student did not meet the eligibility criteria because she did not "demonstrate an adverse educational impact in academic skills, social/emotional skills and/or study/organizational skills" and did not demonstrate "a need for specially designed instruction." Under the section noting specific strategies and interventions that had been used to date and their effectiveness on student achievement and adjustment, nothing is listed. P32, p1. The report did not identify any behavioral incidents under the "significant findings" portion of the general background section. The draft did not include a medical-physical section. TR670-671; P32.

101. The District also attached a PWN dated March 26, 2024, to the draft report informing the Parents that the District had decided to refuse to qualify the Student for special education services because the Student did not "demonstrate an adverse educational impact in academic skills, social/emotional skills and/or study/organizational skills" and "does not demonstrate a need for specially designed

instruction.” The District described data and information it used or planned to use as a basis for the ineligibility decision as “review of records, outside evaluation, evaluation results, observation and *team deliberation*” (emphasis added). Under “Any other factors that are relevant to the action,” the District noted that the Student may benefit from a 504-plan evaluation that continues her elopement plan. P32, p16.

102. After receiving the draft report and PWN, the Parents were concerned that the District had already made its decision before the evaluation meeting had taken place. They engaged Katie Jackson as an advocate to assist them. P60, p13.

103. On March 25, 2024, Mr. Brownstein emailed an updated draft of the Evaluation Report to the Parents and the team. P35, pp4-5. The updated draft included a medical-physical section but was otherwise identical to the prior draft. As with the prior draft, the District attached a PWN informing the Parents that it had concluded that the Student was ineligible. P34.

104. On March 26, 2024, Katie Jackson, the Parents’ advocate, sent an email to Mr. Brownstein and the evaluation team explaining that the Parents wanted Ms. McKee to attend the evaluation meeting because of the Student’s multiple medical diagnoses and her knowledge of the Student’s disabilities. P35, p2. Mr. Brownstein sent a reply email that same day informing the Parents that the nurse’s write-up did not impact the Student’s eligibility. He also stated that “the data outlined in the draft report showed that the Student is not eligible for special education services” and emphasized that the meeting that afternoon was strictly an evaluation feedback meeting. P35, p1.

105. At the Care Team meeting on March 26, 2024, Mr. Brownstein reported that the Student “will not qualify.” TR557-558. The Care Team Notes also confirmed that the evaluation meeting was scheduled, and that the Parents were demanding that Ms. McKee attend. P12, p4.

106. The March 26, 2024, evaluation meeting was cancelled due scheduling conflicts. P12, p3.

107. Mr. Brownstein sent a Notice of Meeting dated March 27, 2024, to the Parents rescheduling the evaluation meeting for April 3, 2024. D3, p1.

108. Mr. Brownstein emailed another draft evaluation report in advance of the April 3, 2024 meeting. P60, p14. The naming convention on this document has the initials “DNQ,” which means “Does Not Qualify.” P36; TR541 & 558-559. This draft did not have an evaluation summary, but it did include the medical-physical section. The following language was also added to the last paragraph under the significant findings portion of the general background section:

The Student's most recent incident occurred on 2/7/2024 when she got into a peer conflict at lunch recess which resulted in her hitting a peer in the head. The Student's behaviors escalated, resulting [in] her destruction of the principal's office and the Student being restrained. Earlier this academic year, the Student eloped on a walking fieldtrip, going home as the class passed by her house. The Student has had prior issues during class camping trips.

The District attached a PWN dated April 3, 2024, to the report. The content of this PWN is identical to the PWNs attached to the draft evaluation reports provided to the Parents on March 22, 2024, and March 25, 2024, except for the date of the evaluation meeting, which was now April 3, 2024. P36, p15.

Initial Evaluation Report

109. The final results of the District's evaluation are contained in a March 27, 2024, evaluation report prepared by Mr. Brownstein, who served as the evaluation case manager.¹⁸ TR593. The District assessed the Student in the areas of communication, listening comprehension, math, reading, social/behavior, written language and study/organizational skills. D3, pp1-19.¹⁹

110. The District did not perform a vision evaluation because the Student's vision was corrected with glasses. D1, p6. The District did not assess the Student's cognitive skills because the results obtained by Dr. Ballard showed the Student's cognitive scores to be in the Average to High Average Range. D3, p6.

111. Under the significant findings portion of the general background section of the evaluation, the District noted that the referral was due to a recent outside evaluation and behavior concerns which had included elopement and physically attacking adults and students. The District also acknowledged that the Student was diagnosed with generalized anxiety disorder in May 2023 and autism in August 2023, and that she has absent [sic] seizures. The Student's strengths included reading, creativity, imaginative play, sports, and cooking/baking. Concerns were noted to include "meltdowns and tantrums, difficulty with flexible thinking, and elopement." D3, p6. The evaluation report does not identify the eligibility categories that were being considered as part of the evaluation. Mr. Brownstein testified that the Student was

¹⁸ March 27, 2024, is the date the report was sent to the Parents. The report is otherwise undated. D3, p1.

¹⁹ Exhibit D3 starts with a Notice of Meeting and an Evaluation Summary at pages 1 – 5. The remainder of Exhibit D3 is identical to Exhibit P36.

considered under the autism category. There is no evidence in the evaluation report or in the testimony confirming what other categories may have been considered.

112. Regarding the behavioral concerns and elopement, the District acknowledged the February 7, 2024, incident involving a peer conflict at recess which resulted in the Student hitting her classmate in the head, destroying the principal's office and, ultimately, requiring restraint. The District also indicated that, earlier in the school year, the Student had gone home (eloped) when her class passed her house on a walking field trip. The only other significant finding documented in the background section was that the Student had "prior issues during class camping trips." D3, p. 6.

Communication

113. Ms. Filatov evaluated the Student in communication on February 9, 2024, February 12, 2024, March 1, 2024, March 8, 2024, and March 20, 2024. TR130; D3, p6. As part of her evaluation, Ms. Filatov spoke with Ms. Parent in person. She did not include the information she gathered from Ms. Parent in her report. TR150. She did not review Dr. Ballard's report but understood that the Student had been diagnosed with autism. TR152.

114. Ms. Filatov administered the Clinical Evaluation of Language Fundamentals, 5th Edition (CELF-5) to assess the Student's receptive and expressive language skills. The Student's scores were within normal limits. Ms. Filatov concluded that the Student did not qualify for services in the areas of receptive and expressive language because her scores indicated skills within normal limits as compared to same-aged peers. TR132-133; D3, p6-8. Ms. Filatov's informal testing of the Student's articulation skills did not reveal any concerns. The Student's voice and fluency was also found to be normal. D3, p 8 & 11.

115. The primary area of concern regarding the Student's communication skills was with her social pragmatic communication. To assess the Student's social communication skills, Ms. Filatov used the Social Language Development Test – Elementary; Normative Update (SLDT-E) and the pragmatics profile from the CELF-5. TR134&137.

116. The SLDT-E is administered by working directly with the student. It consists of four subtests (Making Inferences, Interpersonal Negotiation, Multiple Interpretations, and Supporting Peers), which focus on taking someone else's perspective, making correct inferences, negotiating conflicts with peers, being flexible in interpreting situations, and supporting friends diplomatically. D3, p8. The Student scored in the average range on the Interpersonal Negotiation and Multiple Interpretations subtests. These scores were within normal limits. D3, p8-9.

117. The Student scored below average (9th Percentile) on the Making Inferences subtest, which uses nonverbal and contextual clues to examine how a child makes inferences about what another person is thinking. This subtest asks the child to express what a person in a photograph is thinking and state the visual clues that support those expressed thoughts. The Student's scores indicate that she may have difficulty detecting and understanding nonverbal and contextual clues, assuming the perspective of someone else and inferring what a person is thinking. TR135. Ms. Filatov noted that the Student benefited from substantial wait time to respond to each question. D3, p8-9. This was significant to Ms. Filatov because the Student would typically not have the benefit of this wait time in a conversation with someone her age, which could cause difficulty with perspective taking, social inferencing and navigating conflicts with peers. TR154-155.

118. The Student demonstrated significant deficits on the Supporting Peers subtest. Each item in this subtest describes a situation involving a friend or classmate and asks the child what he or she should say about the situation to the peer. The Student's scores placed her in the 2nd percentile, indicating that her ability to successfully interact with peers in a positive, supportive way is borderline delayed as compared to same aged peers. D3, p8-9; TR135-136 & 156. The Student also had difficulty completing the Supporting Peers subtest. Shortly after beginning the test, the Student got up and left the testing room without saying anything to Ms. Filatov. Ms. Filatov followed the student to her classroom and let her know that she could take a break if the test is too hard or if she wanted to continue another day. Ms. Filatov reported the incident to the Parents, who spoke to the Student and told her she could say "pass" on any items that were too difficult. D3, pp8-9. At the next testing session, the Student responded with "pass" or "I don't know" throughout the subtest. D3, p9-10.

119. The Student's Composite Performance (Social Language Development Score) was below average (14th percentile). D3, p8.

120. Ms. Filatov also used the CELF-5 Pragmatics Profile to gather information concerning the Student's social communication skills. Ms. Parent and Mr. Darring each completed a Pragmatics Profile. D3, p10; TR137-138. The results of the Pragmatics Profile completed by Ms. Parent placed the Student in the 2nd percentile (below average). Mr. Darring's responses placed the Student in the 25th percentile (average). Both Ms. Parent and Mr. Darring reported that the Student had difficulty with maintaining eye contact, adjusting/modifying language based on the communication situation, and self-advocacy skills (asking someone to change their behavior; responding to teasing, anger, failure, or disappointment, etc.). TR159-161; D3, pp10-11. Ms. Filatov testified that some of the questions on the profile were not "very neurodiverse affirming" and that the school was steering away from using the test. TR160 & 165.

121. Ms. Filatov indicated that some skills were listed as “never or almost never” occurring by Ms. Parent, but by Mr. Darring as “always or almost always” and that this discrepancy in scores may indicate “masking.”²⁰ The skills at issue are not identified. Because of the contrast, Ms. Filatov interviewed Mr. Darring to obtain further information. Mr. Darring reported that over the last year and a half, the Student demonstrated unexpected, but noticeably severe behaviors, including (1) hitting peers in the face 4 -5 times, and (2) running to her house and hiding in the garage when the class passed her house on a field trip (eloping). Mr. Darring told Ms. Filatov that the frequency of these incidents was rare and reported that, otherwise, the Student was very bright and attentive, she usually demonstrated socially appropriate behaviors, and she was able to self-advocate when needed. Ms. Filatov commented that, while some of these incidents were unexpected and “potentially unsafe,” they would be “better served through a 504 plan, rather than specially designed instruction” because they occur infrequently. D3, p11.

122. Ms. Filatov generally recalls having conversations with Ms. Parent, but did not recall details of those discussions. Ms. Filatov did not document any of these conversations in her evaluation report. TR163.

123. Ms. Filatov personally observed the aftermath of the February 7, 2024, incident when the Student destroyed the principal’s office, describing a scene with ripped papers all over the floor, books strewn across the ground, a large planter broken in the middle of the room with soil and foliage spilling out, and chairs turned on their sides. Ms. Filatov had learned that the Student had caused the damage because she had become upset with a classmate. Ms. Filatov referred to this incident as an example of inappropriate, but infrequent, behavior. D3, p11.

124. Ms. Filatov recalled observing the Student in her general education classroom and during recess. There is no evidence as to when these observations may have occurred. TR140. She did not document any information from these observations in her report. TR151.

125. Ms. Filatov’s found that the Student demonstrated age appropriate receptive and expressive language, articulation, voice and fluency skills and did not require SDI in those areas. She therefore concluded that the Student’s test scores did not qualify her for SDI in the area of communication. Ms. Filatov emphasized that the area of communication, in her mind, excluded social communication deficits. She did not believe a student with social communication deficits could qualify for SDI in the category of communication. As a speech language pathologist, she believed she could

²⁰ Masking means changing one’s behavior in certain contexts to fit in better, specifically to neurotypical populations. Masking can affect a student’s ability to access their education. TR161-162; D3, p11.

only provide related services if the Student was found to have a need for SDI in the area of social/behavior. TR159-160; D3, p11. Because Ms. Filatov had received information from Mr. Brownstein that the Student did not qualify in other areas for SDI, Ms. Filatov concluded that she was unable to provide related services. TR170; TR556-557.

126. Regarding the Student's social communication skills, Ms. Filatov found that the Student demonstrated volatile and inappropriate behaviors and believed that there was a connection between these behaviors and the deficits the Student demonstrated with her social communication skills. TR168. However, she concluded that the Student's behavioral incidents did not cause any adverse educational impact because they occurred infrequently. She opined that whether the Student needed SDI regarding social behavioral issues was outside the scope of her practice. TR141-142; D3, p11.

127. Ms. Filatov was unaware that the Student had hit a peer and needed to be restrained as part of the incident involving the destruction of the principal's office. She was unaware that the Student had hit an adult chaperone. Other than what Mr. Darring reported to her, Ms. Filatov was unaware of physical altercations with other students. TR167-168 & 174.

128. Ms. Filatov recommended providing the Student with a calm and quiet place, calming tools and strategies to help her self-regulate, and a 504 plan to address social/behavioral issues when dysregulated or anxious. She also recommended the book *The Explosive Child* as a good resource. D3, p11.

Listening Comprehension, Math, Reading, and Written Language

129. Mr. Brownstein used the Kaufman Test of Educational Achievement – Third Edition (KTEA–3) to measure the Student's listening comprehension, math, reading and written language skills. He assessed the Student's math, reading and written language skills on January 22, 2024. He assessed the Student's listening comprehension on March 19, 2024. D3, pp12-15 & 18.

130. MATH: The Math Composite of the KTEA-3 was derived from the Student's performance on the Math Concepts & Applications and Math Computation subtests. The Student performed in the Average Range on both subtests. Mr. Brownstein noted that the Student scored at a Level 4 (exceeding standards) on her Spring 2022 and Spring 2023 SBA in math and that her MAP scores in math have been in the Average to High Average range. He concluded that she did not demonstrate an adverse educational impact in the area of math.

131. READING: The Reading Composite of the KTEA-3 is made up of two subtests: Letter & Word Recognition and Reading Comprehension. The Decoding Composite is

derived from the Letter & Word Recognition and Nonsense Word Decoding subtests. The Student scored in the Above Average range on both composites and all the subtests. Mr. Brownstein noted that the Student scored a Level 4 (exceeding standards) on her Spring 2022 and Spring 2023 SBA in English Language Arts and that her MAP scores in reading have been in the Average to Above Average range. Mr. Brownstein concluded that the Student did not demonstrate an adverse educational impact in reading. D3, p15.

132. WRITTEN LANGUAGE: Mr. Brownstein assessed the Student's writing skills by administering the Written Expression subtest of the KTEA-3. The Student's scored in the Average range with all tasks in the average range or above. Mr. Brownstein noted (again) that the Student's scored Level 4 (exceeding standards) on her Spring 2022 and Spring 2023 on her SBA in English Language Arts. Mr. Brownstein found that the Student did not demonstrate an adverse educational impact in written language. D3, p18.

133. LISTENING COMPREHENSION: The Student performed in the High Average range on the Listening Comprehension subtest, as compared to same age peers. Mr. Brownstein concluded that there was no evidence of an adverse educational impact in Listening Comprehension. D3, p12.

Social/Behavior and Study/Organizational skills

134. Mr. Brownstein used one assessment tool – the Behavioral Assessment System for Children, Third Edition (BASC-3) – to measure both the Student's social and behavioral functioning and her study and organizational skills. This is the only assessment he used to determine the Student's need for SDI in social behavior and study and organizational skills. TR566. The BASC-3 measures positive, or adaptive, and negative, or clinical, aspects of behavior. It is administered by obtaining responses to questionnaires or "rating scales" from teachers and parents. Mr. Darring completed the teacher rating scale on January 17, 2024. The Parents each completed a parent rating scale as well. Ms. Parent completed her questionnaire on January 17, 2024, and Mr. Parent completed his on January 31, 2024. TR508-510 & 512; D3, pp15 & 17. Students may also complete a self-rating scale. Mr. Brownstein did not ask the Student to complete a questionnaire because he did not think it would provide any useful information, and he was trying to limit the amount of paperwork he was sending to Parents and staff. TR567-568.

135. Ms. Parent's rating scales placed the Student in the "clinically significant" range on following composites and subscales:

Behavioral Symptoms Index

Atypicality subscale
Externalizing Problems Composite
Hyperactivity subscale
Aggression subscale
Conduct Problems subscale
Internalizing Problems Composite
Somatization subscale
Adaptability subscale

Ms. Parent's ratings placed the Student in the "at risk" range on the Anxiety and Withdrawal subscales. D3, pp15-16.

136. Mr. Parent ratings differed from Ms. Parent in only three respects. First, his ratings placed the Student in the "clinically significant" range on the Withdraw subscale. Second, his ratings placed the Student in the "at risk" range on the Internalizing Problems Composite and the Somatization subscale. Third, his ratings placed the Student in the "at risk" range on the following additional subscales:

Attention Problems
Social Skills
Functional Communication
Activities of Daily Living

D3, pp15-16.

137. Mr. Darring's ratings placed the student in the "at risk" range on the following:

Externalizing Problems Composite
Hyperactivity subscale
Aggression subscale
Anxiety subscale

D3, pp15-16.

Study/Organizational Skills

138. On the Executive Functioning Indices of the BASC-3, both Parents rated the Student's Behavioral Control Index as "Extremely Elevated." Mr. Darring rated the Student's Behavioral Control Index as "Not Elevated." Mr. Brownstein attributed this difference to the possible "masking" by the Student, where she is holding herself together at school, but not at home. TR510. Masking can be physically and emotionally exhausting for the Student. TR563-564.

139. Mr. Darring and Mr. Parent both rated the Student's Emotional Control Index as "Elevated." Ms. Parent rated the Student's Emotional Control Index as "Extremely Elevated." D3, p17.

140. Mr. Brownstein talked to Mr. Darring a few times about his ratings due to some of the disparities between his ratings and those of the Parents, but Mr. Brownstein did not include the details or results of any of those discussions in the written evaluation. Ms. Parent was never interviewed by Mr. Brownstein about her responses to the assessments. All the information Mr. Brownstein considered is included in the written evaluation report. TR569-571.

141. Mr. Brownstein noted that the results obtained from the Brown Executive Function/Attention Scales (Brown EF/A) during Dr. Ballard's August 2023 evaluation demonstrated a total composite score in the "Somewhat Atypical Range," which may indicate a significant problem. The Student's score on the Emotion scale of the Brown EF/A was in the "Marked Atypical range."

142. Mr. Brownstein concluded that "based on available data" the Student was not eligible for specially designed instruction at this time in either the area of social/behavioral or study/organization due to a lack of an adverse educational impact at school. D3, pp16 & 18. No further explanation for this conclusion was provided in the evaluation report. The only explanation given for this conclusion was provided in Mr. Brownstein's hearing testimony, which was that the District usually qualifies a Student when the scores are clinically significant. TR513.

Medical-Physical

143. On March 25, 2024, Ms. McKee completed a Special Education Health Assessment. The Student passed the vision and hearing screenings and her physical examination was within normal limits. Ms. McKee noted that the Student was in a full leg cast due to a fracture of her fibula and tibia. The history section, obtained from the Parents, indicates that the Student has a select few friends and gets along with most of her classmates but does have struggles reading social cues. Ms. McKee noted under the academic implication section of her report that the Student's medical conditions of absence seizures, ADHD, anxiety, autism, and pathological demand avoidance may impact her educational performance. TR756; D15. Ms. McKee's health assessment was incorporated into the Medical-Physical portion of the Initial Evaluation. She listed the medical diagnoses as follows: autistic – level 2, generalized anxiety disorder, epilepsy – absence seizures, poor working memory, strabismus/astigmatism, pathological demand avoidance. TR758; D3, p13-14.

Observations

144. As part of the evaluation, Mr. Brownstein conducted one observation of the Student for a 20-minute period. The observation took place in her 5th grade general education classroom during writing. There were 18 students in the class, along with a general education and a special education teacher. The Student was observed to be focused and on task for the entire period. Mr. Brownstein did not see anything of concern. D3, p18-19; TR514. This was the only documented school observation of the Student performed outside the setting of the assessments. Ms. Filatov indicated that she had observed the Student in class and at recess, but she did not document any details of these observations in the evaluation. TR139-140 & 151-152.

145. Mr. Brownstein confirmed during his hearing testimony that the only assessment he used to determine the Student's need for SDI in the area of social behavior was the BASC-3. He also acknowledged that he used this same test to evaluate the Student's need for SDI in the area of study and organizational skills. TR566. Mr. Brownstein was familiar with the Behavior Rating Inventory of Executive Function (BRIEF-2) and testified that it was a "great instrument." When asked why he did not administer that assessment, he said that he was trying to limit the amount of paperwork he was sending to Parents and staff. TR567-568.

146. Mr. Brownstein was qualified to administer the Autism Spectrum Rating Scales. When asked why he did not use this assessment tool given that the Student had been diagnosed with autism, Mr. Brownstein testified that he thought the BASC-3 would cover the behavioral concerns the District had regarding the Student. No further explanation was given. TR569.

147. Mr. Brownstein acknowledged that the Student's behavioral incidents and elopement issues demonstrated that she needed support, but that to warrant the need for SDI, there needed to be a pattern of ongoing behaviors. He reasoned that since there were only a couple of isolated incidents, the Student did not qualify for special education services. TR516. Mr. Brownstein asserted that he spoke with Mr. Darring and District administrators to obtain information about the Student's history of behavioral incidents, but he did not include the details of any of those discussions in the written evaluation. All the information that Mr. Brownstein considered is included in the written evaluation report. TR570 & 588.

148. The District's evaluation concluded that the Student was not eligible for special education services because she did not "demonstrate an adverse educational impact in academic skills, social/emotional skills and/or study/organizational skills" and "does not demonstrate a need for specially designed instruction." D3, p3.

149. The District did not propose any interventions other than suggesting that the Student may benefit from continuing her elopement plan or being evaluated for a 504 plan to address behavior issues that arise on field trips and “other flare ups.” D1, p4.

150. On March 29, 2024, the Parents emailed Gordon Fowlds²¹ to express their concerns with the evaluation process and the evaluation team. They requested that he attend the upcoming April 3, 2024, evaluation meeting. P37, pp2-3; P60, p14. Mr. Fowlds did not respond until after the evaluation meeting had already taken place. P37, pp1-2.

151. The evaluation team met to discuss the evaluation results on April 3, 2024. The participants included the Parents, Ms. Jackson, Mr. Brownstein, Ms. Want, Mr. Darring, Ms. Filatov, Ms. McKee, and Ms. Bogrow. Ms. Jackson and Ms. Bogrow participated by videoconference. D4; P12, p2; P60, p14. Mr. Brownstein started out the meeting by informing the group that the Student would not qualify for special education services in the area of social/behavior. TR560 & 618. He also stated that the data did not support providing the Student with an IEP. P60, pp14&18. According to Ms. Parent, Mr. Brownstein commented that he did not believe Pathological Demand Avoidance, one of the Student’s diagnoses, existed. He also shared that the Student’s behavioral explosions did not happen often enough to qualify for special education, but he could not state how often they would need to occur for her to qualify. TR678; P60, p17. Mr. Brownstein told the Parents that they could request an IEE, or the District could start the process for creating a 504 plan. P60, p18; P12, p2. Potential supports were discussed, including 504 accommodations and a social skills group. P12, pp2-3; TR618-619.

152. The Parents were allowed the opportunity to ask questions and provide input at the evaluation team meeting. They had questions about why the District had already concluded that the Student would not qualify before the meeting had taken place. They also believed that an FBA should have been done and included in the report. The Parents disagreed with and were confused by how the results of the social pragmatic communication section and the social/behavior section were being used and interpreted. TR107-113. Prior to the April 3, 2024, evaluation meeting, the Parents had requested more time for the meeting but were told that 30 minutes would be sufficient. They did not believe 30 minutes was sufficient time to go through the results and ask questions. TR114; TR677.

153. At the evaluation meeting, Ms. McKee expressed her disagreement with the decision that the Student would not qualify for special education services. TR760-761. She believed that the Student’s seizure condition, in combination with her other

²¹ Gordon Fowlds is the Student Support Services Supervisor for Special Education. P60, p 14.

diagnoses, was likely to cause her to miss pieces of academic instruction and feel dysregulated throughout the day, depending on the frequency of the seizures. TR752-753; 760-761 & 767-769.

154. There is no way to reliably measure the frequency or duration of an absence seizure that might be experienced during the school day. TR778-779.

155. The Parents also disagreed with the decision that the Student was not eligible for special education services and expressed their dissent on the signature page of the report. TR678; P60, p18; D4.

156. The District admits that the Student has clearly identified disabilities and that she is not a typically developing student. The District's conclusion that the disabilities were not causing an impact to the level where the Student needs specially designed instruction was based on its determination that the Student's history of behaviors and incidents were isolated and not frequent enough. TR564-565. In sum, Mr. Brownstein did not believe that the major behavioral eruptions were causing any adverse educational impact because the Student might miss a day two, but then things were "as they were." TR600. He also explained that what he saw was that, for the most part, things were going smoothly for the Student but were interrupted by major eruptions. In those circumstances, it would be hard to put a plan in place for SDI when the behavior does not occur consistently. TR599-600.

157. On April 30, 2024, the District held a 504-plan meeting with the Parents, Mr. Darring, Ms. Jackson and Ms. Want, who was the 504 plan coordinator. A 504 plan was developed at the meeting. The notes from the meeting indicate that pre-teaching of competitive situations and pre-teaching of changes in the Student's schedule were discussed as potential beneficial accommodations. The notes also include a reference to an elopement plan and documented known challenges, which included math, games (especially competitive games), social interactions, field trips, and public settings, where it was harder to ask for help. P60, p19; P41. Ms. Want did not have any further involvement in the 504plan, as she went on leave on May 1, 2024. TR622.

158. On May 8, 2024, the Student eloped from school again. Ms. Parent received a voicemail from the school informing her that the Student had walked out the front door of the school because she was mad about something in math. The area outside the front door is on campus, but unsecured. TR448. Principal Holmes drove to the Student's house to try to find her. The Student was ultimately found on the playground and returned to class. P60, p19; P42; TR687. The Student reported to Ms. Parent that she had gone outside after "assaulting" another student. TR686 & 801.

159. Care Team notes regarding the Student dated May 8, 2024, indicate that “Gordon” observed the Student for approximately 45 minutes on May 6, 2025, and that there was nothing to note. An entry dated May 13, 2024, noted that “another psych agreed that 504 is a good next step.” P12, p1.

160. On June 3, 2024, the Student had another incident during science class, which was being taught by a substitute teacher. The Student became upset over a disagreement with a peer when it was time to clean up a project. She reacted by throwing scissors, dumping scissors out of their box, circling the room, and knocking papers and materials off tables and counters and screaming and yelling. The Student also threatened another student with a glass jar containing paper clips. Interim Principal Daxa Thomas²² was called in to help. Ms. Thomas evacuated the classroom and had the teacher take the class to a different area of the school so she could speak with the Student. When Ms. Thomas approached the Student to talk to her, the Student evaded her and left the classroom to follow the rest of the class. TR58 & 76-80, P43, pp1-2. The Student ultimately joined the rest of the class in the “hub”²³ and returned to the classroom with the teacher and some of the other students to help clean up. The incident, from throwing items to helping clean up, lasted about 20 minutes and interrupted learning for the entire class. P43, pp1-2; TR82. Ms. Parent was substitute teaching at school that day. She learned of the incident when Ms. Thomas told her about it and asked her to help deescalating the Student. TR690-694; P60, p19. Ms. Parent located the Student in the hub area. The student who had been threatened reported to the Parent that when she had tried to calm the Student down, the Student threatened to throw a glass jar at her. TR692-693.

161. Following the June 3, 2024, incident, the parents of other Pathfinder students contacted the school and asked that the Student be evaluated for special education services. TR82.

162. On June 5, 2024, Ms. Parent sent an email to Mr. Darring with a copy to Ms. Thomas and others regarding the incident that occurred on June 3, 2024. Ms. Parent asked for a copy of the incident report and requested that it be added to the Student’s evaluation/eligibility file. Ms. Parent also asked Ms. Thomas for a status update on the 504 plan. Ms. Parent also emphasized that the end of the school year had consistently been a time when the Student struggled with escalating behaviors and that the Student’s recent EEG showed she is still experiencing seizures. Ms. Parent

²² Ms. Thomas is currently serving as the Pathfinder Interim Principal. She was hired at the end of April 2024 to replace Ellen Want who went on maternity leave on May 1, 2024. TR49 & 63-64; TR606-607. When Dr. Holmes went on leave several weeks later, Ms. Thomas became the Interim Principal and an administrative intern filled the role of Assistant Principal through the end of the school year. TR63-64

²³ The “hub” is a large open area in the middle of the school where people can gather. TR691.

asked whether there were any criteria or benchmarks for the frequency of incidents that would qualify the Student for special education services based on Mr. Brownstein's comments during the evaluation meeting that the Student's behaviors did not occur "often enough." P43, pp2-3.

163. On June 5, 2024, Mr. Darring replied to Ms. Parent's email. He cut and pasted the email he had received from the substitute teacher describing the incident. P43.

164. On June 5, 2024, Ms. Parent reached out to Ms. Thomas and expressed interest in meeting with her to discuss the Student. P48, p5.

165. On June 7, 2024, the District issued a PWN proposing to initiate a referral for special education services. The PNW indicated that the referral was based on a request that had been made via email on June 6, 2024, by community members. The PNW noted that the District considered not referring the Student due to the recently completed evaluation that had found her ineligible. This consideration was rejected to allow for more data collection. The PNW indicated that a decision regarding whether to evaluate the Student would be made by September 23, 2024. D5.

166. On June 12, 2024, Ms. Parent sent an email to Principal Thomas following up on a time to meet to discuss the Student and requesting an update on the status of the 504 plan. P48, p3. That same day, Ms. Thomas replied to Ms. Parent. Ms. Thomas reported that she had been informally observing the Student and thought that a 504 plan would take care of the Student's needs. Ms. Thomas confirmed the meeting set for June 18, 2024. P48.

167. Ms. Thomas met with the Parents and their advocate on June 18, 2024, and discussed looking at how the Student was doing when school started again the following school year and then pursuing a 504 plan. TR84-85.

168. The last day of school was June 21, 2024. P1, p2.

169. On July 9, 2024, the Parents requested the Student's complete education records. P60, p20. On September 17, 2024, Ms. Parent reviewed the records that had been produced in response to her request. The only documents produced were two KTEA-3 subtest testing protocols, consisting of 5 pages. TR712-714; P60, pp20-21.

170. On August 21, 2024, Ms. Parent sent Mr. Darring an email seeking information about who the Student's new teacher would be and expressing concern about the transition to sixth grade without an IEP or a 504 plan, which had yet to be developed. TR715; P47.

171. On August 28, 2024, Ms. Parent sent an email to Principal Thomas confirming that she had finally received an update on the 504 plan. Ms. Parent informed Ms. Thomas that she received a request form for a 504 determination together with a consent form on August 27, 2024, but both documents were dated April 29, 2024, and she had never seen them before. Ms. Parent expressed her opinion that the 504 plan, which noted the needed accommodations as “allowed to take breaks, predictable and planned break locations outside of classroom,” was “woefully inadequate” and did not reflect the accommodations discussed at the April [2024] 504 meeting. Ms. Parent expressed her frustration and asked for any updates that Ms. Thomas may have received. P48, p1; P40; P41.

2024 – 2025 School Year (6th Grade)

172. The first day of school was September 4, 2024. P1, p3.

173. On September 3, 2024, the District determined that the Student was eligible for a 504 plan. P52. On September 9, 2024, Assistant Principal Jen Dickens²⁴ prepared a 504 plan for the Student’s sixth-grade year. The 504-plan provided for instructional support in the form of teacher preparation of the Student on how to engage with others during upcoming competitive situations and how to navigate the upcoming change in schedule. Two behavioral/social supports were also provided: group facilitation by a trusted adult, when possible, and frequent check-ins by a trusted adult. P52.

174. Ms. Dickens also prepared an Elopement Plan for the Student as part of the 504-plan process. TR282 & 301. She created the Elopement Plan based on the notes from the April 30, 2024, 504 plan meeting. TR295-296; P41. The plan detailed prevention strategies, including frequent check-ins during the class period, establishing safe spaces for the Student to go when she gets overwhelmed, and having Parents attend field trips, if available. The plan also set forth specific procedures and protocols in the event of an elopement off-campus. P57.

175. Trisha Hodapp is the Student’s main sixth-grade teacher. In the first semester, the Student was in Ms. Hodapp’s homeroom, study skills, math and science classes. The only difference this current semester is that instead of homeroom, the Student is taking French. TR184. Ms. Hodapp reported that the Student generally does well and participates in her classes but sometimes gets overwhelmed and frustrated if she feels she is not understanding something, especially in math. TR188-189 & 192. This leads to the Student shutting down, engaging in negative self-talk and writing negative

²⁴ Ms. Dickens was hired as the Assistant Principal at Pathfinder in August 2024. She serves as the school’s 504 Plan Coordinator. TR280.

thoughts on her schoolwork. On one occasion, the Student laid down on the floor when she got overwhelmed. When this occurs, Ms. Hodapp will speak with her one-on-one. TR189-190, 192. At the beginning of the year, the Student was using the passing period between classes to go to the library without letting anyone know. TR191. Ms. Hodapp noticed some tardiness at the beginning of the year. TR464-465.

176. Ms. Hodapp and Ms. Parent communicated about their shared concern regarding the Student's destroying her work when she gets frustrated. TR215-216. Ms. Hodapp has also reported to Ms. Parent that the Student has eloped from the classroom during the year when she has become dysregulated. The Student has also reported to Ms. Parent that she has left the classroom. TR119-120 & 724-725 & TR959.

177. Clarissa Resendez²⁵ teaches the Student's English Language Arts and World History classes. The Student was also in her sewing club the previous year. TR641 & 650. Ms. Resendez noted that the Student is inquisitive and wants to do well but that there are times when her stress levels are high, which can be hard on her. TR641. When the Student's stress levels are high, Ms. Resendez has one-on-one conversations with her to figure out a plan. TR643. Ms. Resendez gave one example of the Student becoming dysregulated in October 2024 when she ripped up a project she had been working on for World History. This was a side to the Student that she had not seen before, which she attributed to the Student's effort to hold herself together in school. Ms. Resendez has had conversations with the Parents about the Student's anxiety and stress causing her to be overwhelmed and worked with them to develop strategies to reduce the anxiety, especially following an absence. TR643-644 & 647-648. The Student's interactions with her peers are mostly positive but there have been 2-3 occasions where she perceived something differently than intended and reacted inappropriately. TR642 & 657. Ms. Resendez noted that the Student needs additional support beyond what she provides her other students. She checks in with the Student during class time to be sure she understands what she is supposed to be doing. TR645. She started doing the check-ins after the incident in October when the Student ripped up her project. Ms. Resendez also started working with the Student one-on-one when she returns from absences in order to be proactive and deal in advance with things that can heighten the Student's anxiety. TR653-654 & 660.

178. On September 18, 2024, Mr. Brownstein and the Parents exchanged emails concerning the scheduling of the referral meeting proposed in the June 7, 2024, PWN. Mr. Brownstein ultimately decided not to hold a meeting. P60, pp221-222.

²⁵ Ms. Resendez has been teaching in the Seattle School District for 22 years. She has been at Pathfinder for the last 10 years. TR640 & 650.

179. The Parents filed their due process complaint in this action on September 20, 2024.

180. On September 23, 2024, the District decided not to initiate an evaluation based on the June 2024 referral. TR517-518. The District issued a PWN on September 23, 2024, refusing to evaluate the Student. The PWN referred to the April 3, 2024, assessment finding the Student ineligible and indicated that there was no new school-based data to suggest moving forward with another evaluation. The District based its determination on “observation, team deliberation, review of records” and informed the Parents that it stood by its April 3, 2024, evaluation. D7. Ms. Hodapp was the only teacher Mr. Brownstein had spoken with before deciding not to evaluate the Student. TR576-577. The Parents were not asked to provide any information relating to the June 7, 2024, referral. TR116.

181. On September 23, 2024, Mr. Brownstein sent the Parents a copy of the District’s PWN declining to assess the Student via email attachment. Ms. Parent, by reply email that same day, asked for more information concerning the decision. D6. Mr. Brownstein did not respond. TR720.

182. On October 29, 2024, the Student had another incident during an Ultimate Frisbee practice, which is a school-sponsored sport. TR59-61. On November 1, 2024, Ms. Parent sent an email to District personnel, including the Student’s teachers, informing them of the incident. The Student accidentally hit another student in the head with the frisbee she had passed. Other students accused her of doing it on purpose and started yelling at her. Ultimately, some of the students called her autistic and ran away from her. Ms. Parent expressed her concern about the negative impact the Student’s prior incidents of dysregulation were having on her social life and emotional well-being. P56R. Ms. Daxa addressed the frisbee incident by holding a restorative conversation with the Student and the other students. TR60.

183. The Student had expressed hesitation to Ms. Parent about going to school during her fifth-grade year. On those occasions when the Student did not want to go to school, it took a prolonged amount of time getting her out of the house, which led to her being late. This happened on a regular basis. TR211-212.

184. After the October 29, 2024, Ultimate Frisbee incident, the Student’s school refusal became more intense and regular. P60, p23.

185. Michael Holland²⁶ is the Student’s band teacher. He reported that the Student is generally a good student and participates in class but that she struggles with

²⁶ Mr. Holland is a music specialist. He has been employed at Pathfinder for two years. TR257.

socialization, which requires a lot of redirection. TR258. She is off task about 1-2 times each class, but otherwise her behavior is on par with other students. TR268 & 272.

186. On January 14, 2025, the Student's behavior led Mr. Holland to reach out to the Parents via email. The Student had blurted out comments, was insulting to another student, and was off task. The Student did not respond to Mr. Holland's attempts to redirect her. TR266. Because of her actions, and that of another student, nothing was accomplished in class, and no learning took place. TR259, 266; P58, pp2-3. Mr. Holland attributed 25% of the blame to the Student; 25% to a student she sits next to and with whom she has continuing issues; and the remainder to a third student. TR267-268 & 270-271. Ms. Parent forwarded Mr. Holland's email to Jenna Dickens, the Assistant Principal, the next day. P58, p2.

187. On January 16, 2025, Ms. Dickens sent an email to the Parents following up on the incident in band on January 14, 2024. Ms. Dickens informed the Parents that she had spoken to Mr. Holland, who shared that the Student had been blurting out "quite a bit" and saying hurtful things about other students. While the Student typically was great about advocating for herself when she feels like she needs a break, Mr. Holland noted that she did not take a break when he suggested it. Ms. Dickens asked Ms. Parent to follow up with the Student about strategies for getting the help she needs if another student is bothering her. Ms. Dickens also indicated that she suggested that Mr. Holland do this as well, with the whole class. P58, p1.

188. The Student has reported to Ms. Parent during the school year that she has gotten into fights and punched other students. TR958.

189. Ms. Parent has been approached during the school year by students who have reported that the Student has punched them while at school. TR720 & TR959. Ms. Parent has also had parents of other students tell her that their children would never be friends with the Student. TR721.

190. The Student attends a private outdoor education program one day per month on the recommendation of her medical providers. TR789-790.

January 21, 2025, Independent Educational Evaluation

191. Julia Barta, Psy.D., holds a doctorate degree in psychology with a specialization in school psychology. She is a nationally and Washington state certified school psychologist. TR836-838; P59. She works as a school psychologist for Educational School District (ESD) 113, which is a pooled team of resources that are assigned to small districts to provide affordable special education services and evaluations.

TR838-839. Eighty-five percent of Dr. Barta's evaluations are school based as opposed to private. TR937.

192. Dr. Barta has specialized training in the evaluation of children with autism. She is a certified Autism Diagnostic Observation System, 2nd Edition (ADOS-2) evaluator. The ADOS is considered the gold standard for evaluating autism. TR840. The ADOS-2 catches information that is often missed by more generalized or generic testing tools. TR842.

193. Because of Dr. Barta's specialized training with autism, significant weight is given to her opinions regarding the assessment tool used by the District to evaluate the Student's social emotional functioning and executive functioning.

194. Dr. Barta performed an Independent Educational Evaluation of the Student, which took place on December 2, 2024, December 19, 2024, and January 19, 2025. The results of her evaluation are contained in her January 21, 2025, report. Dr. Barta conducted a records review, interviewed the Parents and the Student, and observed the Student. She evaluated the Student in the following areas: Intellectual, Academic Achievement, Language, Communication, Attention & Executive Functioning, Memory & Learning, Sensorimotor, Social Emotional and Adaptive Functioning, and Autism. The following assessments were performed over the course of three testing days:

TPBA Parent Pre-assessment Interview (TPBA-2)
Wechsler Intelligence Scales for Children, Fifth Edition (WISC-V)
Test of Everyday Attention in Children, Second Edition (TEA-ch 2)
The Developmental Neuropsychological Assessment (NEPSY-II).
Wechsler Individual Achievement Test, Fourth Edition (WIAT-4)
Vineland Adaptive Behavior Scales, Third Edition (Vineland-3)
Wide Range Assessment of Memory and Learning – Second Edition (WRAML-3)
Conners Comprehensive Behavior Rating Scales (CBRS) – Teacher Report
Conners 4 – Parent and Teacher Report
Beery-Buktenica Developmental Test of Visual-Motor Integration – 6th Edition (Beery VMI)
Behavior Rating Inventory of Executive Function – 2nd Edition (BRIEF-2) - Parent Report, Teacher Report
Autism Spectrum Rating Scales, Parent & Teacher reports (ASRS)
Autism Diagnostic Observation Schedule – 2nd Edition (ADOS-2)
Clinical Evaluation of Language Fundamentals - 5th Edition (CELF-5)
Arizona Articulation and Phonology Scale, Fourth Revision (Arizona-4)
Clinical Assessment of Pragmatics (CAPs)

P59, p1-2.

195. Dr. Barta did not interview any of the Student's teachers and she did not observe the Student at school or in any educational setting. Dr. Barta conducted a records review, which included Dr. Ballard's report and the District's evaluation report and related PWN. TR877, 922-923.

Intellectual

196. The WISC-V produces a Full-Scale IQ (FSIQ) score derived from several subtests. The Student's FSIQ placed her in the Average range compared to other children her age. She scored in the Average range on the Verbal Comprehension, Visual Spatial, Fluid Reasoning, Nonverbal, and General Ability subtests. She scored in the Low Average range on the Working Memory, Processing Speed, and Cognitive Proficiency subtests. Dr. Barta noted that the Student demonstrated a difference between memory tasks that were visual/meaningful and auditory/abstract with the auditory/abstract being a greater challenge. P59, pp5-6.

Academic Achievement

197. The WIAT-4 is an individually administered, standardized test of an individual's school-based acquired knowledge. The Student's scores for Word Reading and Reading Comprehension were in the High Average range and her scores on Essay Composition, Math Problem Solving and Numerical Operations were in the Average range. Her Total Achievement score was in the Average range when compared to her same-aged peers. Dr. Barta noted that the Student's unique abilities made her overall academic achievement level difficult to summarize in a single score, such as the Total Achievement Score. A more accurate picture of her academic achievement can be seen when looking at composite and individual subset scores rather than the Total Achievement score. All of those scores placed the Student in the Average to High Average range, with the sole exception of the writing fluency measure, where she scored in the Low Average range. P59, pp7-8.

Language

198. The Student scored in the Average range on the Comprehension of Instructions and Speeded Naming subtests of the NEPSY-II. She scored in the Exceptionally Low range on the Oromotor Sequences subtest, which assesses oromotor coordination by repeating articulatory sentences and tongue twisters. This score suggests that the Student demonstrated poor motor control speech production. Dr. Barta indicated that these motor control issues were likely primarily due to executive functioning difficulties rather than a physical/motor or communication problem. P59, p 9.

Communication

199. Speech Language Pathologist (SLP) Rachel Wells, M.Ed., performed the communication skills portion of the IEE. P59, p10.

200. The Student's speech sounds, speech fluency, and voice and resonance abilities were all found to be within normal limits. P59, pp10-11.

201. Ms. Wells used the CELF-5 to assess the Student's receptive and expressive language skills. The CELF-5 includes a battery of structured tasks, observation, and interaction-based tasks. The Student's Core Language Score placed her in the Average range of overall language functioning. The Student scored in the High Average range of receptive language functioning and the Average range in the area of expressive language. Overall, the Student's performance on the CELF-5 indicates receptive and expressive language skills that fall within normal limits and likely do not impede her participation in an academic setting. Ms. Wells noted that there was a statistically significant difference between the Student's receptive and expressive language scores, with much stronger receptive language abilities than expressive language skills. This indicates that it is likely very difficult for her to express the full extent of her knowledge and understanding of academic subjects. P59, pp11-14.

202. Ms. Wells administered the CAPs to assess the Student's communication skills in the area of pragmatics. CAPs is a video-based pragmatic language battery composed of six subtests that fall under two domains: Pragmatic Judgment and Pragmatic Performance. Ms. Wells administered the full battery of tests. The Student scored in the Below Average Range on the Pragmatic Judgement Index, which measures the ability to interpret contextualized social cues, understand implied requests, and awareness of basic social routines. She also scored in the Below Average range on the Paralinguistics Index, which suggests that she is likely to have difficulty interpreting nonverbal social cues and effectively communicating her own intent. The Student's score on the Pragmatic Performance Index was in the Low Average range. The Student scored in the Exceptionally Low range on the Social Context Appraisal (Reading Context Cues) subtest, indicating that she likely has difficulty reading social contexts, which has a significant impact on her ability to 'decode' social situations, especially those where the spoken words and nonverbal cues are incongruent. She also scored in the Exceptionally Low range on the Paralinguistics Signals (Using Nonverbal Cues) subtest, which measures the ability to use non-verbal cues, such as facial expressions, tone of voice, and overall body language to express various communicative intents. P59, pp15-17.

203. In sum, Ms. Wells concluded that an examination of the Student's pragmatic performance revealed her greatest strengths to be on tasks measuring an awareness

of basic social routines and use of social routine language. Performing well on these tasks demonstrates her ability to decide whether greetings, requests, conversational turn-taking, etc., are appropriate or not, as well as demonstrates an ability to perform means-end tasks with appropriate language. The Student also demonstrated strengths in expressing emotions. Despite these strengths, the Student had significant difficulty with paralinguistic cohesion, or the ability to detect a speaker's intent and express a variety of intent with the help of nonverbal signals, such as facial expressions, tone of voice, inflections in prosody, gestures, and overall body language. Across tasks, the Student tended to accept verbal statements literally, without noticing situational or nonverbal cues that might indicate sarcasm, hesitation, or incongruence between spoken words and nonverbal communication. This corresponds to her overall Core Pragmatic Language Composite of 78 and a percentile rank of 7 (Below Average).

204. Ms. Wells noted that the Student had many strengths, including solid receptive and expressive language skills, age-appropriate speech sounds, voice, and fluency. She also concluded that the Student's social/pragmatic language interaction style was consistent with her diagnosis of autism. Ms. Wells concluded that, given the lack of understanding and appreciation for neurodiversity among the average neurotypical communication partner, the Student's communication style likely impairs her ability to 'read' neurotypical social situations, understand subtle shifts in communication, and 'follow' the emotional gist of middle school conversations. Additionally, the Student demonstrated weaknesses in her ability to shift her point of view to another's perspective or consider that another individual might experience something differently than she would. These skills are critical for developing and maintaining meaningful friendships in middle and high school and, given both her self-report of difficulties with perspective-taking and her description of her social interactions at school, Ms. Wells concluded the Student would benefit from support to understand and navigate the social 'flow' of middle school. P59, pp20-21.

Attention & Executive Functioning

205. Dr. Barta used the TEA-ch2, WRAML-3, the Animal Sorting and Inhibition subtests of the NESPSY-II and BRIEF-2 to examine the Student's attention and executive functioning abilities. P59, p21.

206. The Student's overall scores on the WRAML-3 placed her in the Below Average range. The Student performed in the Average range across all attention indices of the TEA-ch2. Dr. Barta highlighted the Student's Below Average performance (in the 2nd percentile) on the Troy Dual Task of the TEA-ch2, noting that the Student's score suggested an unusual level of difficulty with attending to two equally important tasks at the same time without becoming confused or making too many mistakes. P59, p21-22. Dr. Barta emphasized that the Troy Dual Task was important because the

assessment mimics a classroom setting where the Student must track both visual and auditory information at the same time. TR863-864. On the NEPSY-II, the Student showed Above Average skills on the Animal Sorting subtest and performed in the Average to Above Average range on the Inhibition subtests. P59, pp26-27.

207. Dr. Barta also used the BRIEF-2 to assess the Student's executive functioning. Ms. Hodapp, the Parents and the Student completed the BRIEF-2. Most of the Student's issues were with behavioral and emotional regulation. TR868-869. The Parents and Ms. Hodapp rated the Student's emotional control as clinically elevated, indicating significant problems with the Student's tendency to overreact to events, sudden outbursts, frequent mood changes, and excessive periods of emotional distress. Ms. Hodapp's responses indicated that the Student sometimes had explosive angry outbursts for little reason, that small events triggered big reactions, that the Student reacted more strongly to situations than other children, and that the Student became upset too easily. TR869-872; P59, pp23-26.

208. Dr. Barta summarized the results of this assessment:

Interrater agreement was found in most areas, including a strength of the Student in Cognitive Regulation Index (comprised of Initiate, Working Memory, Plan/Organize, Task-Monitor, Organization of Materials). Significant concerns were indicated by all raters for Emotional Regulation Index (comprised of Inhibit, Self-Monitor). The level of dysregulation in this area are [sic] observed by the Student and others around her as a tremendous area of challenge. Another area of concern across raters, to varying degrees of clinical significance, includes Behavioral Regulation Index items (comprised of Shift, Emotional Control). While parent and self-reports indicate Clinically Significant scores for Global Executive Composites, teacher report indicates Average.

P59, p23.

Memory and Learning

209. Dr. Barta used the WRAML-3 to measure the Student's memory and learning abilities. The Student's overall performance was in the Low Average range on the General Immediate Memory Index, which indicates levels of new learning and immediate recall were at levels somewhat lower than same-aged peers. The Student's performance on the General Delayed Index demonstrated an ability to retain visual and verbal information over time comparable to same-aged peers. Dr. Barta pointed out a significant discrepancy between the Student's scores in visual memory compared to

auditory/verbal memory. Dr. Barta noted that, while the Student's verbal memory was a strength, her visual learning and immediate recall scores were noticeably lower than same-aged peers. The Student scored in the Low Average range on the Visual Delayed Memory Index but demonstrated an Average ability to recognize or recall previously learned meaningful visual information similar to same-age peers. Dr. Barta concluded that, based on these test results:

[I]f the Student is having difficulty remembering information she has just seen, she will benefit significantly from waiting approximately 20 minutes. This is approximately how long brains take to begin consolidating new information, and the Student demonstrates better skills waiting for this process to happen. Meaningful information (e.g. picture of a school scene) is significantly easier for the Student to remember than abstract (e.g. shapes) imagery. Her ability to freely recall abstract visual information falls in the Below Average range.

P59, pp27-28.

Sensorimotor

210. The Student's visual, motor, sensory, and perceptual functioning was measured using the NEPSY-II. She scored in the Below Average range on the Arrows and Visuomotor Precision subtests, indicating poor visuospatial skills in judging line orientation and poor fine-motor coordination and speed. She also performed in the Low Average on finger dexterity and motor speed with her non-dominant hand. The rest of subtest results were in the Average to High-Average range. P59, pp30-31.

211. Dr. Barta administered the Beery VMI to assess the Student's ability to integrate her visual and motor abilities. The Student's performed in the Average range across all test domains. P59, p32.

Social Emotional and Adaptive Functioning

212. Dr. Barta used the Vineland-3 to assess the Student's adaptive skills. Ms. Parent completed the parent scale and Ms. Hodapp completed the teacher scale. The parent report demonstrated that the Student's overall level of adaptive functioning fell well below the normative mean. Ms. Parent's scores on the Daily Living Skills domain placed the Student in the 7th percentile. The scores on the Socialization domain placed the Student in the 3rd percentile. Ms. Hodapp's ratings showed that the Student's overall level of adaptive functioning was somewhat below the normative mean. Ms. Hodapp's ratings on the Socialization domain placed the Student in the 1st percentile. The Socialization domain reflects the Student's functioning in social situations. P59, pp33-36; TR876-877.

213. The Student's social, emotional, and behavioral functioning was assessed with the CBRS. The Parents reported very elevated concerns with: Emotional Distress, Defiant/Aggressive Behaviors, Perfectionistic and Compulsive Behaviors, Violence Potential Indicator, and Physical Symptoms; and elevated concerns with Social Problems. The Parents reported that these problems seriously affect the Student's functioning very frequently in the home, and often in academic and social settings. Ms. Hodapp filled out a teacher report as part of the assessment. She reported elevated scores in: Defiant/Aggressive Behaviors and Social Problems, noting that the Student's problems seriously affected her functioning occasionally in academic and social settings. Ms. Hodapp commented that it was difficult to really tell how stressed the Student is at times because she masks her feelings pretty well. P59, pp36-39. The social problems measure looks at how well the Student understands how to sustain or maintain a friendship. TR882-883.

Autism

214. Dr. Barta used the following assessment tools to evaluate the Student's autism: The ASRS, portions of the NEPSY-II, and the ADOS-2. P59, p39.

215. The ADOS-2 categorizes symptoms into three areas: non-spectrum, autism spectrum, and autism. There were such a significant number of symptoms that overlapped very clearly with an autism diagnosis that the Student fell comfortably within the autism range. TR879. Socially, the Student demonstrated unusual eye contact and did not direct facial expressions toward the examiner. Dr. Barta also noted that the Student's insight into typical social situations and relationships was extremely limited and she demonstrated almost no awareness of her own contributions to social problems. P59, pp39-40.

216. On the ASRS, the Parents' report demonstrated a total score that fell within the elevated range. The Parents reported very elevated ranges in the following areas: unusual behaviors, adult socialization, behavioral rigidity, sensory sensitivity. P59, pp40-41.

217. The Student completed the Theory of Mind and Affect Recognition subtests of the NEPSY-II. She demonstrated an overall low average ability to comprehend perspectives, experiences, and beliefs of others within social contexts. She also demonstrated an overall below average ability to assess facial affect (how others express emotions). Dr. Barta noted that the Student's facial affect difficulties were likely related to her autism and are likely to contribute to misinterpretation in social interactions, difficulty building relationships, being perceived as insensitive, and struggling in group settings. P59, pp41-42. These deficits put the Student at a disadvantage in social situations and may cause difficulties with relationships. TR887.

218. Dr. Barta concluded that the Student met the criteria for Autism Spectrum Disorder Without Intellectual Impairment, With Low Adaptive Functioning and With Language Impairment under the Diagnostic and Statistical Manual, 5th Edition (DSM-5). She diagnosed the Student with Autism Spectrum Disorder – Level 2, requiring support, and Attention Deficit Hyperactivity Disorder: Hyperactivity presentation, Moderate. P59, p42&p44. Low adaptive functioning means that the Student needs help during the day to support her functioning. TR896.

219. Dr. Barta found that the Student's intelligence and academic skills generally fell within expected limits, but that her memory profile suggests that her learning will be most impacted and taxed if she is not allowed time to absorb visual information. If assessed about 20 minutes later, the Student will likely demonstrate her knowledge better. Dr. Barta also found that the Student had a significant and persistent pattern of difficulties with abstract visual and verbal memory, which was likely due to executive functioning problems. Dr. Barta noted a pattern where, if the Student does not understand a social expectation, she experiences activation of a fight or flight response, her executive functioning quickly declines, and she engages in a reactive action. P59, p42-43. Part of what is triggering the Student's fight or flight response is her lack of social understanding and ability to effectively communicate and problem solve. TR898.

220. Dr. Barta concluded that the Student qualified for special education services as a child with a disability under the category of autism. Dr. Barta acknowledged that the Student does not demonstrate academic deficits. She found that her communication, health, and social emotional deficits clearly created a significant educational impact and that the Student required specialized goals and explicitly taught instruction. Dr. Barta concluded that developing skills in socialization, social/emotional reciprocity, social pragmatics, and flexibility would be appropriate for the Student and that SDI was appropriate in the area of Communication and Social Emotional skills, at a minimum. P59, p44-45. Dr. Barta explained that the Student needs help developing these skills because, if she were going to pick them up naturally, she would have already. Part of the reason why she is not picking up these skills is that she has autism, which does not just go away. TR899-902.

221. Dr. Barta's opinion is that the Student requires SDI to remediate her social and communication deficits. TR904. Dr. Barta's recommendations included developing an FBA at school and implementing a Behavioral Intervention Plan (BIP) and enrolling the Student in a structured social skills group led by a therapist or behavioral specialist experienced in working with neurodiverse adolescents. P59, pp45-46.

222. Dr. Barta also recommended speech-language therapy focused on social/pragmatic language with the goal of improving the Student's understanding of

neurotypical social interactions and her ability to handle social interactions appropriately. Dr. Barta further recommended that the Student attend a social group with similar-aged peers with a focus on understanding autism, building connections, and engaging in perspective taking. P59, pp46-47.

223. Dr. Barta includes in her report suggested IEP goals for the Student in the areas of Social-Emotional Regulation, Social-Pragmatic Communication and Behavioral and Emotional Regulation. P59, p50.

Dr. Barta's Opinions Regarding the Appropriateness of the District's Evaluation

224. Dr. Barta's testified that an FBA can be used to look at just about any behavior in school that is impacting a student and can be very helpful to track data. She opined that, in the Student's case, an FBA would have provided helpful data to track what was happening with regard to her behavioral incidents, so patterns could be identified. In her opinion, the District should have conducted an FBA during the evaluation process. TR906-908.

225. Dr. Barta's professional opinion is that, knowing that the Student had been diagnosed with autism, it was inappropriate for the District to rely solely on the BASC-3 to capture the social and behavioral needs of the Student. The BASC-3 is too broad a tool and should have been supplemented with additional rating scales. TR912-914 & 916-918. Dr. Barta testified that the District should have at least considered using the Autism Spectrum Rating Scales because this measure provides information about the way autism is affecting the particular child being evaluated. TR915, 918.

226. Dr. Barta also opined that it was inappropriate to use the same assessment tool, the BASC-3, to measure both the Student's social behavioral skills and her executive functioning. The assessment does not ask a sufficient number of questions specific to executive functioning to adequately measure that area of performance. TR914-915.

227. In Dr. Barta's opinion, it was also inappropriate to send a PWN with the draft evaluation reports because it communicates that the school may have already made up its mind. TR920.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities

Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The District bears the burden of proof in this matter. RCW 28A.155.260(1). In a due process hearing, the burden of proof is a preponderance of the evidence. RCW 28A.155.260(3).

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

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.” *Rowley*, 458 U.S. at 206-07.

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. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

(III) caused a deprivation of educational benefits.

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

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.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). 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. *Id.* at 400. The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* at 399. Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 391. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . .” *Id.* at 402.

Whether the District failed to comply with its Child Find obligations during the 2022-23 school year (4th Grade)

7. Districts are required to “conduct child find activities calculated to reach all students with a suspected disability for the purposes of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability.” WAC 392-172A-02040(1).

8. The law relating to determining when a school district’s Child Find duties are triggered is not well settled. In 2014, the Ninth Circuit Court of Appeals recognized:

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

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

9. In 2016, the Ninth Circuit issued its decision in *Timothy O.*, which stands for the proposition that a disability is “suspected,” and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016). In that case, a staff member informally observed the student and advised that no additional testing was necessary. The court held that “if a school district is on notice that a child may have a particular disorder, it *must* assess that child for that disorder, regardless of the subjective views of its staff members concerning the likely outcome of an assessment.” *Id.* at 1121. Notice that a child may have a particular disability can come from expressed parental concerns about a child’s symptoms, opinions expressed by informed professionals, or less formal indicators such as the child’s behavior. *Id.* 1121.

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

11. In the present case, the District’s Child Find duties were triggered at the end of the 2022-23 school year under both the standard articulated in *Timothy O.* and the standard articulated in *Cari Rae* because the District should have suspected that the Student had a disability *and* that she may need special education services at that time. At that point, the Student had hit other students during recess, given another student a concussion, punched an adult chaperone in the face, and eloped on four occasions from the classroom and while on field trips. The District also knew – from Dr. Bansal’s May 2, 2023, report – that the Student had been diagnosed with generalized anxiety disorder, had a suspected ADHD diagnosis, and there was a concern that she may be experiencing seizures. The District therefore should have suspected the Student had a disability.

12. The District should have also suspected that the Student may need special education services by the end of the school year because, although the interventions attempted by the Student's teacher helped reduce the Student's behavioral incidents for a while, there was a clear regression in behavior at the end of the year. This regression, despite attempted mitigation efforts, put the District on notice that the Student may need special education services to address her behaviors. Furthermore, Mr. Darring felt that the Student needed additional support, from a social emotional standpoint, that he was not able to adequately provide as her general education teacher.

13. In sum, given the nature and severity of the aggressive behavior; the increasing number of incidents at the end of the school year; the pattern that her fourth grade teacher, Mr. Darring, had identified regarding the Student's dysregulation and inability to regulate herself; and the Student's diagnoses at that point, the District had sufficient notice at the end of the 2022-23 school year that the Student's social, emotional, and behavioral challenges may indicate that she had a disability that would require special education services. The District's failure to identify the Student at that time violated its Child Find obligation.

14. Once a district is on notice that a Student may have a disability that requires special education services, it must decide whether or not to evaluate a student within a reasonable time period. See *W.B. v. Matula*, 67 F.3d 484, 501 (3rd Cir. 1995) (*overruled on other grounds by A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791 (3rd Cir. 2007)). The District failed to make a determination on whether or not to evaluate the Student until December 8, 2023. It is concluded that failing to identify the Student by the end of her fourth-grade year and waiting three months before deciding to conduct an evaluation violated the District's Child Find obligations under the IDEA.

15. A Child Find violation is a procedural violation of the IDEA and the ALJ must determine if the violation led to a denial of FAPE. See *Timothy O.*, 822 F.3d at 1124; see also *S.B. v. San Mateo Foster City Sch. Dist.*, 2017 U.S. Dist. LEXIS 217440 at *54-55. "A procedural violation denies a FAPE if it results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010) (citations omitted); see also WAC 392-172A-05105.

16. In this case, it is determined below that the Student was eligible for special education services effective April 3, 2024. Had the District identified the Student and begun the process of evaluating her for special education services at the start of her fifth-grade year, it is likely that the effective date of this determination would have been earlier. The District's failures led to a denial of educational benefits and lost

educational opportunity. The Student continued to demonstrate the same pattern of social and emotional dysregulation that had been increasing at the end of the prior school year and this impacted her ability to access her education. The District therefore impeded the Student's right to FAPE.

Whether the District violated the IDEA and denied the Student FAPE by significantly impeding the Parents' right to meaningfully participate in the Student's educational program during the 2023 – 2024 school year

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

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

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

Whether the District predetermined that the Student would not qualify for special education services

18. Predetermination occurs when the school district makes educational decisions too early in the process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the team. See *Deal v. Hamilton County Board of Education*, 392 F.3d 840, 857-859 (6th Cir. 2004). Predetermination is a procedural violation of the IDEA. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). However, predetermination is not synonymous with preparation. The fact that a district may have come to a meeting with pre-formed opinions is not dispositive of the issue, so long as district team members "are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006) (quoting *N.L. v. Knox County Schs.*, 315 F.3d 688, 694 (6th Cir. 2003)).

19. Here, the evidence demonstrates that the District concluded that the Student was, at best, going to be found to qualify for a 504 plan, not special education services. The Student's fate was effectively decided at the October 25, 2023, Care Team meeting when the team – after acknowledging that the Parents wanted an IEP – concluded that a "504 would make more sense for her." At that point, the District had not yet decided whether to even conduct an evaluation. Mr. Brownstein's repeated

statements – in-person and in writing – to Ms. Parent that the Student would not qualify for special education services also demonstrate that the District had made up its mind. These statements were made before the District had decided to evaluate the Student; after the evaluation had begun, but before it had been completed; and at the start of the evaluation meeting itself. In addition, the District attached PWNs to several of the draft evaluation reports concluding that the Student was not eligible, indicating a decision had already been made in advance of the evaluation meeting.

20. This is not a case in which the District engaged in planning prior to the evaluation meeting but was willing to consider the Student's eligibility for special education services as an option. To the contrary, the evidence clearly shows that the District had made up its mind that the Student would not qualify and that a 504 plan would "make more sense for her." This determination remained unchanged at every stage of the process up to and including the evaluation meeting on April 3, 2024. This constitutes predetermination.

21. By unilaterally deciding that the Student would not qualify for special education services, the District effectively cut the Parents out of any meaningful collaborative process. It is therefore concluded that the District's predetermining that the Student would not qualify for special education services infringed upon the Parents' opportunity to participate in the decision-making process and constitutes a denial of FAPE, beginning on October 25, 2023.

REACH Meetings

22. The Parents also argue that the District impeded their right to meaningfully participate in the Student's educational program by failing to include them in the REACH meetings.²⁷ However, the District was not required to do so. See WAC 392-172A-05001(1)(a) (Parents of a student eligible for special education services must be given the opportunity to participate in meetings "with respect to the identification, evaluation, educational placement and the provision of FAPE to the student."). Although the REACH Team certainly shared information about the Student and discussed and tracked interventions to try to address immediate concerns, the purpose of the meetings was not to decide referral questions, evaluate the Student or address placement. The Parents were invited to attend the SIT meeting, the purpose of which was to decide whether the Student would be evaluated. It is concluded that failing to include the Parents in the earlier REACH meetings did not violate the IDEA.

²⁷ Parents' Brief, p18.

Whether the District failed to abide by IDEA referral and evaluation timelines

Referral Timeline (25 school days from date of written request for evaluation)

23. Once a Parent has initiated a referral request, the school district must document the request for an initial evaluation, including the date the request is received. The request for evaluation must be in writing. The school district must also (1) notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student; (2) collect and examine existing school, medical and other records in the possession of the parent and the school district; and (3) within twenty-five school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. WAC 392-172A-03005.

24. Here, the Parents requested that the Student be evaluated for special education services during the meeting they had with Mr. Darring shortly after they had provided Dr. Ballard's report to him, on August 28, 2023. It is unclear how, when and in what fashion the evaluation request was communicated to the District administration. The Parents thought Mr. Darring was going to relay their request to the appropriate District staff members. Mr. Darring was unclear during his testimony as to what he did with Dr. Ballard's report and whether he passed the Parent's evaluation request on to anyone.

25. What is clear is that by September 20, 2023, when the REACH Team met for the first time, the District was on notice that the Parents had made the request because this was documented in the meeting notes. And, the Parents asked Mr. Darring in writing about the status of their evaluation request on September 21, 2023: "Beyond this week we were hoping there would be outreach to admin to kick off the IEP/504 process but we're glad to do it and take it off your plate as we know field trips are time consuming." To the extent a written request is necessary to trigger the obligations under WAC 392-172A-03005, it is concluded that Mr. Parent's email suffices and that the 25 school day timeline began running September 21, 2023, and ended on October 27, 2023.

26. As noted above, the District did not make the decision whether to evaluate the Student until December 8, 2024, which was six weeks after the deadline of October 27, 2023. This is a violation of WAC 392-172A-03005.

Evaluation Timeline (35 school days after receipt of consent)

27. The District also failed to complete its evaluation of the Student within the required timeline. The District had 35 school days after written consent had been provided by the Parents to fully evaluate the Student and arrive at a decision regarding

eligibility, unless the Parent agreed to an extension. WAC 392-172A-03055(3). The Parents provided written consent on December 12, 2023. The 35-day deadline was therefore February 15, 2024. As of February 15, 2024, the evaluation was incomplete through no fault of the Parents. Rather, Mr. Brownstein had neglected to assess the Student in the areas of communication and listening comprehension. It was only after the Parents notified him of the failure to include these areas of assessment in the draft report that Mr. Brownstein requested a 35-day extension. The Parents did not agree to the extension. Ms. Parent emphasized that she had not agreed to an extension in an email to the District. She also testified that she never agreed to an extension. Mr. Brownstein's testified only that he thought the Parents had agree to an extension based on a conversation he had with Ms. Parent, but there is nothing in writing indicating when the conversation took place or documenting any such agreement.

28. It is concluded that the Parents did not agree to an extension and that the 35-day delay would not have been necessary absent Mr. Brownstein's failure to address agreed upon areas of evaluation in a timely fashion.

29. As discussed below, the Student has been found to qualify for special education services effective April 3, 2024, and the District's conclusion to the contrary has been determined to be incorrect. Had the District referred the Student for evaluation within the 25-day time frame and completed that evaluation within the 35-day time frame, the likely effective date of her eligibility for special education services could have been as early as January 9, 2024. The initial six-week delay in referring the Student for evaluation combined with the additional 35-day delay to complete the evaluation therefore led to a deprivation of education benefits and educational opportunity, and denied the Student FAPE. This is too long a period of time to keep the Parents and the Student in limbo as to the Student's eligibility for special education services. Accordingly, it is concluded that the District impeded the Student's right to FAPE by failing to abide by the referral and evaluation timelines.

Whether the District violated the IDEA and denied the Student a FAPE from September 20, 2022, to the present by failing to conduct an appropriate evaluation of the Student during the 2023-24 school year

30. In conducting an evaluation of a student to determine eligibility for special education and related services, the District must follow the procedures set forth in WAC 392-172A-03005 to 03040.

31. Decisions about how to evaluate a student are left to the district's discretion. Indeed, "[t]he IDEA does not prescribe substantive goals for an evaluation, but provides only that it be 'reasonably calculated to enable the child to receive educational benefits.'" *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1185 (W.D.

Wash. 2002). Therefore, when reviewing the appropriateness of a school district's evaluation, the focus is on whether the district adequately followed the IDEA's procedures in conducting the evaluation, not the substantive result of the evaluation. *E.P. By & Through J.P. v. Howard Cty. Pub. Sch. Sys.*, 2017 WL 3608180, *18 (D. Md. Aug. 21, 2017), *aff'd sub nom. E.P. v. Howard Cty. Pub. Sch. Sys.*, 727 F. App'x 55 (4th Cir. 2018) (appropriateness of evaluation based on whether proper methodologies were utilized, not results or conclusions); *W. Chester Area Sch. Dist. v. G.D.*, 2017 WL 379440, *3 (E.D. Pa. Jan. 25, 2017) (pivotal question for appropriateness of evaluation is whether the district's methods were adequate).

32. The appropriateness of an evaluation must be determined in light of what was known, or should have been known, at the time the evaluation was conducted. Also, whether an evaluation is appropriate should not be judged in hindsight. This is the so-called "snapshot rule." See *Adams v. Oregon*, 195 F.3d 1141, 31 IDELR 130 (9th Cir. 2001); see also *R.Z.C. v. Northshore Sch. Dist.*, 755 F. App'x 658 (9th Cir. 2018).

Whether the District's spring 2024 evaluation of the Student assessed her in all areas of suspected disability and was sufficiently comprehensive

33. A school district must ensure that the evaluation of the Student "is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." WAC 392-172A-03020(3)(g).

34. When evaluating a student for special education services, each district must also ensure that the student "is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." WAC 392-172A-03020 (3)(e).

35. As a preliminary matter, the evaluation notes that the Student had been diagnosed with autism and generalized anxiety disorder, and that she had absence seizures. The District sought permission to assess the Student in the following areas: General Background, Math, Medical-Physical, Reading, Written Language, Social/Behavior, Study/Organizational Skills. The Parents added the following areas: Vision, Communication and Listening Comprehension.

36. It is concluded that the District's evaluation failed to adequately address the Student's seizure disorder. Indeed, Mr. Brownstein failed to even consider whether the seizure disorder could be impacting the Student. As noted above, on March 26, 2024, Mr. Brownstein did not think the school nurse should attend the evaluation because "the nurse's write up of the Student's multiple diagnoses does not impact her eligibility for special education services" and that her input would only be needed "in a 504 plan or medical plan to support the Student." Ms. McKee ultimately did attend

the meeting. She believed that the Student should be found eligible for special education services and objected to District's decision to the contrary. The evaluation report does not contain any analysis of the Student's absence seizures or the potential impact of this health condition on her eligibility for special education services.

37. By failing to adequately address the Student's seizure condition, the District failed to ensure that the Student was assessed in all areas of suspected disability or that the evaluation was sufficiently comprehensive as required by WAC 392-172A-03020 (3)(e) & (g).

Whether the District used a variety of assessment tools and strategies to evaluate the Student

38. When a school district conducts a special education evaluation, a "group of qualified professionals selected by the school district" must:

- (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:
 - (i) Whether the student is eligible for special education services as defined in WAC 392-172A-01175; and
 - (ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum . . .

WAC 392-172A-03020(2). The group cannot use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. *Id.* The group must use a variety of technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. *Id.*

39. Here, the District relied on one test measure – the BASC-3 – to measure both social/emotional functioning as well as executive functioning, the two primary areas of concern. Given that the District knew the Student had autism, it was not appropriate to rely on this one test measure. In Dr. Barta's professional opinion, knowing that the Student had been diagnosed with autism, it was inappropriate for the District to rely solely on the BASC-3 to capture her social and behavioral needs. The BASC-3 was too broad a tool and should have been supplemented with additional rating scales. Mr. Brownstein did not supplement the BASC-3 with any additional assessments. Indeed, he failed to use any assessments at all that were specifically designed to assess children with autism.

40. Mr. Brownstein also used the BASC-3 to assess the Student's executive functioning. Dr. Barta opined that this was also inappropriate because the assessment does not ask a sufficient number of questions specific to executive functioning to adequately measure that area of performance. When asked why he did not use an assessment such as the Behavior Rating Inventory of Executive Function (BRIEF-2), Mr. Brownstein testified that – while the BRIEF-2 was a great instrument – he was trying to limit the amount of paperwork he was sending to Parents and staff. Saving paperwork is not a reasonable justification for failing to use an admittedly “great instrument.”

41. The only other strategy employed by the District to evaluate the Student in the areas of social and emotional learning and/or executive functioning was to conduct a single classroom observation, conducted by Mr. Brownstiein that lasted 20 minutes. Although Ms. Filatov testified that she observed the Student in class and at recess, there is no mention or documentation of these observations in the evaluation report.

42. The only interview that is documented in the evaluation was a follow-up discussion that Ms. Filatov had with Mr. Darring regarding his responses on the CELF-5 pragmatics profile. Although Ms. Filatov testified that she generally recalled conversations with Ms. Parent, she could not recall the details of those discussions. Ms. Filatov did not reference or detail any of these conversations in her report. Mr. Brownstein testified that he talked to Mr. Darring a few times, but, as with Ms. Filatov, he did not include the details or results of any of those discussions in the written evaluation. Mr. Brownstein did not interview Ms. Parent.

43. Individuals contributing to an evaluation report are required to document the results of their individual assessments or observations. WAC 392-172A-03035(2). To the extent Ms. Filatov and Mr. Brownstein observed the Student or conducted interviews that were not documented in the report, they violated this requirement. Mr. Brownstein made it clear in his testimony that all the information he considered was included in the written report. If he considered and relied upon information gathered during observations and interviews that were not detailed in the report, this was inappropriate.

44. It is concluded that the District's reliance on one test measure to assess the Student's primary areas of difficulty and the fact that it used only one other strategy in the form of a 20-minute observation of the Student is not sufficient to meet the requirements of WAC 392-172A-03020(2).

Whether the District reviewed existing data as part of its evaluation

45. As part of an initial evaluation, the evaluation team and other qualified professionals must, if appropriate, review existing data on the student, including

“evaluations and information provided by the parents of the student.” WAC 392-172A-03025 (1)(a).

46. Dr. Ballard’s August 3, 2023, evaluation was an important catalyst for the Parent’s request for the evaluation. Dr. Ballard diagnosed the Student with autism after administering seven different assessments. One of these instruments, the SRS-2, was a 65-item scale that measures symptoms associated with autism, including social communication. Dr. Ballard concluded that the Student needed “substantial support for social communication.” She also recommended therapy to practice advanced “communication skills.” Ms. Filatov did not read Dr. Ballard’s report. This was inappropriate, especially since Ms. Filatov recognized that social communication was a primary area of concern that she was tasked with evaluating. It is concluded that this constituted a violation of WAC 392-172A-03025.

Whether the District used assessment tools and strategies that provided relevant information in determining the needs of the Student

47. When a school district conducts a special education evaluation, the school district must also ensure that “assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.” WAC 392-172A-03020(h).

48. As noted by Dr. Barta, the Autism Spectrum Rating Scales (ASRS) are designed to uncover the unique presentation of autism in an individual child. Although qualified to administer the ASRS, Mr. Brownstein did not to administer this test because he felt the BASC-3 would sufficiently cover the Student’s behavioral issues. Mr. Brownstein also declined to conduct an FBA, which would have helped identify patterns of behavior, information that Mr. Brownstein acknowledged was relevant to the evaluation. In sum, the District failed to take advantage of assessment tools that would have provided relevant information and, as such, did not satisfactorily meet its obligation under WAC 392-172A-03020(h).

The District’s evaluation was inappropriate

49. For the above reasons, it is concluded that the District has failed to meet its burden to show that its evaluation, which culminated in the April 4, 2024, evaluation report, was appropriate. The remedy for this would be to order an IEE at public expense. However, by prior order, the District has already been ordered to provide an IEE, which was completed on January 21, 2025, and is described in the above findings of fact.

Whether the District violated the IDEA and denied the Student a FAPE by failing to find the Student eligible for special education and related services in April 2024

50. A student is eligible for special education if the student has a disability in one of thirteen eligibility categories and, “because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.” WAC 392-172A-01035(1)(a); 34 CFR § 300.8(a).

51. "In the context of the IDEA, 'education' extends beyond discrete academic skills and includes the social, emotional, and physical progress necessary to move the child toward meaningful independence and self-sufficiency consistent with the child's cognitive potential." *Zachary J. v. Colonial Sch. Dist.*, 2022 U.S. Dist. LEXIS 33145 *35 (E.D. Pa. 2022) (citing *Sean C. v. Oxford Area School District*, 2017 U.S. Dist. LEXIS 129199 *19 (E.D. Pa. 2017) (quoting *M. v. Penn Manor Sch. Dist.*, 2015 U.S. Dist. LEXIS 4789 *12 (E.D. Pa. 2015)). See also *Mr. I v. Me. Scho. Admin. Dist. No. 55*, 480 F.3d 1, *12-13 (1st Cir. 2007).

Whether the Student has a disability

52. As of April 3, 2024, the Student has been diagnosed with multiple conditions, including ADHD, epilepsy and autism. ADHD and epilepsy both fall under the eligibility category of “Other Health Impairment,” which is one of the thirteen eligibility categories under WAC 392-172A-01035. Autism is also one of the thirteen recognized eligibility categories. There is no question that the Student has clearly identified disabilities and that she is not a typically developing student, which the District admits. The Student therefore meets the first part of the test for eligibility.

Whether her disabilities caused an adverse educational impact

53. The Student’s education includes both academics and social and emotional learning. The District limits its argument to the “academics” part of this equation. The Student’s academic progress and grades are not the issue. This case is about the Student’s social and emotional learning and progress. The Parents are not seeking SDI in discreet academic areas; rather, they have consistently argued that the Student needs SDI in the areas of social and emotional behavior and social communication. They are correct.

54. The Student’s disabilities, particularly her autism, were clearly having an adverse impact on her social and emotional education and learning as of at least August 2023. Dr. Ballard acknowledged this in her August 2023 report. She identified

emotional regulation and physical self-regulation as areas of significant difficulty and concluded that the Student struggled with social and emotional functioning. She also found that, because of her autism, the Student needed substantial support with social communication.

55. The Student's behavioral and emotional incidents at school provide compelling evidence of the adverse educational impact her disabilities were having on her social and emotional functioning and growth. From September 2022 to the date of the evaluation meeting, the Student had eloped on seven different occasions, two of which were during the administration of assessments. The Student also had four extremely severe behavioral incidents, one of which required the school principal to physically restrain her. Aside from these extreme examples, the Student had trouble working with other people in general. The manifestations of her disabilities were also impacting her in smaller ways, such as when she would fail to complete her schoolwork or tear it up when she became overwhelmed by her frustration over not understanding something.

56. The evidence shows that, although the Student was successful academically, her disabilities were causing her to overreact to situations, behave inappropriately and struggle to form friendships. Social emotional skills and learning are part of the school curriculum and an important part of a student's education. The multiple incidents of hitting peers and adults, destroying personal property and eloping clearly impacted the Student's social and emotional learning and development. The consequences of these behaviors have led to social isolation, emotional distress and school avoidance behaviors.

57. Ms. Filatov's evaluation confirmed that the Student's disabilities were causing deficits in social communication that were impacting her education. The Student scored below average (9th percentile) on a test that measured her ability to pick up on verbal and non-verbal cues. Ms. Filatov noted that the Student needed substantial wait time when responding to the test questions, a luxury she did not have when interacting with her peers. The Student's test results also demonstrated that her ability to successfully interact with peers in a positive, supportive way was borderline delayed. Ms. Filatov found that the Student demonstrated volatile and inappropriate behaviors and believed that there was a connection between these behaviors and the deficits the Student demonstrated with her social communication skills. In sum, Ms. Filatov reached the same conclusion as Dr. Ballard, which was that the Student struggled with social and emotional functioning due to her social communication deficits.

58. The multiple scores in the clinically significant and at-risk ranges on the BASC-3 in the area of social and behavioral functioning, and scores in the "Elevated" and "Extremely Elevated" range on the Emotional Control Index of the executive functioning

measure of the BASC-3 provide further support for the impact the Student's multiple disabilities were having on her social and emotional progress and development.

59. Moreover, Mr. Darring's testimony on this issue is given significant weight because he worked with and got to know the Student over the course of two full years. During this time, he noticed that the Student's not wanting to come to school was increasing. He understood from the Parents and his own observations that this school avoidance was due to anxiety about peer interactions, being successful and being able to control her emotions. He testified that the anxiety and stress he saw in class with the Student impacted her learning.

60. Dr. Barta's evaluation confirmed the Student's autism diagnosis. Dr. Barta also found that the Student had deficits in the areas of communication, health, and social emotional skills and that these deficits created a significant educational impact. Although Dr. Barta's evaluation was done eight months later, the evidence indicates that the Student's symptoms have remained constant and it is reasonable to conclude that she had these adverse impacts as of April 2024.

61. In sum, it is concluded that the Student's disabilities were adversely impacting her education as of April 2024.

Whether the Student needs special education and related services

62. It is concluded that the Student needs special education services in the area of social and emotional learning. Mr. Darring's testimony is given significant weight on this issue. He had long conversations with the Student about elopement, physical aggression, and emotional regulation, and emphasized that there were times when he wanted a clear plan in place to address elopement and to keep the Student and her classmates safe. Although he was able to support the Student in a lot of ways, he remained frustrated with his ability to adequately intervene and support the Student when her stress and anxiety was impacting her learning. He testified that as a general education teacher, he simply was unable to provide the support she needed from a social and emotional standpoint.

63. The Student's need for special education services is demonstrated by her inability, due to her autism, to control her fight or flight response when faced with a social situation she does not understand. This inability to effectively communicate and problem solve has a negative impact on the Student's ability to form friendships with peers and interact with adults. The Student's need for special education services is also supported by the fact that the interventions that have been tried so far have not been effective. Indeed, as set forth in the above findings of fact, the Student's dysfunctional behavior and the negative impact her behavior was having on her social

and emotional progress continued in the months after the evaluation had been completed. Her current teachers report continued difficulties with stress, anxiety and emotional control problems. One of teachers testified that the Student needs additional support beyond what she provided to other students, thus confirming the ineffectiveness of current interventions and a need for special education services that began back in April 2024.

64. Dr. Barta's report and testimony is given significant weight due to her specialized training with autism. Her evaluation confirmed that the Student's social and emotional learning continues to be impacted by her autism and that the Student needs special education services. Her test results demonstrated that the Student's insight into typical social situations and relationships was extremely limited and that she demonstrated almost no awareness of her own contributions to social problems. These deficits put the Student at a disadvantage in social situations and may cause difficulties with relationships. The results of the BRIEF-2 revealed significant concerns relating to the Student's emotional regulation, indicating that the level of dysregulation in this area continues to be a tremendous area of challenge. Dr. Barta concluded that the Student needed SDI in order to develop skills in socialization, social/emotional reciprocity, social pragmatics and flexibility. She determined that the Student lacks these skills and is not going to develop them on her own. She therefore needs help developing them through explicitly taught instruction. Dr. Barta's professional opinion is that the Student also needs SDI in the areas of Communication and Social Emotional skills, at a minimum. There is no evidence that the Student's deficits and corresponding needs suddenly appeared at the time of Dr. Barta's evaluation. Rather, it is reasonable to conclude from the evidence in the record that these deficits and needs existed as of at least April 2024 and the Student required the recommended SDI as of that date.

65. Here, the Student met all of the criteria for qualifying for special education services at the time the District completed its evaluation. The Student was therefore eligible, as of April 3, 2024, for special education services under the category of autism in the area of social emotional and behavioral. The Student may also be eligible for other or different special education services, including related services. The District needs to hold an IEP meeting to thoroughly review the existing data and Dr. Barta's report to make appropriate decisions concerning other potential areas of need.

66. It has been determined that the evaluation conducted by the District was lacking in several respects, as discussed above. Although the evaluation was not as thorough as it should have been, the data it did contain supports that the Student qualified for special education services at the time the evaluation was conducted. The District's conclusion to the contrary was simply not justified based on the information

it had obtained and the Student's multiple incidents of social and emotional dysregulation.

67. For these reasons, it is concluded that the District's decision that the Student was ineligible for special education services was incorrect. The Student qualified for special education services effective April 3, 2024.

Whether the District violated the IDEA and denied the Student a FAPE by significantly impeding the Parents' right to meaningfully participate in the Student's educational program during the 2024 – 2025 school year

68. As set forth above, it has already been determined that the District denied the Student FAPE as of April 3, 2024, when it erroneously found her ineligible for special education services. The FAPE denial continued through the 2024-25 school year. Because it has already been determined that the Student was denied FAPE throughout the 2024-25 school year, the additional alleged violations during that year need not be reached.

Whether the Parents are entitled to remedies

69. Administrative Law Judges have broad latitude to grant relief and fashion equitable remedies appropriate for the denial of a FAPE. *School Committee of Burlington, Mass. v. Dept. of Education*, 471 U.S. 359, 370, 105 S. Ct. 1996 (1985); *Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 1496 (9th Cir. 1994); *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2494 n. 11 (2009). To remedy a FAPE denial, a student is entitled to relief that is appropriate in light of the purposes of the IDEA. 20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). The purpose of the IDEA is to provide disabled students a FAPE which emphasizes special education and related services to meet their unique needs. *Burlington*, 471 U.S. at 374.

70. "Compensatory education" is an equitable remedy that seeks to make up for 'educational services the child should have received in the first place,' and 'aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA.'" *Prescott*, 631 F.3d at 1125 (quoting *Reid v. Dist. of Columbia*, 401 F.3d at 518). "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Student W. v. Puyallup.*, 31 F.3d at 1497.

71. In the present case, it has been determined that the Student is eligible for special education services, effective April 3, 2024. Accordingly, the Parents' request for development of an IEP for the Student is granted.

72. The Parents also request varied forms of compensatory education. The decision as to what type of compensatory education the Student may need shall be addressed by the IEP team as part of the development of the Student's IEP.

73. The Parents request reimbursement for the cost of Dr. Ballard's evaluation. There is no evidence in the record of the cost of that evaluation. Given the lack of information about any out-of-pocket costs incurred by the Parents, this requested remedy is denied.

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

ORDER

1. The District has violated the IDEA and denied the Student FAPE as set forth above.

2. The District is ORDERED to convene an IEP meeting within 15 calendar days of the date of this order. The meeting participants shall include Julie Barta, and SLP Rachel Wells, both of whose participation shall be paid for by the District at their usual hourly rate. The school nurse shall also attend the IEP meeting. The IEP meeting shall be scheduled for a minimum of 90 minutes to allow sufficient time to develop an IEP that meets the unique needs of the Student.

3. Given that the Student has been found eligible for special education services effective April 3, 2024, the IEP team is ORDERED to consider what, if any, compensatory education services are appropriate for the Student from that date to the present.

4. The IEP team is also ORDERED to give serious consideration to the recommendations set forth in Dr. Barta's IEE.

5. The IEP team is further ORDERED to consult with a Board-Certified Behavioral Analyst before the end of the school year to determine whether to conduct an FBA.

6. All other remedies requested by the Parents have been considered and are DENIED.

SERVED on the date of mailing.



David LeMaster
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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Dated May 5, 2025, at Olympia, Washington.



Representative
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cc: Administrative Resource Services, OSPI