

**STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Sumner Bonney Lake School District

Docket No. 12 2021 OSPI 01471

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

Agency: Office of Superintendent of Public
Instruction

Program: Special Education

Cause No. 2021 SE 0161

Administrative Law Judge (ALJ) Matthew D. Wacker held a due process hearing in the above matter via remote video conference over three days on September 12 14, 2022. The Mother of the Student whose education is at issue¹ appeared and the Parents were represented by Lara Hruska and Alex Hagel, attorneys at law. The Sumner Bonney Lake School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District was Karen Finigan, executive director of special services. A certified court reporter was also present.

STATEMENT OF THE CASE

Procedural History²

The Parents filed a Request for Due Process Hearing (the Complaint) on December 6, 2021. The Complaint was assigned Cause No. 2021 SE 0161 and Docket No. 12 2021 OSPI 01471. The Complaint was assigned to ALJ Courtney E. Beebe as the presiding ALJ. The District filed its Response to the Complaint on December 17, 2021. The same day, the Parents filed a Motion of Prejudice and an Affidavit in Support of Motion of Prejudice against ALJ Beebe. On December 20, 2021, an Order of Reassignment of Administrative Law Judge was entered, granting the Parents' Motion of Prejudice, and reassigning this matter to ALJ Pamela Meotti.

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

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

On January 10, 2022, the Parents filed an Amended Complaint. The First Prehearing Order was entered on January 11, 2022. The First Prehearing Order granted the Parents' motion to amend their Complaint, set a briefing schedule to hear and decide a Motion for Summary Judgment by the Parents,³ set a due process hearing for March 21 24, 2022, determined the issues for the hearing, and granted the Parents' motion to extend the due date for a written decision to the close of record plus thirty calendar days. The District filed its Response to the Amended Complaint on January 20, 2022.

A prehearing conference was held before ALJ Meotti on February 9, 2022, and ALJ Meotti entered a prehearing order the same day. That order granted the Parents' motion to continue the due process hearing over the District's objection, struck the hearing set for March 21 24, 2022, and set a prehearing conference for March 4, 2022, to determine the status of this matter.

On February 10, 2022, this case was reassigned from ALJ Meotti to ALJ Matthew D. Wacker. A prehearing conference was held before ALJ Wacker on March 17, 2022, and the Second Prehearing Order was entered March 22, 2022. The Second Prehearing Order set a due process hearing for June 14 17, 2022. Another prehearing conference was held before ALJ Wacker on April 12, 2022, and the Third Prehearing Order was entered on April 18, 2022. The Third Prehearing Order set a schedule to hear and decide a new Motion for Partial Summary Judgment from the Parents and set the due process hearing for September 12 15, 2022. The Fourth Prehearing Order was entered on May 16, 2022. That Order granted a second amendment to the Parents' Complaint and memorialized the parties' agreement to waive a new resolution period. On June 28, 2022, an Order on Parents' Motion for Partial Summary Judgment was entered, denying the Parents' Motion for Partial Summary Judgment. The Fifth Prehearing Order was entered on August 15, 2022, clarifying one of the Parents' requested remedies.

The due process hearing was held on September 12 14, 2022, and the parties agreed to file post hearing briefs on November 4, 2022. The Parties Post Hearing Briefs were timely filed on November 4, 2022.

Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See First Prehearing Order. The record of the hearing closed with the

³ The Parents subsequently filed notice that they no longer intended to file a Motion for Summary Judgment.

filing of post hearing briefs on November 4, 2022. Thirty calendar days from November 4, 2022, is December 4, 2022. Therefore, the due date for a written decision in the above matter is **December 4, 2022**.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parents Exhibits: P1, P3 P39.

District Exhibits: D1 D19.

Court Exhibit: C1.⁴

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

The Mother of the Student;
Dyanne Jewett Borst, District school counselor, Mountain View Middle School;
Todd Herd, District school counselor, Bonney Lake High School;
Amy Montgomery, District principal, Mountain View Middle School;
Mike Linderman, Licensed Clinical Professional Counselor, Clearview Girls Academy;
Alexis Tschida, Licensed Clinical Professional Counselor, Clearview Girls Academy;
Tracey Dean, special education teacher, Clearview Girls Academy;
Steve Gill, District school psychologist;
Audra Walters, District director of special education.

ISSUES AND REMEDIES

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

- a. Whether the District violated the Individuals with Disabilities Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to meet its Child Find obligations from January 2020 to January 10, 2022, by not identifying or conducting a special education evaluation of the

⁴ The ALJ *sua sponte* admits the Parents' Request for Due Process Hearing filed December 6, 2021, as Court's Exhibit C1. In the event of any appeal of this Final Order, a party may raise an objection to admission of Exhibit C1.

Student after the Parents alerted District staff of the Student's disabilities and their negative impact on her education, thus unnecessarily delaying the Student's special education eligibility.

- ii. Failing to offer an Individualized Education Program (IEP) to the Student in and after January 2020 that included an educational placement in the Student's least restrictive environment;
 - iii. Failing its Child Find obligation to develop an IEP for the Student after March 16, 2022, when it was informed of the Student's eligibility for special education and her intent to return to Washington State;
- b. Whether the private evaluations and services, including placement in a residential therapeutic placement, obtained for the Student from March 2021 through entry of this final order were appropriate; and,
- c. Whether the Parents are entitled to their requested remedies:
- i. Declaratory relief that the District denied the Student a FAPE;
 - ii. Compensatory special education and related services for the Student to allow her to obtain the educational benefit she would have received but for the District's violations of the IDEA and denial of FAPE to the Student;
 - iii. An annual IEP for the 2021-2022 school year that includes a placement in the Student's least restrictive environment;
 - iv. An order directing the District to reimburse the Parents for private evaluations and services they obtained for the Student from March 2021 through entry of the final order;
 - v. Or other equitable remedies, as appropriate.

See First, Fourth, and Fifth Prehearing Orders.

FINDINGS OF FACT

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

General Background

1. The Student [REDACTED]
[REDACTED]
[REDACTED] *Id.*; Mother T29.⁶
2. In July 2016, the Student was evaluated at Hope Counseling Centers by a Licensed Mental Health Counselor Associate (LMHCA). P3p13. The Student was diagnosed with Post Traumatic Stress Disorder Unspecified (PTSD), Child Neglect, and Major Depressive Disorder Single Episode, Unspecified (MDD). *Id.*
3. The Mother reported that the Student “struggles with impulsivity and distraction manifested as angry outbursts, lying, argumentative, incomplete projects and is having trouble establishing relationships.” *Id.*
4. A Psychotherapy Treatment Plan was developed for the Student. *Id.* The Parents first provided a copy of the Psychotherapy Treatment Plan to the District attached to an email on January 7, 2022. Mother T44; See P1.
5. In January 2018, the Student’s pediatrician wrote a letter “To Whom It May Concern,” stating that:

[The Student], a patient of mine, has been diagnosed with Oppositional Defiant Disorder and Attention Deficit Disorder. There is no medical therapy for

⁵ Citation to the exhibits is by Parent or District and page number. For example, citation to “P5p2, P7p12” is a citation to Parents Exhibit 5 at page 2, and Parents Exhibit 7 at page 12.

⁶ Citation to the testimony of a witness is by last name and page number of the Transcript. The exception to this is citations to the testimony of the Mother, who is identified as such to help preserve the privacy of the family. For example, citation to “Mother T29” is a citation to the testimony of the Mother at page 29 of the Transcript.

Oppositional Defiant Disorder. Behavioral therapy and counselling are recommended as interventions for this condition. She is being medicated for Attention Deficit Disorder. Please let me know if you need any more information.

P3p14. The Parents first provided a copy of the pediatrician's letter to the District attached to an email on January 7, 2022. Mother T44.

6. The Student attended a private school, Cascade Christian School, for kindergarten through seventh grade. P7p12.

7. The Student began [REDACTED]
[REDACTED]
[REDACTED] Mother T101.

8. The Student was initially "rostered" to continue attending Cascade Christian School for eighth grade during the 2019 2020 school year. D13p1. However, the Student wanted to attend the District's Bonney Lake High School (BLHS) starting with ninth grade during the 2020 2021 school year because all her friends in her neighborhood went to BLHS. Mother T31. The Student thought that by attending the District's Mountain View Middle School (MVMS) for eighth grade she would meet students and be better able to merge into BLHS for ninth grade the following school year. *Id.*

9. Prior to leaving Cascade Christian School in fall 2019, the Student was assessed using the Measures of Academic Progress (MAP) tool. D13. The Student scored above "norm grade level" average in reading, language usage, and math, and scored at norm grade level average in science. *Id.*

2019 2020 School Year: Eighth Grade at MVMS

10. The District's 2019 2020 school year started on September 3, 2019. D19p1.

11. On October 21, 2019, the Mother completed a District Student Registration Form for the Student to attend eighth grade at MVMS. D1, D14p1, P7p12. The Mother also completed a health history background form when she enrolled the Student. Mother T91. The Mother

reported the Student's diagnosis of ADHD on the health history form but did not report any of the Student's other mental health diagnoses because the Student asked her not to.⁷ *Id.*

12. The Student began attending MVMS on October 23, 2019. Jewett Borst T175.

13. Amy Montgomery is the principal of MVMS. Montgomery T309. The 2019 2020 school year was her first year as principal at MVMS. *Id.* Principal Montgomery recalls meeting with the Mother and recalls her being "really forthcoming with information about [the Student's] background and the adverse childhood experiences she had." *Id.* Principal Montgomery does not recall the Mother mentioning the Student's struggle with anxiety and depression. *Id.* T309 310. Principal Montgomery did not know the Student had been diagnosed with Oppositional Defiant Disorder (ODD). *Id.* T310. Nor was she aware the Student had panic attacks. *Id.* However, the Student was "very social. She quickly made friends and wanted to connect with others." *Id.* T309. Principal Montgomery does not recall the Mother or any of the Student's teachers at MVMS ever asking for the Student to be evaluated for eligibility for special education. *Id.* T322 323. She does not recall any of the Student's teachers raising any concern with her about the Student's performance. *Id.* T327 328.

14. Principal Montgomery believes that "anxiety and depression both can be seen frequently, in the halls of a middle school, on a daily basis," and that "students escaping to the bathroom is a pretty common middle school action." *Id.* T321, T322.

15. Dyanne Jewett Borst has been employed as a middle school counselor at MVMS for the last 18 years. Jewett Borst T166. Prior to that, she worked as an elementary school teacher in the District for 14 years. *Id.* She holds a bachelor's degree in K 8 elementary education, and masters' degrees in curriculum and instruction, and guidance and counseling. *Id.* T167.

16. Ms. Jewett Borst had a conversation with the Mother prior to the Student enrolling at MVMS. Jewett Borst T175. The Mother talked about the Student [REDACTED]. *Id.* The Mother talked about "some of the trauma that surrounded [the Student] and what might have been causing her to have some anxiety at school." *Id.* Ms. Jewett Borst was not aware of the Student's diagnoses at that time. *Id.* T176. She was told that the Student "suffered from anxiety and depression." *Id.* She was not told

⁷ Counsel for the District asked the Mother during testimony if she reported the Student's "ADHD," and the Mother confirmed she *did*. This may have been an incorrect reference to the Student's ADD previously diagnosed by her pediatrician.

Borst considered the Student to be [REDACTED]
[REDACTED] *Id.* T194.

23. Ms. Jewett Borst opined that in [REDACTED]
[REDACTED] *Id.* T229.

24. Starting in November, the Student would leave class and go to the nurse's office about twice a week. Mother T142. The Nurse would typically call the Mother to tell her the Student [REDACTED]. *Id.* T58, T134, T142. The Student also called the Mother to pick her up from school. *Id.* T142, T150. The Mother is unsure how often she brought the Student home from school. *Id.* T531 532.

25. By early November 2019, Ms. Jewett Borst was aware the Student was experiencing anxiety and depression at MVMS. T177, T178. This was based on statements by the Student and observations at MVMS when the Student would leave the classroom and "hide" in the bathroom. *Id.* The bathroom was the Student's "go to place when she was...feeling anxious." *Id.*

26. Ms. Jewett Borst agrees that the Student struggled with anxiety during the school year, and the Student's struggle had an adverse impact on her ability to engage in her education. *Id.* T207.

27. By November 2019, Principal Montgomery was also aware that the Student was having issues with spending extended time in the bathrooms at MVMS. Montgomery T310. The Student talked about "feeling anxious in classrooms; and that's why she would leave to go to the bathroom...Sometimes it was test related. Sometimes it was friend related." *Id.* T186. The Student was leaving the classroom "at least once every few days" during the school year. *Id.* T187.

28. There were a couple of times when Principal Montgomery could not get the Student out of her office because the Student was angry and crying. *Id.* T189. Principal Montgomery discussed with the "instructional team" that anxiety was "the biggest cause of her going to the bathroom." T201. Principal Montgomery asked, "for some help with her...mental health needs, that, if they noticed signs and symptoms she was agitated or she was getting up and walking out if they would again encourage the process that she spend time with me, that she comes to counseling instead of the bathroom." T201. The Student's teachers followed through with Principal Montgomery's request. *Id.* Principal Montgomery "checked in with [the Student] every week, if not more." *Id.* This continued throughout the school year. *Id.* T202.

29. In early November, Ms. Jewett Borst walked the Student to the Health Room because the Student had:

[REDACTED]

Jewett Borst T178 179. Ms. Jewett Borst does not recall the Student [REDACTED] at school. *Id.* T179, T213.

30. With respect to the Student's [REDACTED], Ms. Jewett Borst believes that:

[REDACTED]

Id. T181.

31. The Mother first met with Ms. Jewett Borst in her office during the first week in November. Mother T35. The meeting lasted between 45 and 60 minutes. *Id.* T143. The Mother told Ms. Jewett Borst about the Student's diagnoses of ODD, ADHD, depression, and PTSD. *Id.* T35, T45, T48.

32. In an email on November 18, 2019, Karen Black, then a computer teacher at MVMS, told the Mother that the Student was very passive, not making progress, did not ask for help, and had her head down on her desk in class. P1p3, D14p1; Jewett Borst T183. After this email, the Student's anxiety and depression worsened. Mother T34.

33. The Mother replied to Ms. Black via email later the same day, stating that the Student was "going through a difficult time." P1p3, P14p1. The difficult time was the Student "entering a new learning environment, her heightened anxiety, and just her struggles understanding the curriculum," and "transitioning to public school from private school." *Id.* T59, T122.

34. In an email on November 20, 2019, Nicole Castro, a paraprofessional at MVMS, told Ms. Jewett Borst an unnamed student had reported that the Student was saying she wanted

to fight her. P15; Jewett Borst T185. While Ms. Jewett Borst does not recall this situation, she does recall a couple of times when the Student got into “verbal altercations with girls that had previously been friends of hers.” *Id.* T185. Ms. Jewett does not recall anything “physical” happening. *Id.*

35. In an email on November 21, 2019, to Ms. Jewett Borst and other staff, Principal Montgomery stated that she and Ms. Jewett Borst met with the Student “about her grades and some other things this morning.” P16. Ms. Jewett Borst does not recall what “other things” were discussed. Jewett Borst T186.

36. In December 2019, the Mother received a call from the MVMS nurse. Mother T47. The nurse told the Mother that the Student [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* T145 146.

37. In an email on December 9, 2019, Ms. Jewett Borst stated that another student reported the Student “has been saying things to her/about her that are not nice and (name redacted) began to retaliate this weekend. Mention of fighting so we thought time together in class today may not be such a wise choice.” P17.

38. Principal Montgomery believes that the behavior described in Ms. Jewett Borst’s email is “common” and “is very developmentally appropriate for middle school students.” Montgomery T324. Principal Montgomery believes that “Social conflict and middle school goes (sic) hand in hand.” *Id.*

39. The Mother was unaware of the Student’s behavior, but the Student’s “fight and flight and freeze, has always been her responses to situations where she felt threatened.” T60. The Mother attributes this to the Student’s PTSD. *Id.*

40. In an email to Ms. Jewett Borst on January 10, 2020, the Student stated that:
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

P19. The Student went on to describe telephone calls from the two guys calling her names and making negative comments. *Id.* The Student reported that the Mother was “very aware of what’s going on.” *Id.*

41. Ms. Jewett Borst recalled the Student reporting race based harassment, intimidation, and bullying (HIB) on at least two occasions. Jewett Borst T199. Once the Student went to Ms. Jewett Borst’s office very upset, and another time was very angry. *Id.* Ms. Jewett Borst believes she reported this bullying to Principal Montgomery. *Id.* T200. However, Principal Montgomery does not recall the Student reporting race based HIB. Montgomery T312. If such bullying was reported, “I know that a topic like this would have come to me.” *Id.* Accordingly, it is found as fact that Ms. Jewett Borst did not communicate the Student’s reports of HIB to Principal Montgomery.

42. On January 13, 2020, the Parents met with Ms. Jewett Borst. See P18 (Invitation for meeting on January 13, 2020). Ms. Jewett Borst cannot specifically recall this meeting. Jewett Borst T193. Principal Montgomery does not recall attending this meeting. Montgomery T325.

43. The Mother was very concerned about this meeting because she believed the Student was being bullied. Mother T61. Ms. Jewett Borst told the Parents there was really nothing she could do about the boys bullying the Student because the boys’ parents didn’t support any of her decisions. *Id.* T145. The Mother was concerned because the bullying made the Student more anxious. *Id.*

44. The Mother was also trying get some help with the Student being in the bathroom at school and missing instruction. *Id.* T61. Although Ms. Jewett Borst offered after school academic help, academics “wasn’t the problem at that time, really.” *Id.* The Mother’s concern was the Student’s ability to function at school, attend classes, and not having to be picked up at school because of her anxiety. *Id.* T105.

45. In an email the following day to Principal Montgomery and Ms. Black, Ms. Jewett Borst referenced her meeting with the Parents and stated that, “Grades were only a small piece of what our meeting covered. Mom and dad had a lot of other concerns but I obviously didn’t need to share all that with you guys.” P20. The Parents “other concerns” were the Student’s “history with her anxiety, her trauma, especially her trauma and some of her reactive attachment disorder issues.” Mother T61 62. The Parents also discussed the Student’s ODD and ADHD at the meeting and told Ms. Jewett Borst that Student was taking medications. *Id.* T62. Ms. Jewett Borst did not share any of the Parents’ other concerns with Principal

Montgomery or Ms. Black because those other concerns related to the Student's "living situation." Jewett Borst T200.

46. On Monday, January 27, 2020, the Student [REDACTED]
[REDACTED]
[REDACTED]. *Id.* T63.

47. [REDACTED]
[REDACTED]
[REDACTED] T146.

48. [REDACTED]. *Id.* T134. It was only sometime later that the Mother learned the Student was not attending most of her classes at MVMS while she lived with the other family. *Id.* T65.

49. On Tuesday, January 28, 2020, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and she did not agree. *Id.*

50. There were other times the Student ran away from home but came home the same night, including once in December 2019. *Id.* T94. The Mother did not report to the District that the Student was running away from home *Id.*

51. For the grading period ending January 30, 2020, the Student earned an "A" in Choir, an "F" in Algebra and Science, and a "C" in Language Arts, History, and "App Creators." D14p2. Teachers' remarks for the grading period included, "Needs to attend class more regularly absences are impacting learning," and "Late and/or missing working is affecting grade." *Id.*

52. On or about February 4, 2020, the Mother and Ms. Jewett Borst had a telephone conversation. See P1p4 (2/5/20 Mother email to Jewett Borst); and Jewett Borst T176, T205 (Recalls talking with the Mother the day before this email). At least in part, they discussed whether the Student might have Reactive Attachment Disorder (RAD). Jewett Borst T176. But Ms. Jewett Borst does not "recall a discussion about a specific diagnosis." *Id.* The Mother told Ms. Jewett Borst that the Student had diagnoses of ODD and ADHD, and that she was

really struggling in her classes. Mother T34. She told Ms. Jewett Borst that they were having the Student evaluated for RAD. *Id.*

53. In an email on February 5, 2020, to Ms. Jewett Borst, Ms. Montgomery, and other staff, Jacquelin Davidson, the student's math teacher, stated that

[The Student] asked to go to the bathroom during advisory (maybe around 12:20ish or a little before) and as of now (12:35) she has not come back. Her Chromebook and backpack are still in my room and 4th period has started.

P24, P27, Mother T186. Approximately 30 minutes later, Ms. Davidson sent another email, asking, "was [the Student] in 4th period... [the Student] left during advisory/did not come back and I still have her backpack/Chromebook worried about where she is." P24, P27.

54. Approximately three hours after Ms. Davidson's first email, Ms. Montgomery sent an email to Ms. Davidson and other staff, stating the Student:

(W)as in the counseling office. We picked her up from the bathroom; she remained here for the remainder of the day. Dyanne (Hewett Borst) also met with her mom this afternoon...and will have some update information on her living situation and new guardians to you soon.

P27.

55. Nick Seavello is a staff person at MVMS. At least in part, Mr. Seavello taught a "Leadership" class, which included the Student. P26. In an email to Mr. Seavello on February 17, 2020, the Mother talked about how the Student had a "traumatic first years of life and has had a lot of loss in her life, which has deeply affected who she is." *Id.* She explained that the Student had been in therapy but would no longer attend. *Id.* She explained that the Student had tested well above grade level yet was failing her classes at MVMS. *Id.*

56. On February 23, 2020, Ms. Davidson sent an email to Ms. Hewett Borst, telling her that "[The Student] usually takes a good 15 30 minutes in the bathroom each time she goes. She does not use it every single day, but every time she does go it's almost half of class." P28

The District Closes All Schools Due to COVID 19 Pandemic

57. On March 13, 2020, the District closed all its schools due to the COVID 19 pandemic. Jewett Borst T175. The District implemented remote only learning through the end of the

2019-2020 school year, primarily utilizing Zoom videoconferencing software to provide instruction. The Student never participated in Ms. Jewett Borst's "Zoom hours." *Id.* T225. Ms. Jewett Borst does not recall speaking with the Mother from the school closure through the end of the school year. *Id.* T226. She did not make any home visits to the Student's home before the school year ended. *Id.* T232.

58. In an email to her teachers on May 8, 2020, the Student wrote, "i know i have turned in a majority of my work in late, i was just wondering if that is why they are still showing up as missing in the gradebook". P29.

59. For the grading period ending March 13, 2020, the Student earned an "A" in Choir and Leadership, an "F" in Math, Language Arts and PE, and a "D" in Science. D14p3.

60. The District utilizes a third party software program, the Securly program, on all District computers to act as a "filter system" and detect any on line searches using "words that are flagged as concerning." Montgomery T313. This includes words or search terms connected with subjects like self harm, drugs, and alcohol. *Id.*

61. On May 14, 2020, the District received an alert from the Securly program. P30. The subject line stated, "Alert: Disturbing keywords identified." *Id.* p1. The Security program had detected the following search from the Student's District laptop: "**Searched for [REDACTED]** [REDACTED].'" *Id.* p2. (Bold in original). The alert was forwarded to Principal Montgomery, Ms. Jewett Borst, and others. *Id.* p1.

62. District protocol requires all Securly alerts to be reviewed by school counselors. Montgomery T313. The appropriate response to receiving the Securly alert from the Student's search on her District laptop would be for Ms. Jewett Borst to call the Student into her office and review the District's protocol to screen for [REDACTED]. *Id.* T315. Principal Montgomery agrees that if a student [REDACTED] [REDACTED] *Id.* T314. During the COVID 19 pandemic and school closures, counselors would contact parents to set up a Zoom meeting. *Id.* T316 317.

63. Principal Montgomery does not know if Ms. Jewett Borst contacted the Parents after receiving the Securly alert. *Id.* T317. Ms. Jewett Borst cannot recall if she spoke with or called the Mother about the Securly alert. Jewett Borst T180. The Mother confirmed the District did not notify her concerning the Securly alert. Mother T47, T65. The Mother did not see the Securly email (P30) until she received the proposed exhibits for the due process hearing. *Id.* T133.

64. Ms. Jewett Borst gets Securly alerts like this “all day, every day.” Jewett Borst T218. Principal Montgomery gets “half a dozen of these alerts every day.” Montgomery T322.

65. The last day of the 2019 2020 school year was June 17, 2020. D19p1.

66. For the grading period ending June 17, 2020, the Student earned an “A” in Choir and Leadership, a “C” in Math, a “C” in Language Arts, a “D” in science, and a “D+” in Fitness. D14p4.

2020 2021 School Year: Ninth Grade at BLHS

67. The Student moved to BLHS for ninth grade during the 2020 2021 school year. The first day of the school year was September 8, 2020. D19p2. The District began the new school year continuing to provide remote only learning through Zoom videoconferencing. P7p12.

68. Todd Herd is a guidance counselor at BLHS. Herd T254. He holds two bachelor’s degrees, one in English literature and one in history. *Id.* He holds a master’s degree in Educational Guidance Counseling and has worked as a guidance counselor since 2001. *Id.* Prior to that, he was a classroom teacher. *Id.*

69. Mr. Herd has experience working with students with anxiety and depression. *Id.* T284, T285. Anxiety and depression often “go hand in hand.” *Id.* T285. Over the last 10 years, anxiety among high school students “has “really gone off the charts. *Id.* T284. During the Covid 19 school shutdown, “The amount of anxiety that I was hearing...during this school year...during the COVID era, was really tremendously off the charts beyond our ability to help people to manage in most cases.” *Id.* T285.

70. Via an email to the Student on October 19, 2020, the Student’s English teacher at BLHS, Alex Walker, wrote, “I saw your message about feeling stressed. Would you be willing to come to office hours tomorrow so I can hear about what is causing you stress, and help you find some solutions?” D3p1.

71. Via an email to Mr. Herd on Friday, October 23, 2020, the Mother wrote that the Student:

(l)s struggling to get her work done on time. She lacks motivation and struggles with turning in assignments. She is very far behind right now with 14 missing

assignments. Can you have a zoom meeting with her and try to see where the struggle is or what can be done to motivate her to complete her assignments?

D4p1, P1p6. This was the Mother's first email to Mr. Herd expressing her concern about the Student's missing assignments. Mother T113 114. The Student was struggling with remote learning. *Id.* T66. The Parents tried "many things to help...but we were just at a loss." *Id.* This was the first email Mr. Herd received from the Parents about any concerns for the Student's academic or social/emotional needs. Herd T290.

72. During this semester at BLHS, the only way to speak with students was through Zoom. Herd T258. In response to the Mother's email, Mr. Herd set up a meeting via Zoom to speak with the Student on Tuesday, October 27, 2020. *Id.*, D4p2. Mr. Herd sent an email to the Mother the day before to confirm the meeting. D4p1, P1p6.

73. Minutes later, the Mother replied to Mr. Herd's email stating, "Thank you. We have decided to pull her out at this point and homeschool her for most of her classes." D4p1, P1p6. The Parents were afraid that "we were going to go down the road again that we did the...previous year...her not getting her work done, and that we would be better to pull her out, so I had hands on." Mother T37. The Parents left the Student enrolled in Choir at BLHS because she liked Choir, and the Mother wanted her to "at least stay in something through the School District." *Id.*

74. The meeting Mr. Herd set for October 27, 2020, was not held because the Mother withdrew the Student the day prior. Herd T258, Mother T113, T147 (Mother did not attend because the Parents had already decided to homeschool the Student). However, on direct examination at the due process hearing, the Mother initially said she attended the Zoom meeting and recounted at least some of what was purported to have been discussed. Mother T67. This did not happen.

75. Mr. Herd had no further contact with or from the Parents or the Student until the Student returned to BLHS in February 2021. Herd T258 259.

76. The Mother continued to homeschool the Student through January 2021, using Edgenuity, an online program approved by the District. *Id.* T105.

77. On October 26, 2020, the Mother completed and signed a Declaration of Intent to Provide Home Based Instruction and a Request for Part Time Attendance. D4p6, p8.

78. At the time of her withdrawal from BLHS, the Student was earning a “C” in biology, an “F” in algebra and ceramics, an “A” in English, and a “D” in PE. P31pp1 4, P32.

79. Mr. Herd opined that the Student’s grades when she was withdrawn were “not all that uncommon for a normal 9th grader who’s struggling with the transition to high school in the middle of the first semester. That being said, this was remote education. And the number of students struggling at this level was way higher than a normal year.” Herd T290.

80. The Mother withdrew the Student from Choir on November 23, 2020, because the Student was “not doing distance learning well.” D6p1, P1p8.

81. In an email to the BLHS registrar on January 11, 2021, the Mother initiated reenrollment of the Student at BLHS. D8p1. P1p9. The same day, a New Student Enrollment Tracking form was filled out regarding the Student. D7p1. The Mother once again did not identify any of the Student’s diagnoses or conditions other than ADHD/ADD and eczema. Mother T118. The Student did not want her to disclose any other diagnoses. *Id.* T116.

82. The Student’s anticipated start date at BLHS was February 2, 2021; the first day of the second semester. D7p1, D9p24. The Student wanted to try in person learning. Mother T70.

83. In an email on January 12, 2021, the BLHS registrar informed the Mother that the Student would need to meet with her counselor, Mr. Herd, to get her class schedule. D8p1.

84. In an email to Mr. Herd on January 14, 2021, the BLHS registrar stated that the Student:

(I)s returning to BLHS starting 2nd semester. She withdrew on 11/23 to homeschool... [The Mother] said she was going to email you [the Student’s] homeschool work. I did make her aware that the district would have to review the work and determine what she can get credit for.

D8p3.

85. In an email to Mr. Herd on January 15, 2021, the Mother stated:

[REDACTED]

[REDACTED]

D9p1, P1p10. The Mother also attached copies of the Student's work done during homeschooling to her email. D9pp2 23.

86. In her email to Mr. Herd, the Mother also asked that the Student be placed in a "co taught" algebra class because the Student really struggled with math. *Id.* p1. A "co taught" class is an "IEP special education intervention." Herd T297. No effort was made to place the Student in a co taught math class. *Id.* T298.

87. The Mother's email to Mr. Herd was the first report he had about the Student suffering from excessive anxiety or panic attacks. Herd T291. He does not recall "receiving any formal diagnoses." *Id.* Mr. Herd followed up on the Mothers' email with an "extended phone conversation" with the Mother. *Id.* T260, T295. Mr. Herd understood what the Mother wanted was an intervention to address the Student's panic attacks, not a 504 plan.⁸ *Id.* T291, T295. The intervention was intended for when BLHS returned to in person instruction. *Id.* T296.

88. On January 19, 2021, the BLHS nurse called the Mother to ask if the Student would be taking any medication at school. D17. The Mother responded no. *Id.* The Mother asked the nurse if there would be a space for the Student to be excused to "if she experienced a panic attack (related to anxiety)." *Id.* The nurse offered the health room as a secondary option if the Student's case manager or counselor did not have a plan in place. *Id.* The nurse advised the Mother to contact the case manager and counselor about this matter. *Id.*

89. The Mother recalls her conversation with the nurse. Mother T69. The Mother does not know if the Student ever went to the health office at BLHS with a panic attack. *Id.* T138.

90. BLHS began second semester on February 2, 2021. D9p24. There was conflicting testimony regarding whether the second semester began with all remote instruction, or hybrid instruction at BLHS. Principal Montgomery believed the District started hybrid learning (50% in person and 50% on line) during the first week in February 2021. Montgomery T305. Mr. Herd recalls BLHS starting hybrid learning in March 2021. Herd T264. Audra Walters is a District director of special services. Walters T527. Ms. Walters recalls that District elementary schools began hybrid in person learning in late January 2021, the District middle schools, like MVMS, started hybrid learning on February 9, 2021, and both District high schools started

⁸ Reference to a "504 plan" is a reference to a 540 plan under the Rehabilitation Act of 1973.

hybrid learning March 9, 2021. Walters T528. After considering all the evidence, it is found more likely than not that BLHS began hybrid in person learning on March 9, 2021.

91. On February 8, 2021, the Student attempted to take her own life with an overdose of medication. See P7p12. The Mother recalled the Student had gone back to in person learning at BLHS for about a week before [REDACTED]. Mother T49. This is not correct; BLHS did not return to hybrid in person learning until March 9, 2021. It is found that upon returning to the District on February 2, 2021, the Student was still accessing remote only instruction from BLHS.

92. The next morning at 6:00 a.m. the Mother found the Student:

[REDACTED]

Id. T49 50. In fact, the Student was discharged from the hospital on February 17, 2021, a nine day stay in the hospital. See, e.g., P3p1 (Discharge Date: 2/17/21); Mother T50.

93. In an email on February 12, 2021, to Mr. Herd and others, the BLHS attendance secretary stated that, "I had a call earlier this week regarding [the Student]. Her mom said she is currently hospitalized. [The Mother] did not give any specifics or information as to why. She has excused her through next week." D10p1. The Mother did not provide any specific information about why the Student was hospitalized. Mother T114.

94. The Student was discharged from the hospital with discharge paperwork which included diagnoses of Conduct Disorder, Depression, PTSD, Sleep Disorder, severe episode of recurrent major depression disorder, and [REDACTED]. P3p2. The discharge paperwork identified the reason for admission [REDACTED]. *Id.* [REDACTED]. *Id.* p4.

95. The Mother did not provide the District with the Student's discharge paperwork until January 7, 2022, as an attachment to an email. Mother T44 45.

96. In an email to Mr. Herd on February 18, 2021, the Mother stated that:

“[The Student] was in the hospital for 10 days...She started back today and is extremely overwhelmed...I think she may need some in person (sic) instruction to catch up. Is that possible. She has extremely high anxiety and anything...we can do to help alleviate that would be helpful.”

D10p2, P1p11. The Mother did not tell Mr. Herd that the Student had [REDACTED] [REDACTED] for the Student. Mother T39. She wrote this email because she wanted the Student’s teachers to be aware of how overwhelmed the Student was and her level of anxiety. *Id.* T50.

97. The Parents did not provide the District any information about the Student’s [REDACTED] [REDACTED] during March 2021. *Id.* T114.

98. Mr. Herd received this email from the Mother. Herd T266. The Mother never told him the reason why the Student was hospitalized. *Id.* T293. Students being “extremely overwhelmed” after missing a week of school is “fairly typical.” *Id.* T267. Mr. Herd requested that the family ask for Zoom office hours with the Student’s teachers. *Id.* T268. Beyond this email, the Mother did not request any additional support for the Student from Mr. Herd. *Id.* T293.

99. Mr. Herd replied to the Mother via email the same day. D10p2. He told the Mother that he contacted the Student’s teachers and asked them to help by sending her an email and/or inviting the Student to an “office hour” if that is what was needed. D10p2, p3.

100. The Student was seen by Jennie Hendrie, MD, for a medication follow up on March 2, 2021. P3pp8 10. The Progress Note states in part that, “[The Student] is here with her mom for f/u hospitalization and then ER visit followed by [REDACTED].” *Id.* p8. The evidence is not clear what the reference to [REDACTED]” refers to.

101. Via an email on February 2, 2021, to her English teacher at BLHS, the Student stated, “i have missed so many days that im very lost on what to do. what can I do to help myself get caught up quicker. and are theyre any resources i can use.” D11p1 (typographical errors in original).

102. The Student’s English teacher, Alex Walker, replied to the Student the next day. D11p1. He provided instructions for the Student to make up the missed work. *Id.*

103. On March 9, 2021, BLHS started hybrid in person learning. This started as two days a week of in person instruction at BLHS, and three days a week of remote learning. Herd T265.

The Parents Begin Searching for an Out Of District Placement for the Student

104. On or about March 13, 2021, the Parents began searching for an out of District or out of home placement for the Student. Mother T108; P1p1, P5p7, P7p12 (Parents started looking for a placement about 10 days before the Student was placed at Boise Girls Academy on March 23, 2021).

105. The Parents did not tell the District that they were looking for an out of home placement for the Student. Mother T108.

106. By this time the Parents were feeling “really desperate.” *Id.* T72. Since returning to BLHS after discharge from the hospital the Student was failing her classes, her anxiety was not getting any better, and the Mother did not perceive any progress was being made. *Id.* T51. The Parents decided to look for a placement that had some academic and therapeutic supports for the Student. *Id.* T51. The Mother searched on line for “therapeutic schools.” *Id.* T72. After contacting multiple therapeutic schools only to learn they could not immediately take the Student, the Mother identified the Boise Girls Academy (BGA) in Boise, Idaho. *Id.*

107. For the Parents, BGA had “the academics and the 24 hour supervision and basic counselling but not actual therapeutic counselling.” *Id.* T108. Although the Parents had an appointment for an evaluation of the Student in March concerning possible RAD, “At that time, we decided that her safety was more important and moved her to Boise.” *Id.* T133.

108. The Parents’ “goal at that time...was just to get her safe, to have her be able to continue her academics, and to have a safety plan for her that would work at that point.” *Id.* T147. The Mother went on to explain, “at that point, we really weren’t selecting for academic purposes...We were actually looking at that point to keep her safe and to get her stable. And (then) we can move forward with academics.” *Id.* T159 160.

109. March 19, 2021, was the last day the Student attended school in the District. D12p2.

110. The Student would later report that she smoked one marijuana joint every day for a month leading up to March 22, 2021. P5p6. Although the source is unclear, whether it was the Student or the Mother, it was also reported that the Student was [REDACTED] and couldn’t do her work.” *Id.* The Mother denied the Parents knew anything about this. Mother T98.

111. On March 26, 2021, the Mother completed and signed a BLHS Withdrawal Form. D12p2. The Mother identified the reason for withdrawing the Student as “Going to school out of State.” *Id.* The District received the Withdrawal Form via email from the Mother on March 30, 2021. D12p1. The Parents did not notify the District about withdrawing the Student until March 30th because they “were in a state of anxiousness to get her placed.” Mother T115.

112. A second, different BLHS Withdrawal Form bearing a withdrawal date of March 30, 2021, reflects the Student’s final grades as all “Fs”. P35p1. The Mother believes all Fs was a fair representation of the Student’s academic performance because she was not working and had shut down emotionally. Mother T71. However, it cannot be determined on a more probable than not basis that this is true. The Student last attended BLHS on March 19, 2021. By the time of her withdrawal on March 30, 2021, the Student had missed multiple school days. It is axiomatic that if a student is not in class they cannot learn or turn in work for grades. It simply cannot be determined from the evidence what the Student’s grades were on March 19th, the last day she attended BLHS.

113. Mr. Herd does not recall the Mother ever asking for the Student to be evaluated for special education prior to the Parents withdrawing the Student from BLHS. Herd T293. None of the Student’s teachers asked for or referred the Student for an evaluation for special education. *Id.* T294. Once the Student was withdrawn from BLHS, Mr. Herd does not recall any further contact with the Mother through the end of the school year. *Id.*

The Student is Placed at BGA

114. The Parents placed the Student at BGA on March 23, 2021. P1p1, P5p7, P7p12.

115. There is little evidence regarding BGA. No one from BGA appeared as a witness at the due process hearing. The only witness to offer testimony concerning BGA was the Mother.

116. BGA is a gender specific, female only Christian boarding school.⁹ Mother T108. BGA does not have licensed clinicians or licensed therapists; they have “counselors.” *Id.* T109. BGA had one classroom for all the girls. *Id.* T140. The Mother cannot confirm the credentials of any teacher(s) at BGA. *Id.* T141. The Student’s curriculum at BGA was a self paced curriculum provided through a third party vendor; Lighthouse Christian Academy. *Id.* T155. The actual curriculum was not offered as an exhibit.

⁹ The Mother was not specifically looking for a Christian-based placement. Mother T108. What BGA had that other placements at that time did not was an immediate opening for the Student. *Id.*

117. On April 27, 2021, the Student was seen by a medical provider. P3pp11 12. The Progress Note reflects the Student was at BGA. *Id.* p11. The Progress Note states in part that the Student [REDACTED].” *Id.* The Student reported that she had not taken any [REDACTED] since transitioning to BGA, and despite this the medical provider noted that “screening (is) negative for depression.” *Id.* At that time, the Student was also not taking any medication for her ADD because BGA “did not want her on any stimulants.” Mother T104.

118. On October 21, 2021, the Student and another student eloped from BGA. P7p12, Mother T100. The two of them were eventually [REDACTED]. *Id.* T102.

119. Prior to eloping from BGA, the Student asked the Parents to place her in a therapeutic program. *Id.* T100. The Student eloped from BGA because she did not want to be in the program at BGA. *Id.*

The Student is Placed at Clearview Girls Academy

120. After [REDACTED], the Parents took her directly to Clearview Girls Academy (CGA) in Montana. *Id.* T110. The Student “did not want to be” at CGA. *Id.* T136. The Parents “took her pretty much by force to put her there.” *Id.* The Student was admitted at CGA on November 3, 2021.¹⁰ The Mother did not contact anyone at the District before placing the Student at CGA. *Id.* T110.

121. CGA is a “therapeutic boarding school...for mental health and spiritual healing” licensed by Montana. Linderman T333, T334, T355, Dean T476. CGA is a female only facility. Tschida T403. It typically has between 45 and 48 girls in residence, the majority of whom are placed there by their parents. Linderman T337, T355, Dean T431. School Districts have placed some students at CGA. Linderman 352.

122. CGA has a year round school schedule. Linderman T367, Dean T434. There is no minimum number of hours per week a student is expected to receive academic instruction. Dean T474. The educational program at CGA is accredited through Cognia, an independent,

¹⁰ There is conflicting evidence concerning the exact date the Student was admitted at CGA. The Mother believes she was admitted on November 1, 2021. Mother T84. Ms. Tschida believes the Student was admitted November 3, 2021. P39¶3. CGA is required to conduct a Biopsychosocial Intake within 24 hours of a student’s admission. Linderman T339. That was completed on November 4, 2021. P5. Therefore, it is found more likely than not that the Student was admitted on November 3, 2021.

third party provider. *Id.* T435, T436. CGA is approved to issue high school diplomas that are recognized as such by Montana. *Id.* T436, T477-478. CGA's educational curriculum is provided by Edmentum, an accredited online academic platform. *Id.* T434-435. This is a self-paced academic program. *Id.* 435. Students also work with CGA teachers individually as tutors for the Edmentum curriculum. *Id.* CGA has three classrooms; two general education classrooms and one special education classroom. *Id.* T431. Staffing is provided by either a certificated general education teacher or certificated special education teacher and an aide in every classroom. *Id.* T436, Linderman T363. Aides must possess at least a high school diploma. Dean T437.

123. The therapeutic program at CGA is provided by seven licensed clinical professional counselors and/or licensed clinical social workers. Linderman T357. Although CGA does not have a psychologist on staff, it does have a psychiatric nurse practitioner on staff. *Id.* T357, T375, T360. The therapeutic program includes daily group therapy, weekly individual therapy, and a weekly family therapy session. Tschida T384; P39¶4. This totals between 12 and 15 hours per week of therapy. Linderman T335.

124. CGA includes a "Christian component." *Id.*, Mother T80. The students at CGA are offered the opportunity to go to Bible Study, church, and a number of Christian affiliated activities. Linderman T335. However, the therapeutic program is independent of this Christian component. *Id.* T358. "If we have a girl that's absolutely...opposed to the Guiding Principles, absolutely opposed to Christianity, we're not going to use that as part of her treatment." *Id.*, Mother T80.

125. A student at CGA is ready to be discharged upon completion of the five Stages of Change,¹¹ two identity phases, and the student's individual treatment plan. Linderman T334-336, Tschida T386, T405, T406, Linderman T364; See also P10pp21-22, P11pp1-4. The Student's treatment plan focuses on four goals related to her depression and anxiety. P39¶5. The therapeutic program at CGA typically takes 14-18 months to complete. Linderman T333-334. The determination whether a student is ready to be discharged is made by consensus of a student's treatment team. Tschida T387, T402, T405, Linderman T364.

126. On November 4, 2021, CGA conducted a Biopsychosocial Intake of the Student. P5. The Mother first provided a copy of the Biopsychosocial Intake to the District in January 2022. Mother T95.

¹¹ The individual "Stages" of Change are also referred to as "Levels."

127. On November 30, 2021, the Student was seen by a Psychiatric Mental Health Nurse Practitioner (PMHNP). P4pp1 2. In her email forwarding the PMHNP's report, the Mother identified the report as "[the Student's] recent psych eval." *Id.* p1. The PMHNP determined that the Student's major depressive disorder was currently in remission, the Student did not meet criteria for ADHD, and the Student denied criteria for ODD. *Id.* The Mother first provided a copy of the PMHNP's report to the District in January 2022. Mother T103.

Parents File Request for Due Process Hearing

128. On December 6, 2021, the Parents filed their Request for Due Process Hearing (the Complaint). C1.

129. In an email to the District on January 7, 2022, the Mother stated in part that, "As you know, this all culminated in a Feb 2021 [REDACTED] [REDACTED] P1p1. The evidence reflects only one other possible reference to the Student being hospitalized apart from the nine day hospitalization in February 2021 after her [REDACTED] [REDACTED]. That reference is in the Woodcreek Pediatrics Progress Note dated March 2, 2021. P3p8, See above. If the Mother's assertion is correct and the Student was hospitalized a second time in March 2021, the evidence does not reveal the reason or cause for that hospitalization, nor whether any such hospitalization is relevant to the issues in this matter.

130. The Mother went on to state that the Parents, "fully intend for [the Student] to come home to SBLSD when she is well enough to leave her therapeutic placement." *Id.* The Mother's January 7, 2022, email to the District was her first contact with the District since the Parents withdrew the Student from BLHS in March 2021. Mother T122.

The Student's Evaluation by the Noxon, MT, School District

131. On March 15, 2022, a team convened a meeting to consider the results of an evaluation of the Student by the Noxon School District in Noxon, Montana. P7. CGA is located within the geographical boundaries of the Noxon School District. See P7p14 ("E)valuation was requested by the local LEA to determine eligibility for special education.").

132. The purpose of the evaluation was to determine if the Student was eligible for special education. The Parents, the Student, and their legal counsel participated in the meeting via remote video conference (Zoom). *Id.* p14. Ms. Dean from CGA participated in the evaluation and the meeting. *Id.*; Dean T445, T447.

133. The Parents' legal counsel shared with the team that the catalyzing events for [the Student] being placed residentially was the [REDACTED] (sic) and her not being identified as eligible for services." P7p1.

134. The team determined that the Student was eligible to receive special education and related services based upon an "Emotional Disturbance." *Id.* p13. The team determined the Student "requires specially designed instruction in social/emotional behavioral supports in order to progress and benefit from a general education curriculum." *Id.*

135. The team went on to clarify that, "The recommendations from the evaluation team were based on the current evaluation results and what the team would recommend to a potential future IEP team in the event [the Student] was re enrolled in a public school (sic) setting." *Id.* p14.

136. Ms. Dean is employed by CGA as a special education teacher and Academic Director. Dean T429. She holds an undergraduate degree in special education pre K through 12th grade, and elementary education K 8th grade. *Id.* T430. She has been certificated as a special education teacher in Montana since 2014. *Id.* T452, T453.

137. Based on the Noxon evaluation, Ms. Dean opined she could develop an IEP for the Student. *Id.* T449. However, the IEP "would mainly encompass accommodations." *Id.* 450. Ms. Dean opined that without "any IEP for accommodations" the Student would not be successful in a public school "because she would be blowing out of the classroom and not completing her coursework and failing classes." *Id.* T451. Ms. Dean did not identify what specially designed instruction the Student would need in an IEP.

138. Apart from Ms. Dean and the Mother, none of the Noxon evaluation team members appeared for testimony at the due process hearing.

139. Steve Gill is employed by the District as a school psychologist. Gill T497. He holds an undergraduate degree in education, and a Master of Education degree in school psychology. *Id.* T496. He is certificated as a school psychologist in Washington State. *Id.* T497. He has 31 years' experience as a school psychologist. *Id.* T497.

140. Mr. Gill reviewed the Noxon evaluation report. *Id.* T498. His familiarity with the Student is limited to his review of the Noxon report, being informed the Student had no history of discipline in the District, and some emails he was provided. *Id.* T498, T501. He has never met the Student. *Id.* T506.

141. The District provided Mr. Gill with a copy of the Noxon report near the end of the 2021-2022 school year and asked him to review the report to see if it met Washington State criteria for a special education evaluation. *Id.* T498.

142. In Mr. Gill's opinion, the Noxon evaluation has "some major flaws." *Id.* T499. The biggest flaw is that the evaluation does not document a need for SDI. *Id.* Most of the evaluation's recommendations are for accommodations. *Id.* The evaluation's conclusion about an adverse educational impact "doesn't appear to match up with historical information." *Id.* T499-500. And the documented behaviors over time, a component of the emotional/behavioral disability, "don't match with the evidence." *Id.* T500.

143. Despite his opinion that the Noxon evaluation has major flaws, Mr. Gill opined that:

(M)y concern is that there is the possibility that [the Student] is a child with a disability who might need services. But (the Noxon evaluation)...in my opinion doesn't clearly support that, especially given that they didn't clearly document a need for SDI. And what I was seeing was accommodations.

Id. T505. Were she to return to the District, Mr. Gill would recommend that the District conduct an initial evaluation of the Student for special education. *Id.* T506, T517.

144. In early April 2022, the Parents contacted the District about reenrolling the Student. See D18p2 (April 5, 2022, email from Cederdahl to Mother referencing "the enrollment application for [the Student]).

145. On April 5, 2022, the BLHS registrar sent an email to the Mother requesting some information she needed to work on an enrollment application for the Student. D18p2. The Mother replied via email on April 13, 2022, stating the family was on vacation and she would provide the information by Friday. *Id.*

146. On May 3, 2022, the registrar sent another email to the Mother confirming she still had not received a response from the Mother concerning the necessary information for the Student's enrollment application. D18pp1-2.

147. The Mother replied later the same day stating:

[The Student] is getting out of residential treatment center and although I don't have an exact date I am staying in contact with them and letting them know we are prepared for her enrollment at BLHS as part of her discharge plan. She will

be attending BLHS part time and homeschooling part time. Her classes will depend on her IEP, she has her Eval done and qualifies but we have not had a meeting yet. We are working on that. I have attached the records from her current school that they sent to me. It is online at the center. I will keep you updated as I have a more definite timeline of release.

D18p1.

148. As of the due process hearing, the Student was applying for her “Level 3” at CGA. Mother T79. The Parents hope the Student will be ready for discharge from CGA by June 2023. *Id.*

149. The Parents seek reimbursement in the amount of \$34,800.00 for the cost of tuition, school fees, and uniforms they incurred in placing the Student at BGA. P8p1, Mother T73 74. The Parents also seek reimbursement for the cost of travel expenses to and from BGA. P9p1, Mother T74.

150. The cost of tuition at CGA is \$23,250.00 per quarter. Mother T75. The Parents seek reimbursement in the amount of \$95,758 for the cost of tuition and miscellaneous expenses at CGA through September 30, 2022. P8pp2 9, Mother T74 76. The Parents also seek reimbursement for the cost of tuition at CGA for the last quarter of 2022 (October, November, and December) in the amount of \$23,250.00.

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Therefore, the Parents bear the burden with respect to the issues raised in their Complaint.

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

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

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

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

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

Endrew F. v. Douglas County Sch. Dist. RE 1, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1201 (9th Cir.), cert. denied, 583 U.S. ___, 138 S. Ct. 556 (2017).

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

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

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

ISSUE: Whether the District violated the IDEA and denied the Student FAPE by failing to meet its child find obligations from January 2020 to January 10, 2022, by not identifying or conducting a special education evaluation of the Student after the Parents alerted District staff of the Student's disabilities and their negative impact on her education, thus unnecessarily delaying the Student's special education eligibility.

6. WAC 392 172A 02040 is relevant and provides in part:

(1) School districts shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system; except that students attending approved nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392 172A 04005. School districts will conduct any required child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education services, even though they are advancing from grade to grade.

7. The District argues that "A school district's (child) find duty for special education services is conditioned upon the presence of both a suspected disability and a potential need for SDI, citing WAC 392 172A 02040(2), above. District's Post Hearing Brief (DB) p24. This is a two factor or two prong analysis. The Parents argue the IDEA requires that if a school

district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability, citing *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016), cert. denied, 137 S. Ct. 1578. Parents' Post Hearing Brief (PB) p26. This is a single factor analysis.

8. Child find generally and this issue specifically have been well considered before by the Office of Administrative Hearings (OAH). ALJ Pamela Meotti addressed these in *Northshore School District*, 121 LRP 34551 (SEA WA 2021):

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

(T)o develop a method to identify, locate, and evaluate students with disabilities who are in need of special education services. *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1221 (9th Cir. 2016). [C]laims based on a local educational agency's failure to meet the child find requirement are cognizable under the IDEA. *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1185 (9th Cir. 2010). The Ninth Circuit instructs that a duty to evaluate arises when a disability is deemed suspected:

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

Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1119 20 (9th Cir. 2016), cert. denied, 137 S. Ct. 1578, 197 L. Ed. 2d 704 (2017); see also *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) (The duty to evaluate a student arises when disability is suspected, or when the district has notice that the child has displayed symptoms of that disability.) (quoting *Timothy O.*, 822 F.3d at 1119); *S.B. v. San Mateo Foster City Sch. Dist.*, 2017

U.S. Dist. LEXIS 217440, 2017 WL 4856868, at *13 (N.D. Cal. April 11, 2017) (A school district's child find duty is triggered when it has reason to suspect a child has a disability, and reason to suspect the child may need special education services to address that disability.) (citing *Dep't of Educ. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (P. Haw. 2001)). Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not exclusively in hindsight. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993)). However, some consideration of subsequent events may be permissible if the additional data provide[s] significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9th Cir. 2011) (quoting *Adams*, 195 F.3d at 1149).

9. With respect to the specific issue whether a school district's child find duty is conditioned upon the presence of both a suspected disability *and* a potential need for SDI, ALJ Meotti correctly concluded that the law in this area is not clear:

In 2014, the Ninth Circuit Court of Appeals recognized:

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

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

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

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

Northshore Sch. Dist., supra.

10. It is concluded that the Parents’ argument on this issue is more persuasive than the District’s. *Timothy O.* was decided well after *Cari Rae S.* It is therefore reasonable to assume that the court was aware of *Cari Rae S.* when it decided *Timothy O.* This, coupled with the court’s holding in *G.M.*, also decided after *Cari Rae S.*, that there was no binding Ninth Circuit caselaw on how courts are to determine whether a school district has violated child find, provides support to conclude that a disability is suspected, and must therefore be evaluated, when a school district has notice that a student has displayed the symptoms of a disability. Accordingly, the issue in this case is whether the District was on notice that the Student displayed symptoms of a disability before she was withdrawn from the District by the Parents. For reasons discussed below, it is concluded that the District had clear notice that the Student displayed symptoms of a disability before she was withdrawn, and the District should have evaluated the Student for special education and related services.

11. Upon enrollment at MVMS during October 2019, the Mother disclosed the Student's diagnosis of ADHD.¹² The Mother told Principal Montgomery about the Student's background and adverse childhood experiences. The Mother also told Ms. Jewett Borst about some of the trauma that surrounded the Student and what might have been causing her to have some anxiety at school. The Mother told Ms. Jewett Borst that the Student *suffered* from anxiety and depression, although the Mother did not tell her the Student was *diagnosed* with depression. The Mother told staff that the Student was in outside therapy but did not disclose the reason for the therapy. Then within one month of attending MVMS, the Student was considered a Tier II student, a designation that placed her within in the top 10% of students requiring extra supports at school. The Student was also considered an at risk student based on her history of relationships with peers, eloping, and early childhood trauma.

12. Within a month of attending MVMS, the Student was leaving class to hide in the bathroom for extended periods of time or going to the nurse's office with anxiety or panic attacks. At the same time, Ms. Jewett Borst was aware the Student was experiencing anxiety and depression at MVMS. In fact, Ms. Jewett Borst agreed that the Student struggled with anxiety during the entire school year, was leaving the classroom at least once every few days, and this had an adverse impact on her ability to engage in her education.

13. Principal Montgomery was also aware the Student was struggling at MVMS. There were a couple of times when she could not get the Student to leave her office because the Student was angry and crying. Principal Montgomery discussed with the instructional team that anxiety was the biggest cause of the Student leaving class and spending extended time in the bathroom, and she asked for some help with the Student's "mental health needs." Principal Montgomery checked in with the Student every week if not more often throughout the school year, this in a school of 900 students.

14. In early November, Ms. Jewett Borst took the Student to the nurse's office with [REDACTED]. Then still in November, the Mother met with Ms. Jewett Borst in her office and told her about the Student's diagnoses of ODD, ADHD, depression, and PTSD. Again, still in November, the Student's computer teacher informed the Mother that the Student was very passive, not making progress, did not ask for help, and had her head down on her desk. Later in November, there were reports of the Student verbalizing wanting to fight with other students and getting into verbal altercations

¹² Again, this appears to be an error in reporting the Student had ADHD. The Student was diagnosed with ADD by her pediatrician, not ADHD. However, for the purpose of determining what notice the District had of any possible disability, the distinction is not relevant.

with peers. Then in December, the MVMS nurse called the Mother to report the Student was

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15. On January 10, 2020, the Student reported to Ms. Jewett Borst that she was being bullied at MVMS. Ms. Jewett Borst recalled at least two occasions when the Student reported race based harassment, intimidation, and bullying at MVMS. The Parents met with Ms. Jewett Borst about the Student being bullied on January 13, 2020 but were told there was nothing she could do. The bullying only increased the Student's anxiety at MVMS. The Parents told Ms. Jewett Borst that the Student was on medication. Then on January 27, 2020, the Student eloped from MVMS and did not go home. The following day, a CPS employee arrived at MVMS to speak with the Student. For the grading period ending January 30, 2020, the Student earned "Fs" in algebra and science, a "C" in language arts and history, and an "A" in Choir.

16. In early February 2020, the Mother had a telephone conversation with Ms. Jewett Borst during which they discussed whether the Student might have RAD, and that the Parents were having the Student evaluated. Later in February the Mother exchanged emails with the Student's leadership class teacher. In her email, the Mother talked about the Student's traumatic first years of life, and that the Student had been in therapy but would no longer attend. Finally, she explained that the Student had tested well above grade level but was failing her classes at MVMS. Finally in February the Student's math teacher reported that the Student usually takes 15-30 minutes, or almost half a class period, when she went to the bathroom, although the Student did not use the bathroom every day.

17. For the grading period ending March 13, 2020, the Student earned "Fs" in math, language arts, and PE, a "D" in science, and an "A" in Choir and Leadership. Then on May 14, 2020, the District received an alert through the Securly system. The alert informed the District that the Student used her District laptop to search for information relating to ██████████. Principal Montgomery agreed that if a student expresses ██████████

████████████████████

18. The Student moved to BLHS for ninth grade. By October 2020, the Student was experiencing stress about school and this was communicated to at least one of her teachers. Shortly after that the Mother wrote to Mr. Herd, confirming the Student was struggling to get her work done on time, lacked motivation, and already had 14 missing assignments. Only days later, the Parents withdrew the Student from BLHS, deciding to home school the Student. This continued until the Parents returned the Student to remote learning with the District on February 2, 2021. In January 2021, the Mother emailed Mr. Herd, informing him that the

Student had excessive anxiety and panic attacks, was on medication, and that her doctor had asked the Mother to request a 504 plan. The Mother also asked that the Student be placed in a co taught algebra class a special education class at BLHS. Later in January, the Mother reported to the BLHS nurse that the Student had panic attacks related to anxiety. The Student [REDACTED] While the Mother reported to BLHS that the Student was hospitalized, she did not reveal the reason. The Parents later withdrew the Student from the District and placed her at BGA in March 2021.

19. Given all that the District was aware of concerning the Student and her background, behavior, and performance while attending MVMS and BLHS, it is concluded that the District had clear notice that the Student displayed symptoms of a disability before she was withdrawn in March 2021. This conclusion is true despite the District's apparent attempt to normalize much of the Student's aberrant behavior. This is reflected in Principal Montgomery's characterization of anxiety and depression as being observable in the halls of MVMS on a daily basis, and that escaping to the bathroom is common among middle school students. This ignores or minimizes the frequency and duration of the Student leaving class overwhelmed by anxiety and losing valuable instructional time. Mr. Herd's observation that during the COVID 19 pandemic and school closures the amount of anxiety at school was "tremendously" off the charts similarly does not lessen the District's obligation to investigate and as necessary evaluate students who display symptoms of a disability.

20. This is also illustrated in Ms. Jewett Borst's opinion that the Student was an at risk student, but the same could be said of all the students at MVMS. It is also reflected in the testimony of Principal Montgomery and Ms. Jewett Borst that they receive multiple Securly alerts every day. Whether it is one student a day or six students a day using search terms including [REDACTED] that cannot be ignored or minimized as typical middle school behavior. The same holds true for the two occasions when the District was aware the Student was [REDACTED] [REDACTED] regardless of whether it occurred at school or at home. Whether at home or at school, such behavior is aberrant and indicative of profound internal conflict.

21. This conclusion holds true even though District staff were to some degree unaware that the Student had a formal diagnosis or diagnoses. But the facts are clear that staff were aware the Student suffered from or experienced "mental health needs" Principal Montgomery's own characterization. A formal diagnosis of a mental illness is not required to place a reasonable school district on notice that a student is displaying symptoms of a disability. And there is no question that the District was aware the Student was at least reported to be diagnosed with ADHD, whether that report was accurate or not. That alone, coupled with the Student's poor academic performance over practically the entirety of her

enrollment in the District, could place a reasonable school district on notice that the Student was displaying the symptoms of a disability and should be evaluated. And the fact that the Student moved from MVMS to BLHS does not negate what *the District* knew about the Student and her displays of symptomology related to a disability.

22. It is not necessary to identify the exact date, event, or circumstance by which the District first had clear notice the Student was displaying symptoms of a disability, and therefore should have been evaluated. Rather, it is sufficient to conclude that the District had such notice before the Parents withdrew the Student from the District in March 2021, and it is so concluded. It is concluded the District violated the IDEA when it failed to carry out its child find duty and evaluate the Student prior to the time she was withdrawn from the District.

23. The District raises the argument that because she has not been determined eligible for special education and related services through an appropriate evaluation, the Student is not entitled to the protections of the IDEA. DB p27. This argument is without merit. The Parents correctly cite to *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 241 (2009), where the court found this argument unpersuasive. PB p29. There, the court characterized the same argument as producing:

“(A) rule bordering on the irrational. It would be particularly strange for the Act to provide a remedy, as all agree it does, when a school district offers a child inadequate special education services but to leave parents without relief in the more egregious situation in which the school district unreasonably denies a child access to such services altogether.

Forest Grove, *supra* at 245.

24. Violation of a school district’s child find duty is a procedural violation of the IDEA, and it must be determined if the procedural violation impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decision making process regarding the provision of a FAPE to the parents’ child or caused a deprivation of educational benefit. WAC 392 172A 05105(2); See also *Timothy O.*, 822 F.3d at 1124.

25. This ALJ agrees with the Parents’ argument on this point. The District’s failure to evaluate the Student for special education and related services impeded the Student’s right to a FAPE and significantly impeded the Parents’ right to participate in the decision making process regarding the Student’s right to a FAPE. By failing to evaluate the Student, the District effectively short circuited the entire process under the IDEA to identify, evaluate, craft an appropriate IEP, and select a Least Restrictive Environment (LRE). A child find violation is not

the type of alleged procedural violation where, for example, some component of an IEP is not implemented, but it is possible the failure may be found to be an immaterial failure to implement the IEP. Here, the entire process simply stops. The District's child find violation results in a situation where there is no decision making process for the Parents to meaningfully participate in. Accordingly, it is concluded that the District's child find violation warrants a remedy for the Parents, as discussed below.

ISSUE: Whether the District violated the IDEA and denied the Student FAPE by failing to offer an IEP to the Student in and after January 2020 that included an educational placement in the Student's least restrictive environment.

26. Neither the Parents' Brief nor the District's Brief appear to develop or articulate a persuasive legal analysis of this issue. It is axiomatic that without an evaluation determining a student eligible for special education and related services, a school district will not develop and offer an appropriate IEP. Given the District never evaluated the Student for potential eligibility because of the child find violation, it is difficult to conceptualize how this issue is not somehow subsumed by the child find issue and violation. Similarly, it is difficult to conceptualize how an appropriate remedy for the child find violation would not also cure the failure to offer an IEP. As this issue has not been well developed by the parties and the burden of proof falls to the Parents, it is concluded that the Parents have not proven an independent violation of the IDEA apart from the child find violation with respect to a failure to offer the Student an appropriate IEP. This issue is dismissed.

ISSUE: Whether the District violated the IDEA and denied the Student a FAPE by failing its Child Find obligation to develop an IEP for the Student after March 16, 2022, when it was informed of the Student's eligibility for special education and her intent to return to Washington State.

27. In early April 2022, the Parents contacted the District ostensibly to initiate reenrollment of the Student in the District. In May 2022, the Mother represented to the District that the Student was getting out of CGA, although she did not have an exact date for discharge. This ALJ does not find credible the Mother's or Parents' representation to the District that the Student would be discharged from CGA within any conceivably reasonable time of their request to reenroll the Student. After representing to the District in May 2022 that the Student would be getting out of CGA, the Mother confirmed at the due process hearing in September 2022 that the Student was only then *applying* for her Level 3 at CGA. As of the due process hearing, the Mother hoped the Student would be ready for discharge from CGA by June 2023, more than a year after representing to the District that they wished to reenroll the Student. It is not credible for the Parents to assert they were sincere in their

representation to the District that they wanted to reenroll the Student in the District even for the start of the 2022 2023 when, four months later at the due process hearing, they hoped the Student would be ready for discharge from CGA an entire school year or more later. As of May 2022, the Student was still residing in Montana at CGA, and she continues to reside there to date. She has not resided with the Parents in the District since March 2021, now almost 22 months ago. It is concluded that the Parents had no genuine intent to return the Student to the District until she finished the program at CGA. Given there was no genuine intent to return the Student to the District, it is concluded that the District did not violate the IDEA or deny the Student FAPE when it did not develop an IEP for the Student after March 16, 2022.

ISSUE: Whether the private evaluations and services, including placement in a residential therapeutic placement, obtained for the Student between March 2021 and January 10, 2022, were appropriate.

28. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if: (1) the district placement violated the IDEA; and (2) the Parents' private school placement is "proper" under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993). Once a district fails to develop an IEP that makes FAPE available, the proper private placement need only confer some educational benefit to the student. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981 (8th Cir. 2011); and *Warren G. v. Cumberland County Sch. Dist.* 31 IDELR 27 (3d Cir. 1999). A private school placement does not need to maximize the student's potential or provide every special education service and support she needs to be deemed proper or "appropriate" for reimbursement purposes. See, e.g., *C.B. v. Garden Grove Unified Sch. Dist.*, 56 IDELR 21 (9th Cir. 2011), *cert. denied*, 111 LRP 68912, 132 S. Ct. 500 (U.S. 2011). A unilateral private placement is "appropriate" for reimbursement purposes if it offers instruction that is specially designed to meet the student's unique needs as well as the support services the student requires to benefit from that instruction. *M.N. v. State of Hawaii, Dep't of Educ.*, 60 IDELR 181 (9th Cir. 2013, *unpublished*). A private placement does not need to satisfy the IDEA's least restrictive environment requirement to be proper under the Act. *C.B. supra at 991*.

29. The Student was unilaterally placed by the Parents first at BGA in March 2021. The Student remained at BGA until she eloped in late October 2021. There is very little evidence to determine if the Student's unilateral placement at BGA is proper for reimbursement. No one from BGA testified at the due process hearing. There is very little documentary evidence concerning the program at BGA. The only real source of information about BGA was the Mother's testimony, and much of that is second hand or hearsay. What is known is that BGA does not have licensed clinicians or licensed therapists. What is not known is whether BGA has any properly credentialed teachers or instructional staff. It is also unclear whether BGA

is licensed or accredited by Idaho in any manner. Other than identifying the curriculum used at BGA as coming from “Lighthouse Christian Academy,” there is insufficient evidence to determine whether the curriculum was appropriate for the Student’s academic needs. The Parents argue briefly that BGA provided a significant educational benefit to the Student based on grades she earned at BGA that later became part of her transcript at CGA. This is not enough. Given the lack of sufficient evidence to consider and the evidence that is known about BGA, it is concluded that the Parents have not proven the Student’s placement at BGA was proper for reimbursement.

30. The Parents unilaterally placed the Student at CGA after she eloped from BGA. The evidence to determine whether CGA is proper for reimbursement is considerably more substantial than the evidence for BGA. Three staff members from CGA testified at the due process hearing. Documentary evidence was introduced regarding its program for the Student. CGA is licensed by Montana as a therapeutic boarding school. Its educational program is accredited through Cognia, and its curriculum is provided by Edmentum, an accredited online academic platform. It employs clinical professional counselors, licensed clinical social workers, and certificated educational staff including a special education teacher. It has a psychiatric nurse practitioner on staff. It has a year round school schedule and is approved to issue high school diplomas recognized by Montana. After considering all the evidence, it is concluded that CGA is proper for reimbursement.

31. The Parents also seek reimbursement for “private evaluations and services” obtained from March 2021 through entry of the final order. It is somewhat unclear what private evaluations the Parents are referring to. CGA performed a Biopsychosocial Intake upon the Student’s arrival at CGA, but it is unclear if this is a private evaluation for which the Parents see reimbursement. The IDEA evaluation by the Noxon School District should have been at no expense to the Parents. To the extent the Student’s placement at CGA required additional miscellaneous fees or expenses beyond the \$23,250 per quarter tuition, it is concluded that such expenses are reimbursable as the Student’s unilateral placement at CGA is proper.

The Parents’ Requested Remedies

32. Compensatory Education: The Parents request compensatory education and related services to allow the Student to obtain the educational benefit she would have received but for the District’s violation of the IDEA and denial of FAPE. This remedy is denied. The Parents will be awarded reimbursement as set forth below. Awarding the Parents reimbursement as well as compensatory education is not appropriate. And as the Parents acknowledge, because no IEP has been developed for the Student calculating the amount of any compensatory education award is difficult. PB p48. In fact, it is impossible to calculate any

compensatory education award with reasonable certainty given the evidence in this case.

33. Reimbursement: The Parents seek reimbursement for the expenses incurred in placing the Student first at BGA and later CGA. Any reimbursement for BGA is denied because as discussed above, the evidence does not support concluding that BGA was a proper placement for reimbursement. The Parents also seek reimbursement for the expense incurred in placing the Student at CGA. It has been concluded that the placement at CGA is proper for reimbursement.

34. The Parents seek reimbursement for CGA in the amount of \$95,758 for tuition and expenses through September 2022. PB p48. They seek an additional \$23,250 for tuition for October, November, and December 2022, for a total of \$119,008. They also seek reimbursement for travel and lodging expenses associated with travel to and from CGA. That amount is calculated based on the information in P9p1. Excluding the expense attributable to travel to and from BGA, that amount is calculated as \$998. Therefore, the Parents seek total reimbursement for all expenses associated with placing the Student at CGA through December 31, 2022, in the amount of \$120,006. It is concluded that the total amount the Parents seek for placement at CGA through December 31, 2022, should be reduced for the following reasons.

35. As the District correctly identifies, a claim for reimbursement of expenses associated with a unilateral private placement by parents may be denied or reduced if parents fail to either: (1) inform the IEP team at the most recent IEP meeting prior to the unilateral removal that they are rejecting the district's placement, identify the reasons why, and inform the district of their intent to enroll their student at a private school at public expense, or provide written notice to the district 10 business days prior to unilaterally removing the student from the district pursuant to WAC 392 172A 04115(4). DB pp31 32. In the Parents case, there was never an IEP meeting because the Student was not identified through child find, evaluated, or determined eligible by the District.

36. The Parents never informed the District of the reason why they withdrew the Student from the District in March 2021 until they filed their Complaint on December 6, 2021. This is a very important factor to consider because the Parents never gave the District an informed opportunity to attempt to address their concerns about the Student's education. The District cites to authority to support awarding the Parents no reimbursement at all for the expenses associated with placing the Student at CGA. PB p32. However, it is concluded that under the facts in this case, awarding the Parents nothing would be inequitable. The violation and denial of FAPE supporting some amount of reimbursement is based on the District's child find violation in the face of very clear knowledge that the Student was displaying symptoms of a

disability. The conclusion that the District violated its child find duty is not a close call. Any reasonable school district should have known the Student required an initial evaluation for special education and related services. Nevertheless, the Parents' failure to notify the District prior to withdrawing the Student and placing her first at BGA, and then CGA is significant. It is concluded that the Parents' reimbursement for the expenses associated with placing the Student at CGA should be reduced by 25% for their failure to provide prior notice to the District.

37. An ALJ may also consider the conduct of parents when crafting a remedy like reimbursement. *W.G. v. Board of Trustees of Target Range School Dist.*, 960 F.2d 1479, 1486 (9th Cir. 1992)(The conduct of both parties must be reviewed to determine whether relief is appropriate). In this case, the Parents' conduct warrants further reduction to reimbursement for CGA. The Parents did not fully disclose the extent of their knowledge concerning the Student's disabilities or diagnoses when the Mother completed the Student's enrollment materials upon entry to MVMS. While the Mother did this at the request of the Student, the fact remains that if the Parents had provided the District with the documentation in their possession at that time identifying the Student's diagnoses and treatment to date, the District would have been in a much better position to recognize what they were observing at MVMS was the Student displaying symptoms of a disability. The Parents were also not forthcoming with the District about the Student's [REDACTED] in February 2021. It is concluded that the Parents' reimbursement for the expenses associated with placing the Student at CGA should be reduced by an additional 10% based upon their intentional failure to disclose valuable and relevant information about the Student to the District.

38. Finally, the Parents were not forthcoming when they sought to reenroll the Student in the District in April May 2022. The Parents had no reasonable expectation that the Student would be discharged from CGA for likely another year or more. The Mother was not forthcoming when she told the District that the Student was getting out of CGA, but she didn't have an "exact date." This evidences bad faith on the part of the Parents and warrants an additional 10% reduction in reimbursement for CGA.

39. All told, it is concluded for the above reasons that the Parents' reimbursement for CGA should be reduced by a total of 45%. **It is concluded that the District's shall reimburse the Parents a total of \$66,003 for their placement of the Student at CGA.**

40. Prospective Placement at CGA: The Parents also request an order for prospective placement of the Student at CGA through a District IEP and at District expense. PB p49. That remedy will be granted in part as follows.

41. The District has never conducted an initial evaluation of the Student for special education and related services. While the Parents contend that the evaluation of the Student by the Noxon School District establishes the Student's eligibility for special education, even were the Student to return and begin residing again in Washington State, the District would still have the right to conduct its own evaluation. It is concluded that the District should be afforded an opportunity to evaluate the Student, determine if the Student is eligible for special education, and if the Student is eligible, develop an appropriate IEP and offer it to the Student.

42. If after conducting its own evaluation of the Student an evaluation team, including the Parents, determines the Student is not eligible for special education, the District shall provide the Parents with an appropriate Prior Written Notice of the denial, and the Parents may request a due process hearing to contest the denial. If after evaluating the Student an evaluation team, including the Parents, determines the Student is eligible for special education, the District shall convene an IEP team and develop and offer an appropriate IEP for the Student. If the Parents disagree with the IEP, they may request a due process hearing.

43. If the District elects to conduct its own evaluation of the Student, it may pursue one of two options. First, it may supplement the Noxon School District evaluation with additional assessments/evaluative procedures as the District determines are necessary to arrive at an appropriate evaluation. In the alternative, the District may conduct its own entirely new evaluation of the Student. However, the District shall supplement the Noxon evaluation or conduct an entirely new evaluation of the Student at CGA. The Parents shall fully cooperate as needed to facilitate the District having whatever access it needs to evaluate the Student while she remains in residence at CGA. The District may send its own staff to CGA as needed, or the District may contract with a non District individual or team to evaluate the Student at CGA. In either event, the Parents shall fully cooperate with the District to ensure a timely and efficient evaluation of the Student at CGA.

44. The Student may remain at CGA at the District's expense until the issues of the Student's eligibility and, as necessary, the appropriateness of a proposed IEP are finally determined, including as needed through a due process hearing.

45. All arguments raised by the parties and all requested remedies have been considered. Any matters not expressly addressed above are found to be without merit.

FINAL ORDER

The Sumner Bonney Lake School has violated the Individuals with Disabilities Act and denied the Student a Free Appropriate Public education. The Parents are awarded

\$66,003.00 as reimbursement for placing the Student at Clearview Girls Academy. The Parents shall fully cooperate with the District's evaluation of the Student while in residence at Clearview Girls Academy pursuant to the above Conclusions of Law.

Signed on the date of mailing.



MATTHEW D. WACKER
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

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

Parents

[REDACTED]
[REDACTED]

via E mail

[REDACTED]
[REDACTED]

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Dated December 16, 2022, at Seattle, Washington.

Jazmyn Johnson

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

cc: Administrative Resource Services, OSPI