

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

IN THE MATTER OF

LAKE WASHINGTON SCHOOL DISTRICT

OSPI CAUSE NO. 2021-SE-0056

OAH DOCKET NO. 05-2021-OSPI-01317

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

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline Becker from September 27 through October 1, and on October 4, 2021, via videoconference. The Parents of the Adult Student (Student) whose education is at issue¹ appeared and were represented by Nicholle Mineiro, attorney at law. The Lake Washington School District (District) was represented by Carols Chavez, attorney at law. Also present for the District was Stacy McCrath, Director of Secondary Special Services - East.

PROCEDURAL HISTORY OF THE CASE

The Due Process Hearing Request (Complaint) in this matter was filed with the Office of Superintendent of Public Instruction (OSPI) on May 25, 2021. The Complaint was assigned Cause No. 2021-SE-0056 and was forwarded to the Office of Administrative Hearings (OAH), which assigned the matter to ALJ Eric Roth. The Complaint was amended on July 16, 2021, and a prehearing order was issued, setting forth the issues to be heard at the due process hearing and the Parents' requested remedies.

On September 15, 2021, the Parents filed a pleading seeking to clarify their requested remedies and withdraw several issues set to be heard at the due process hearing. On September 17, 2021, this matter was reassigned to ALJ Becker. On September 21, 2021, ALJ Becker issued a prehearing order granting the Parents' request to clarify their requested remedies and withdraw several issues. The final statement of issues to be heard at the due process hearing and the Parents' requested remedies are set forth below.

EVIDENCE RELIED UPON

Exhibits Admitted:

Parents' Exhibits: P1, P5-P7, P9-P21, P23-P37, and P39-P53.²

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

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 In such cases, only one copy of the exhibit was admitted and used during the hearing, and the duplicate exhibit was withdrawn.

District's Exhibits: D1-D7, D10-D12, D14-D18, and D22-D24.

Witnesses Heard (in order of appearance):

Olivia Jewell, registered behavior technician, Basic Beginnings
Jon Goodman, District special education teacher
Cristina Speer, behavioral paraeducator, Basic Beginnings
The Student's Mother (Ms. Parent)
Kassandra Picchi, Dolan Academy instructor
Jaymee Mansanas, former District behavior aide; behavioral paraeducator, Basic Beginnings
Dr. Shannon Hitch, District Executive Director of Special Services
Stacey McCrath, District Director of Secondary Special Services - East
Nancy Piombo, case manager, Washington Developmental Disabilities Administration
Dr. Yaniz Padilla Dalmau, clinical psychologist and board certified behavior analyst
Dr. Anne Uherek, clinical psychologist
Caitlyn Sweetapple, Director of Education, Shrub Oak International School
The Student's Father (Mr. Parent)
Dr. Christopher Jones, developmental psychologist and board certified behavior analyst
Tabitha Troutman, Director of Programs, Basic Beginnings
Josh Trimmell, District special education teacher
Katie McAllister, District program specialist
Dawn Simmons, District speech language pathologist
Dr. Cassie Martin, District education and behavior consultant

Post-Hearing Briefs

The due date for post-hearing briefs was November 8, 2021. The parties' post-hearing briefs were timely filed.

Due Date for Written Decision

The due date for a written decision in this case was continued to thirty (30) calendar days after the close of the record by order dated July 1, 2021. The record closed with the receipt of the post-hearing briefs on November 8, 2021, and the due date for the written decision is December 8, 2021.

ISSUES/REMEDIES

The issues heard at the due process hearing are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and failed to offer the Student a free appropriate public education (FAPE) for two years before the May 25, 2021 filing of the due process hearing request in this matter, by:

i. Failing to offer individualized education programs (IEPs) that were reasonably calculated for the Student to make appropriate progress as follows:

A. The October 19, 2019 IEP failed to address self-injurious behavior, did not provide sufficient behavioral and therapeutic-related services to the Student, and did not contain appropriate supportive aids and services for staff training and supervision.

B. The May 31, 2020 IEP did not provide sufficient behavioral and therapeutic-related services to the Student and did not contain appropriate supportive aids and services for staff training and supervision.

C. The November 5, 2020 IEP did not provide sufficient behavioral and therapeutic-related services to the Student and did not contain appropriate supportive aids and services for staff training and supervision.

D. The April 8, 2021 IEP did not provide sufficient behavioral and therapeutic-related services to the Student.

ii. Failing to issue a prior written notice (PWN) that documented the IEP team's decision to change the Student's placement to residential placement, and the reasons and evidence used to make that determination.

iii. Failing to discuss the Student's rejection from residential placements, and the District's decision to reject placements, in an IEP team meeting based on the Student's individualized need and not administrative cost.

iv. Failing to document services provided to the Student in his IEPs.

v. Failing to place the Student in a residential treatment center as his Least Restrictive Environment (LRE).

vi. Failing to initiate a reevaluation after the October 19, 2019 IEP amendment to consider changing the Student's placement to residential placement.

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

c. And whether the Parents are entitled to their requested remedies:

i. Declaratory relief finding that the District violated the IDEA and denied the Student FAPE for the two years up to and including the filing date of the complaint.

ii. Placement on an IEP or, in the alternative, an award of compensatory education to consist of tuition and all related services and expenses for the Shrub Oak International School Founders Program, a residential treatment center for students with autism, impaired functional communication skills, and severe self-injurious behaviors.

iii. Compensatory education in the form of twenty-four months of tuition and all related services and expenses at Shrub Oak International School, after the end of IDEA eligibility for the Student.

iv. Any additional relief deemed appropriate by the Administrative Law Judge.

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 conflicts, the evidence adopted has been determined to be more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence is set forth below as necessary.

1. The Student was born in [REDACTED] His Parents are his legal guardians. Complaint; Tr. 162, 803.³ The Student is [REDACTED] Tr. 69; P52 p.4.⁴ [REDACTED]. Tr. 162; P1 p.4.

2. Ms. Parent is a Board Certified Behavior Analyst (BCBA) and a licensed speech language pathologist (SLP). P52 p.1. She has a master of education degree in behavior analysis, among other degrees.

3. In 2004, when he was [REDACTED], the Student was diagnosed with autism spectrum disorder (autism), along with intellectual and communication impairments. D1 pp.1, 5. The Student has attended school in the District since he was three years old. P52 p.4. He has undergone numerous evaluations and reevaluations since first being diagnosed with autism. D1 pp.1, 5.

4. The Student has long struggled with his behavior in school. When he was in first grade, his IEP team discussed placing him in a residential program. P52 p.4. However, the Parents consistently advocated for him to be included in the general education setting along with non-

³ The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to "Tr. 80" is to the testimony at page 80 of the transcript.

⁴ Exhibits are cited by party ("P" for Parents, "D" for District), exhibit number, and page number. For example, a citation to "P1 p.5" is to the Parents' Exhibit 1 at page 5.

disabled children as much as possible. *Id.* Prior to 2017, the District provided a BCBA to work with the Student. *Id.*

5. The Student has a lengthy history of [REDACTED]

Id. at 67.

6. It could not be determined from the evidence presented at the due process hearing whether the [REDACTED]. No findings of fact are made as to these issues.

7. The Student regularly exhibits self-injurious behavior (SIB) in addition to [REDACTED]

. P52 p.3-4.

8. At the time the Student started high school, he was able to successfully go on outings in the community, such as to the grocery store. He was able to use functional skills he had learned, such as locating basic items within a store. *Id.* at 806-07.

The 2018-19 school year

9. During the 2018-19 school year, the Student was a junior at Eastlake High School in the District. D3 p.3. He attended a general education physical education (PE) class and other general education classes with his one-on-one aide. *Id.* at 4. The Student received Specially Designed Instruction (SDI) in functional academics math, functional academics reading, functional academics writing, adaptive skills, social/emotional, behavior, and communication. *Id.* The Student also had a job at the school store. His duties included folding clothes, counting items, putting things away, loading the refrigerator, and assisting the staff members who ran the store. P47 p.5. The Student also participated in the Washington Network for Innovative Careers (WANIC) program through the District. This program provides hands-on experience in vocational career options. P52 p.5.

10. During the fall of 2018, the Student had an increasingly difficult time attending general education classes. Tr. 148. His one-on-one aide noticed the Student became increasingly agitated in general education classes and his "stimming" increased. Stimming refers to repetitive or unusual movements or noises. In the case of the Student, it typically consists of flapping his hands against his head, making snapping movements, and grunting. Tr. 153; P47 p.6. The Student would also break supplies and draw on himself. *Id.* In October of 2018, the Student hit his aide in the face and spat on her. He began to [REDACTED]

day. *Id.* at 153-155. The Student would [REDACTED]. P47 p.5. In November of 2018, the Student was no longer allowed to eat lunch in the school cafeteria with the other students because he would attempt to take their food. *Id.* at 7. The Student hit his art teacher in the head in December of 2018 and was suspended. *Id.*

11. During the 2018-19 school year, the Student's Parents noticed a dramatic increase in the Student's aggression and SIB. P52 p.5. Due to his escalating behaviors, the Student was eventually excluded from the WANIC program.

12. During the spring of 2019, Jaymee Mansanas⁵ was a behavior aide at Eastlake High School and frequently observed the Student. She saw him hit other students, [REDACTED]. P51 p.2. When he went on school outings, which occurred infrequently, the Student required two-to-one supervision from an aide and a special education teacher. *Id.*

13. The District conducted a reevaluation of the Student in May of 2019 (2019 Reevaluation). D1. The 2019 Reevaluation concluded that the Student's limitations in verbal and nonverbal communication, as well as his challenges with social interactions stemming from his autism, were adversely impacting his educational progress. *Id.* at 2. The May 2019 Reevaluation concluded that the Student continued to qualify for SDI in the areas of functional academics reading, functional academics math, functional academics writing, social/emotional, adaptive, communication, and behavior. He also qualified for occupational therapy (OT), speech language therapy, and a one-on-one aide as related services. *Id.*

14. The May 2019 Reevaluation recommended that the Student's IEP provide for behavior SDI to improve skills that would increase positive classroom behaviors and support a decrease in disruption to the Student's learning and the learning of others. D1 p.3. It also recommended that the Student's IEP provide communication SDI focused on improving receptive and expressive language skills. *Id.*

15. The 2019 Reevaluation report notes that the Student had recently been ejected from the "Teens Rock" social group due to escalating behavior challenges after four years of participation. The report notes Ms. Parent's input that Teens Rock had been the Student's only organized social group outside of school. D1 p.5. The report further notes that Ms. Parent expressed concern over the Student's increasingly aggressive behavior and SIB as of the time of the 2019 Reevaluation, including [REDACTED]. *Id.*

16. The 2019 Reevaluation found the Student's overall adaptive skills⁶ to be in the "extremely low" range. His communication, functional academic, and self-direction skills

⁵ Ms. Mansanas is currently a certified behavior technician, but had no formal training as a behavior technician and was not certified during the time she worked with the Student. P51 p.7; Tr. 964-65. She has a high school degree and attended some college but does not have a college degree. P51 p.7.

⁶ "Adaptive skills" is a term of art that means a person's ability to function in his or her environment. Tr. 464.

were also in the “extremely low” range, while his social skills were below average. D1 pp.8, 12.

17. The 2019 Reevaluation found the Student’s communication skills in receptive, expressive, and pragmatic language were below average and indicated that he had a “significant communication disorder.” D1 p.23.

18. Dr. Cassie Martin⁷ is an education and behavior consultant who has been acquainted with Ms. Parent for many years. Dr. Martin has worked as a District consultant for the Student since he was in third grade. Tr. 1084-85. Dr. Martin testified at the due process hearing that the Student had been “one of our success stories.” *Id.* at 1093. Even with his complex needs, the Student had spent almost half of his day in the general education environment in prior school years. When his extreme behaviors began to emerge in the 2018-19 school year, Dr. Martin did not know why. Tr. 1093-94.

19. A Functional Behavior Assessment (FBA) of the Student was completed by Dr. Martin as part of the 2019 Reevaluation.⁸ Target behaviors addressed in the FBA included aggression [REDACTED]

and attempting to hit or bite (referred to as “posturing”). P1 p.1. The FBA notes that changes were observed in the Student during the 2018-19 school year in that his aggressive and destructive behaviors increased, and the speed and intensity with which he engaged in those behaviors increased. *Id.* at 2. The Student was also noted to increasingly engage in pica. The FBA states that the target behaviors are methods by which the Student communicates that he wants something different, or does not want whatever it is he has or is doing. This suggested that he required more functional methods by which to communicate his needs and wants to teachers and others. *Id.*

20. The Student’s [REDACTED] is not addressed in this FBA, but Dr. Martin testified that “there have been conversations on and off around his [REDACTED] for years, and we have attempted different interventions.” Tr. 1089.

21. The May 2019 FBA includes a “frequency of target behaviors” graph purporting to indicate that the target behaviors decreased over the period of January 2019 to April of 2019. P1 p.3. On at least two days, the frequency of behaviors is quite high (8 to 15 instances). The graph does not make clear which behaviors occurred on which days. According to Dr. Martin, the Student’s behaviors were “variable from one day to the next.” Tr. 1092.

⁷ Dr. Martin has a Ph.D. in special education with concentrations in applied behavioral analysis inclusion, and organizational systems and leadership. She has worked as a teacher and applied behavioral analysis therapist. She is not a BCBA. Tr. 1083-84, 1086. At the times relevant to this action, Dr. Martin was an hourly contract employee of the District. *Id.* at 1109, 1136.

⁸ Dr. Martin had previously prepared several FBAs for the Student.

22. The FBA recommends that data pertaining to the Student's behaviors be reviewed every six weeks. P1 p.8.

23. A new IEP was developed for the Student in May of 2019. D3. The Student's special education teacher and case manager at the time, Josh Trimmell,⁹ noted in the May 2019 IEP that he was "extremely concerned with the amount of challenging behaviors that we have seen this year, [and] that [Student's] levels of independence for many areas have dipped drastically." *Id.* at 3.

24. The IEP contains a lengthy list of goals. It also provides for the following special education and related services to be provided to the Student:

Special Education and Related Services							
Meeting Date: <u>05/31/2019</u>							
PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.							
Services 06/03/2019 - 05/30/2020							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Adaptive Skills	Special Ed Teacher	Special Ed Teacher	40 Minutes / 5 Times Weekly	Special Education	06/03/2019	05/30/2020
No	Behavior	Special Ed Teacher	Special Ed Teacher	40 Minutes / 5 Times Weekly	Special Education	06/03/2019	05/30/2020
No	Social / Emotional	Special Ed Teacher	Special Ed Teacher	28 Minutes / 5 Times Weekly	Special Education	06/03/2019	05/30/2020
No	Functional Academics - Writing	Special Ed Teacher	Special Ed Teacher	25 Minutes / 5 Times Weekly	Special Education	06/03/2019	05/30/2020
No	Functional Academics - Reading	Special Ed Teacher	Special Ed Teacher	25 Minutes / 5 Times Weekly	Special Education	06/03/2019	05/30/2020
No	Functional Academics - Math	Special Ed Teacher	Special Ed Teacher	25 Minutes / 5 Times Weekly	Special Education	06/03/2019	05/30/2020
No	Communication	Private SLP, paid by LWSD	Speech and Language Pathologist	60 Minutes / 1 Times Weekly	Special Education	06/03/2019	05/30/2020
Related							
No	Occupational Therapy	Occupational Therapist	Occupational Therapist	120 Minutes / 1 Times Monthly	Special Education	06/03/2019	05/30/2020
Yes	1:1 Aide	1:1 agency aide, paid by LWSD	Special Ed Teacher	1540 Minutes / 1 Times Weekly	Special Education	06/03/2019	05/30/2020
No	1:1 Aide	1:1 agency aide, paid by LWSD	Special Ed Teacher	720 Minutes / 1 Times Weekly	General Education	06/03/2019	05/30/2020
No	Speech and Language Therapy	Speech and Language Pathologist	Speech and Language Pathologist	30 Minutes / 1 Times Weekly	Special Education	06/03/2019	05/30/2020
Total minutes per week student spends in school:				<u>1815 minutes per week</u>			
Total minutes per week student is served in a special education setting:				<u>1035 minutes per week</u>			
Percent of time in general education setting:				<u>42.98% in General Education Setting</u>			

D3 p.21.

⁹ Mr. Trimmell has a bachelor's degree in special education. Tr. 984.

25. The May 2019 IEP provides for special transportation for the Student and extended school year (ESY) services. D3 p.22. It further provides for a “secondary transition” plan designed to facilitate the Student’s move from school to post-school activities. The transition plan notes that the Student’s projected “exit date” from the District is June 23, 2023, and provides as follows:

Secondary Transition

Meeting Date: 05/31/2019

PURPOSE: The purpose of transition planning is to develop a coordinated set of activities designed within a results-oriented process that is focused on improving the academic achievement and functional performance of the student in order to facilitate the student’s movements from school to post-school activities, including postsecondary education, training, employment, and if appropriate, independent living skill.

Projected Graduation / Exit Date: 06/23/2023

Comments:

IEP Determined graduation

I. Post Secondary Goals/Outcomes

Define and project the desired post-secondary goal as identified by the student, parent, and IEP team in the available content areas. Transition Services may be special education, if provided as specifically designed instruction or related services. These services would be included in the Service Matrix section of the IEP.

Content Area: Education/Training	
Upon leaving public school, [redacted] will receive on the job training for supported employment	
Transition Services	Staff / Agency Responsible
[redacted] receives SDI in adaptive skills to enhance his ability to participate in vocational training.	School

Content Area: Employment	
Upon leaving public school, [redacted] will have a supported job and work for a paycheck.	
Transition Services	Staff / Agency Responsible
[redacted] receives SDI in functional academic skills to enhance his ability to follow job duties	School

Content Area: Independent Living	
Upon leaving public school, [redacted] will have a supportive living environment in his home and participate in two age appropriate community based activities	
Transition Services	Staff / Agency Responsible
[redacted] receives SDI in speech to increase his ability to communicate and be independent	School

II. Course of study

A multi-year description of coursework to achieve the student’s desired post secondary goals, from the student’s current year to anticipated exit year.

[redacted] is in his Junior year at Eastlake High School. He will attend school until he is 21 and earn a Certificate of Individual Achievement. [redacted] will take the WA AIM to meet state graduation requirements. [redacted] will continue to earn special education credits for his core classes, plus general education credit for electives. [redacted] will continue to receive specially designed instruction with an alternative curriculum, including instruction focused on communication, adaptive skills, social/emotional, behavioral skills, reading, writing, and math. He will continue receiving speech and language support as a related service. He also spends time with non-disabled peers through his general education classes. [redacted] will attend the transition academy post graduation from highschool.

Id. at 16.¹⁰

¹⁰ The blackened areas of this page are redactions of the Student’s name that were made by the ALJ prior to including this page of exhibit D3 herein. The official copy of exhibit D3 in the record does not contain redactions.

26. Enumerated supports for school personnel in the May 2019 IEP are minimal, including only, “The IEP dissemination process is followed with staff – as needed – all seetings [sic].” D3 p.19. This support is not specific to the Student. Tr. 1026. Rather, it describes a general process that is followed for all students who have IEPs. *Id.*

27. A “Positive Behavior Support Plan” (PBSP) was developed for the Student by Dr. Martin in May of 2019. D4. The PBSP is ten pages long and includes an “overarching goal” of reducing challenging target behaviors exhibited by the Student, including aggression, property displacement/destruction, [REDACTED]. *Id.* at 1. Pursuant to the PBSP, reinforcement for absence of aggression by the Student in a specified time period consists of a piece of a frosted cookie. *Id.* at 2. “Reactive procedures,” i.e., staff members’ responses to the Student’s challenging behaviors, include requiring the Student to [REDACTED] and requiring the Student to perform “boring” tasks if he hits a staff member. *Id.* at 8-9.

28. The PBSP contains a brief paragraph pertaining to functional communication, which reads: “Functional Communication: [Student] will continue to learn functional ways to communicate that include Proloquo,¹¹ written communication (writing and computer) and verbal communication. All will be taught and progress is monitored.” D4 p.7.

29. In June of 2019, Dr. Martin designed “programs” for the Student to work on during the 2019-20 school year. D5. The programs related to math, writing, self-reporting, reading, independence, keeping a schedule, community travel, job readiness, information gathering, social emotional, behavioral self-management, soothing activities, and behavior during choice time. *Id.* According to Dr. Martin, the programs were provided because the Student had a large number of IEP goals. Everyone on the IEP team was copied on information pertaining to the programs and Dr. Martin told team members, “We can talk more about what these will look like in the context of his school day when we figure out his school schedule.” *Id.* The classroom teacher received training on the programs, and staff working with the Student, as well as supervisors, were also included. Tr. 1106. Dr. Martin described having “a lot of conversations about how to generalize skills and what that looked like” for the Student, and how the programs would “facilitate consistency and the instructional methods” being used with the Student. *Id.*

30. Dr. Martin had an integral role in training the District staff members who worked with the Student. According to Dr. Martin, “It was a lot of training. It was extensive. That’s why it was hard when people left because it meant that I was spending a lot of time at the school working with staff.” Tr. 1104. Dr. Martin spent the entire summer training Ms. Mansanas to work with the Student. *Id.* According to Dr. Martin, “Even if [a staff member] is a registered behavior technician, they are not educators. So there needs to be that team, there needs to be that kind of coaching,” in addition to getting to know the Student. *Id.* Ms. Mansanas was

¹¹ “Proloquo” was not defined or explained in the record.

not a registered behavior technician (RBT). This extensive training program described by Dr. Martin was not written into the Student's IEP.

31. During the summer of 2019, the Student's ESY consisted of him attending camps at Basic Beginnings in the morning, eating lunch at Basic Beginnings, and receiving ESY services at Redmond High School in the afternoon. D3 p.25. Basic Beginnings is a private company that provides one-on-one support for students with special needs, and also runs social and life skills groups for students up to age 25. Tr. 960. One-on-one support providers hired by Basic Beginnings are required to earn a certificate of crisis prevention. *Id.* at 962. Basic Beginnings staff members who were new to working with the Student were required to overlap for three weeks with an experienced aide due to the complexity of the Student's needs. *Id.* at 968.

32. Ms. Mansanas, who knew the Student from Eastlake High School, was employed by Basic Beginnings over the summer of 2019. She worked with the Student and observed him to [REDACTED] P51 pp.2-3. The Student had to be dropped off at Basic Beginnings by his Parents because he could not safely ride the bus. *Id.*

33. The Student ran away from his home on more than one occasion during the summer of 2019. He was [REDACTED] on one such occasion. P52 p.6.

34. The Student was hospitalized at the Behavioral Medicine Unit at Seattle Children's Hospital on July 5, 2019, so that his medications could be adjusted. P52 p.6, Tr. 601. He was kept there for 12 days. P52 p.6.

35. On July 9, 2019, Dr. Martin sent an email pertaining to the Student to Ms. McCrath.¹² The email states, in part:

I am writing today because of my overwhelming concern for [Student] and his family.... Over the summer of [REDACTED]

[REDACTED].
Currently, [Student] is unsafe...despite our best efforts we have been unable to decrease these behaviors, in fact they have gotten worse...

[Student] has escaped from the house and engaged in property destruction around the neighborhood. He breaks everything in sight. His aggression is

¹² Ms. McCrath has a bachelor's degree in communication, and a master's degree in special education with a focus on emotional disturbances. She is currently studying for her Ph.D. Ms. McCrath has experience working as a school principal and a director of special education. Tr. 322. She is the program administrator for the District's Redmond Transition Academy. *Id.* at 373.

significant and now people are getting hurt. Staff is leaving because of the stress surrounding the intensity of his behaviors... I have been tormented by this over this past year... I am urging the district to talk to [Student's] family and IEP team about what is best for him moving forward. We are at a point where no one is safe, most significantly this includes [Student]...

When [Student] arrived at ESY this morning, he hit the bus driver (hard), [REDACTED] - in the first 30 minutes he was there.

P5.

36. Dr. Martin felt "things were getting worse" at this point and the family was in turmoil. Tr. 1107. She believed the District needed to help them and "figure out something to do now." *Id.* In response to her concerns, she put together a more intensive program for the Student. *Id.* at 1142. Dr. Martin would have supported a residential placement for the Student at this time if the Parents had wanted that. *Id.* at 1130.

37. In response to Dr. Martin's email, Ms. McCrath, Dr. Martin, Tabitha Troutman of Basic Beginnings, Mr. Trimmell, and Ms. Parent held a meeting. Tr. 326-27. This was not an IEP meeting. The purpose of the meeting was to discuss the Student's hospitalization, how the District could support the Parents, and how the District could support the Student's return to ESY. *Id.*

38. The Student's visual acuity was declining during this time period. His eye glass prescription changed frequently as his eyesight worsened. The Parents purchased "thicker and thicker" glasses for the Student. Tr. 804.

The 2019-20 school year

39. During the 2019-20 school year, the Student was in twelfth grade at Eastlake High School, and it was anticipated that he would attend public school until he turned 21 years old. D11 p.23; Tr. 239. He continued to participate in general education PE classes. *Id.* at 7. He continued to receive SDI and related services in the same areas as previously described.

40. Ms. Mansanas was the District aide who worked with the Student during the 2019-20 school year. Tr. 964-65. She was responsible for administering the programs created by Dr. Martin. P51 p.4. Mr. Trimmell, the special education teacher, would "interact with [the Student] to greet him or give him positive feedback, but the aide's role was to deliver instruction." *Id.* Ms. Mansanas would call Mr. Trimmell to help clean or to get supplies if the Student had a behavioral outburst, but she described Mr. Trimmell's role as "supporting." *Id.* Progress-monitoring data pertaining to the Student was collected by Ms. Mansanas and kept in a notebook. Tr. 996. She described [REDACTED] as a "constant behavior" by the Student at the time. P51 p.4. Dr. Martin would periodically come in to observe the Student's programs and review data in order to determine if anything needed to be adjusted. Tr. 271.

41. In October of 2019, an IEP meeting was held for the purpose of “making clerical changes to the IEP to remain compliant with Washington state law.” D7 p.34. At this meeting, the Student’s IEP was amended. D7. The “Present Levels of Educational Performance and Measurable Annual Goals” (PLOPs) section of the IEP describes the Student’s progress on IEP goals. The Student had not achieved his “daily recall” goal to remember what he had done during the day. *Id.* at 7. He had done very poorly progressing toward his “independence” goal in that he was unable to manage his own activity schedule more than, on average, 13% of the time. *Id.* The IEP team felt this goal was important and kept it in the IEP. The Student did well on his “information gathering” and “purchasing” goals in that he could open applications on his phone and could pay for purchases in a store with a debit card. *Id.* at 8.

42. The October 2019 PLOPs further reflect that the Student had made progress toward, but had not achieved, his “social communication skills” goal in that he could answer simple questions posed by peers (such as, “what did you have for lunch today?”) 60-80% of the time. D7 p.10. Progress on his “following directions in class” goal was inconsistent because the Student’s behaviors had reduced the time he could spend in general education. *Id.* at 11. This goal was eliminated and replaced with a goal pertaining to self-management which provided as follows: “By 5/30/2020, when given a situation where [Student] is demonstrating protest/dysregulated behaviors (verbal stimming, postures, etc.), [Student] will independently choose replacement language (visually or verbally) to make a request (I want a different activity, I want puddy, go for a walk, I want a sensory activity, etc.) and participate in it, improving self-management skills, from practicing self-regulation skills when he is dysregulated in 0% of opportunities across 10 consecutive trials to practicing self-regulation skills when he is dysregulated in 80% of opportunities across 10 consecutive trials, as measured by Special Education Teacher/Paraprofessional collected data.” *Id.* at 12.

43. The Student had made good progress on his “self-correction” behavior goal which entailed him checking if he had followed each step of a task correctly. D7 p.11. The IEP team replaced this goal with a “self-soothing” goal because they determined, based in part on the FBA, that it would be more important to the Student’s future employment to focus on self-management and self-regulation skills. *Id.* at 12.

44. The Student had not achieved his reading comprehension goal, which had been a goal for “a long time.” The team changed the goal to be more functional - reading a text message and replying to it. D7 p.14. A new goal pertaining to writing a shopping list and writing his name legibly was also added to the October 2019 IEP. The IEP team felt this would be important at a job site. *Id.* at 13.

45. The Student’s fine motor PLOP noted that he could do some activates of daily living independently (such as get dressed, wash his hands, feed himself) but he needed assistance to monitor his behavior and safety. D7 p.18.

46. None of the goals contained in the October 2019 IEP pertained to SIB. D7.

47. There was a discussion of residential placement for the Student at the October 2019 IEP meeting. The Parents' understanding was that the District planned to pursue residential placement but needed more information in order to determine what facility was best for the Student. P52 p.7.

48. The service matrix pertaining to special education and related services to be provided to the Student was amended in October of 2019 to read as follows:

Special Education and Related Services (Amendment)							
Meeting Date: <u>10/10/2019</u>							
PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.							
Services 10/13/2019 - 05/30/2020							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Adaptive Skills	Special Ed Teacher	Special Ed Teacher	40 Minutes / 5 Times Weekly	Special Education	10/13/2019	05/30/2020
No	Behavior	Special Ed Teacher	Special Ed Teacher	40 Minutes / 5 Times Weekly	Special Education	10/13/2019	05/30/2020
No	Social / Emotional	Special Ed Teacher	Special Ed Teacher	28 Minutes / 5 Times Weekly	Special Education	10/13/2019	05/30/2020
No	Functional Academics - Writing	Special Ed Teacher	Special Ed Teacher	30 Minutes / 5 Times Weekly	Special Education	10/13/2019	05/30/2020
No	Functional Academics - Reading	Special Ed Teacher	Special Ed Teacher	30 Minutes / 5 Times Weekly	Special Education	10/13/2019	05/30/2020
No	Functional Academics - Math	Special Ed Teacher	Special Ed Teacher	30 Minutes / 5 Times Weekly	Special Education	10/13/2019	05/30/2020
No	Communication	Private SLP, paid by LWSD	Speech and Language Pathologist	60 Minutes / 1 Times Weekly	Special Education	10/13/2019	05/30/2020
Related							
No	Occupational Therapy	Occupational Therapist	Occupational Therapist	120 Minutes / 1 Times Monthly	Special Education	10/13/2019	05/30/2020
Yes	1:1 Aide	1:1 agency aide, paid by LWSD	Special Ed Teacher	1540 Minutes / 1 Times Weekly	Special Education	10/13/2019	05/30/2020
No	1:1 Aide	1:1 agency aide, paid by LWSD	Special Ed Teacher	720 Minutes / 1 Times Weekly	General Education	10/13/2019	05/30/2020
No	Speech and Language Therapy	Speech and Language Pathologist	Speech and Language Pathologist	30 Minutes / 1 Times Weekly	Special Education	10/13/2019	05/30/2020
Total minutes per week student spends in school:				<u>1815 minutes per week</u>			
Total minutes per week student is served in a special education setting:				<u>1110 minutes per week</u>			
Percent of time in general education setting:				<u>38.84% in General Education Setting</u>			

Id. at 31.

49. Supports for school personnel in the October 2019 IEP continued to include only, "The IEP dissemination process is followed with staff – as needed – all settings [sic]." D7 p.29. The Secondary Transition section of the IEP stated, in part, "[Student] will continue to advance his vocational skills through participation in a variety of on-campus jobs during the school week. [Student] spends time with non-disabled peers through his general education classes. [Student] will attend the transition academy post graduation from high school." *Id.* at 21.

50. The prior written notice (PWN) pertaining to the October 2019 IEP states, in the “description of any other options considered and rejected” section, “It was proposed to change [Student’s] placement from an in school placement to a residential placement. It was also considered to move [Student] from being in material science 3rd period to working on vocational skills.” D7 p.34. In the next section, “The reasons we rejected those options,” the PWN states:

The transition to a residential placement was rejected because the team did not have enough information at this time. Our associate director wanted to pass along information such as ABC¹³ data and anecdotal experiences to our director. Additionally, the team was not sure where the right placement would be for [Student] should the team choose to go with a residential placement.

Id. The PWN goes on to state, in the “other factors” section:

[Parents] said they were interested in [Student] attending Heart Springs in Colorado. It was brought up by the team that we did not have all of the details surrounding Heart Springs and equivalent facilities in other states to make that decision with 100% confidence. Stacey [McCrath] said she would gather more information around these facilities. Additionally, Stacey said that she would look at [Student’s] ABC data and anecdotal information from the IEP team members to help make a decision.

Another item regarding out of state residential facilities that was brought up by the team is that upon [Student] joining a residential facility in a different state DDA¹⁴ would freeze his current case. Stacey said that upon returning back to the state of Washington, whether that be before or after turning 21 years of age, it was extremely hard to contact DDA to resume his case. More info was needed on this topic before the team could decide on placing [Student] in a residential placement.

Id. at 34-35.

51. The ABC data referred to would have come from the data recorded by the Student’s one-on-one aide. Tr. 1019.

52. In January of 2020, Ms. McCrath asked Katie McAllister, District Program Specialist, to send emails to several private residential facilities and ask them to consider a “referral” for the Student. P10; P11; P12; Tr. 1036-37. Ms. McAllister sent the Student’s 2019 Reevaluation, FBA, Behavior Intervention Plan (BIP),¹⁵ and IEP to Lakemary Center,

¹³ “ABC” stands for Antecedent-Behavior-Consequence. Tr. 75.

¹⁴ “DDA” stands for the Washington State Developmental Disabilities Administration.

¹⁵ It is unclear whether the Student had a BIP or if this refers to the PBSP.

Heartspring, and Bayes Center. According to Ms. McCrath, sometimes the District sends out referral letters to gather information about placements that might be available for a student. Tr. 363.

53. During this time period, representatives from Heartspring came to observe the Student. P52 p.8. The Parents' understanding at this point was that the District would place the Student in a residential treatment facility once an appropriate facility was identified. *Id.*

54. Nancy Piombo is the Student's Developmental Disabilities Administration (DDA) case manager and is an IEP team member. P45. Ms. Piombo works exclusively with children who qualify for the "Children's Intensive In Home Behavior Supports" program. This is a very specialized program that only accepts 100 children statewide. *Id.* at 1; Tr. 409.

55. Ms. Piombo emailed the District's Behavioral Health Services Clinical Specialist, Tricia King, on March 16, 2020. P13. Ms. Piombo informed Ms. King that the District was looking at placing the Student "in an out-of-state residential facility due to his behaviors," and she wanted to be sure Ms. King had the Student "on her radar." *Id.* Ms. King responded that she would check in with Ms. McCrath and Ms. McAllister. *Id.*

56. On March 20, 2020, the Lakemary Center in Kansas accepted the Student into its residential treatment program. P14.¹⁶ Lakemary was discussed at the IEP meeting in May of 2020, but Ms. McCrath believed the Parents did not find the facility to be acceptable. Tr. 337, 364. The Parents deny ever rejecting Lakemary as a potential placement. *Id.* at 438.

57. In March of 2020, the COVID-19 pandemic caused the District to cease holding IEP meetings and evaluations in person. Tr. 365. The school buildings were shut down and instruction was provided online. The Student was not able to effectively participate in the virtual instruction and social groups provided by the District. P52 p.9. That spring and summer, the Student attended Basic Beginnings, which the parents paid for with DDA funds. *Id.*

58. On April 3, 2020, Ms. McAllister sent referrals pertaining to the Student to the Bancroft facility, the Woods, and the Monarch Center for Autism in Ohio. P15; P16; P17. Ms. Parent was copied on emails the District sent to various residential placements. P52 p.8. Her understanding remained that the District planned to place the Student at in a residential placement once an appropriate facility was located. *Id.* at 9. On April 14, 2020, Ms. McAllister received notice from The New England Center for Children, which she had previously contacted, that the facility did not have any openings for the Student. P19.

59. On May 15, 2020, the Monarch Center notified the District that they could not accept the Student. According to the Monarch Center intake specialist, "The Student's programming

¹⁶ The date on the acceptance letter at P14 p.2 is "3/20/19," but it is evident from context that the correct year is 2020. See Tr. 336.

and staffing needs are too acute for our MBA¹⁷ units, and given his size, we do not feel we can safely manage him on our campus.” P20.

60. In May of 2020, Mr. Trimmell requested a copy of Dr. Martin’s [REDACTED] intervention plan that was being used by Ms. Mansanas in order to add it to the Student’s BIP.¹⁸ D10. In Mr. Trimmell’s view, [REDACTED] had become a serious concern. Tr. 996.

61. On May 18, 2020, Ms. McCrath asked the District staff member responsible for scheduling IEP meetings to invite Ms. McAllister to the Student’s upcoming IEP team meeting scheduled for May 28, 2020, because the District had “updated information on his out of district placement.” P21. By this reference to “out of district placement,” Ms. McCrath meant a residential placement. Tr. 338.

62. In May of 2020, the Student’s IEP was reviewed and revised. D11. The May 31, 2020 IEP notes, “[Student] requires 1:1 support throughout his day in order to help him minimize behavior triggers, support implementation of the positive behavior supports outlined in his behavior plan, and to support him when he is in crisis.” *Id.* at 8.

63. When developing this IEP, the team discussed the potential of a residential placement for the Student at the Bancroft facility in New Jersey. The Parents were concerned that the Student would be admitted to the “intensive” program at Bancroft and would not be able to attend the less restrictive “campus” program, which is more community based. D11 p.4; Tr. 340. The final version of the IEP states that the issue regarding Bancroft’s campus and intensive programs “has been sorted out” and “[Student] would be able to attend the campus program even if he started in the intensive program.” D11 p.4.

64. In Ms. McCrath’s view, there was agreement at the May 2020 IEP meeting that the Student needed a residential placement. Tr. 365. Ms. McCrath testified:

I think there was an agreement that he needed a residential placement, but because there was not an interest in Lakemary due to the lack of ABA,¹⁹ there was – Bancroft was discussed as another option and the Parents were interested in – and mom was interested in Bancroft, I believe. I think we might have already sent records to Bancroft at this point.

Id. at 365-66. Ms. Parent’s view of the IEP team’s decision comports with that of Ms. McCrath. Ms. Parent’s understanding was that the District wanted to place the Student at Bancroft. P52 p.9. Mr. Trimmell, who was responsible for writing the PWN pertaining to this IEP, does

¹⁷ “MBA” is not defined.

¹⁸ The evidence does not indicate that Student had a BIP at this time, so this reference is unclear. Presumably it refers to the PBSP.

¹⁹ “ABA” refers to applied behavior analysis.

not recall a decision being made by the team to place the Student at a residential facility. Tr. 1004.

65. The PLOPs in the May 2020 IEP indicate the Student had made progress on his independence goal, managing his activity schedule with 30% accuracy, up from 13%. D11 p.8. His “community travel” goal was severely affected by the COVID-19 pandemic in that the Student was not attending school in person or accessing public transportation at the time. *Id.* at 9. He had made progress on his “job readiness” goal in that he could independently complete tasks such as recycling, shredding, alphabetizing, and folding clothes 66% of the time. *Id.*

66. According to Mr. Trimmell, who drafted the May 31, 2020 IEP, the Student had “dramatically increased his knowledge of alternate language for when he is frustrated.” D11 pp.12-13. He had also made some progress on the self-management goal in that he practiced self-regulation skills during 40% of the opportunities. *Id.* The Student had made no progress on his handwriting “legibility” goal. *Id.* at 15. He was making very minimal progress on being able to send a text message and required prompting for every step almost all the time. *Id.* at 16.

67. A new goal, pertaining to [REDACTED], was developed for the Student in his May 2020 IEP. That goal provides: “By 5/27/2021, when given an opportunity to participate in a work time [Student] will participate in the work time [REDACTED] [REDACTED] an average 0 times a day during work time during a 5 day week over a 3 week span as measured by Special Education/paraprofessional collected data.” D11 p.14. The Student did not achieve this goal. Tr. 1148.

68. The Student’s “soothing activity” goal was removed from the May 2020 IEP. This goal had required the Student to independently choose a soothing activity at specific intervals throughout the day in order to improve his behavior management skills. Progress on the goal had been inconsistent, but it was determined that a soothing activity could be incorporated into the Student’s schedule-related goals. D11 p.13.

69. The special education and related services in the May 2020 IEP were the same as those provided in the October 2019 IEP. D11 p.30. The education/training goal in the Student’s secondary transition plan was amended to read, “Upon leaving public school [Student] will receive on-the-job training in the area of manual labor or landscaping.” D11 p.22.

70. The “supports for school personnel” in the May 2020 IEP provided, “The IEP dissemination process is followed with staff.” D11 p.28.

71. The PWN for the May 2020 IEP references a BIP. D11 p.33. It is unclear to what this refers.

72. The PWN does not state that the team agreed to place the Student in a residential facility. It says, “[Student’s] placement at Redmond High School²⁰ will continue with exploration of part-time participation in the District’s Transition Academy to support vocational skill development.” D11 p.33. The PWN states, under “other relevant factors,” as follows: “If Bancroft is going to accept the Student within 6 months time, what programs do we need to put in place to ensure that he is able to attend the campus programming instead of the residential isolated programming that they offer? –To be discussed at upcoming meeting with Bancroft staff (6/5/2020).” *Id.* at 34.

73. The May 2020 PWN further states that the Parents wanted “more BCBA” support in order to monitor the Student’s behaviors more closely. D11 p.34. It is unclear why the PWN refers to “more” BCBA support when the Student was not receiving any BCBA support at the time. The PWN erroneously refers to Dr. Martin as being a BCBA. It appears Mr. Trimmell was confused as to her credentials and possibly as to her role in the Student’s programming when he drafted the PWN. *Id.*

74. The May 2020 PWN also states that the team agreed to hold a meeting in August of 2020 to determine the Student’s placement for the next school year, and that the District’s Redmond Transition Academy (RTA) might be able to provide a program for the Student. D11 p.34. RTA is a community-based District program in which students practice vocational skills, social skills, and life skills. Tr. 84.

75. The PBSP written by Dr. Martin was updated in May of 2020. P23. The target behaviors in the PBSP were: aggression [REDACTED]

[REDACTED]. *Id.* at 1. The “goals” portion of the PBSP provided as follows: “To develop a plan that increases [Student’s] quality of life by teaching him alternative ways to communicate, to engage in activities for longer periods of time, engage in academic learning, and to expand his interests and repertoire of leisure activities, and to increase his independence. There is an overarching goal of reducing challenging behaviors (target behaviors listed).” *Id.*

76. The May 2020 PBSP contains an [REDACTED] was not added as a target behavior. The PBSP provides that for every three minutes during which the Student does not [REDACTED], he receives a piece of frosted cookie. P23 p.11. When [REDACTED] data shows the behavior is reduced by 50%, two more minutes are to be added to the measured time. Data was to be sent to Dr. Martin every week so she could provide feedback and modify the plan as needed. *Id.*

77. According to the written “Request for Contractual Services” pertaining to Dr. Martin during the 2019-20 school year, which was completed by Ms. McCrath, Dr. Martin was deemed to be an “educational behavior specialist.” P6. The contract request called for her to work on the Student’s programming seven hours per month. In the portion of the form that

²⁰ This reference was an error. It should say Eastlake High School. Tr. 1001.

asks, "Are [Vendor's] Services on IEP," Ms. McCrath filled in "No." *Id.* The seven hours per month were a decrease in the amount of hours to be provided by Dr. Martin, which had previously been 12 to 14 hours per month. She advised the Parents to request another education specialist or a BCBA if they felt they needed more hours from her because she would not be able to provide the "same level of support" she had previously provided. Tr. 1108-09.

78. Dr. Martin was aware that her services were never written in to the Student's IEPs and she felt this was because she did not provide SDI to the Student. Tr. 1137. Rather, she provided "consultation and coaching." *Id.*

79. Ms. Piombo recalls attending an IEP meeting on June 8, 2020, at which the Student's acceptance at Bancroft was discussed. At this meeting, the District staff stated "the Student would be screened as to what program he would attend at Bancroft." P45 p.3.

80. In June of 2020, the Student was referred to the Biobehavioral Program at Seattle Children's Hospital Autism Center. Tr. 453. The Biobehavioral Program is a specialty clinic in the Autism Center that treats individuals with intellectual and developmental disabilities who display significant challenging behavior. The program develops very precise FBAs that include functional analysis for severe behaviors such as tissue-damaging self-injury, property destruction, and pica. *Id.* at 454. Dr. Yaniz Padilla Dalmau²¹ (Dr. Padilla) was the Student's lead behavioral therapist at the Biobehavioral Program.

81. The Student's IEP team held a meeting on August 25, 2020. That meeting, and what led up to it, was summarized in a subsequent IEP as follows:

On May 28, 2020, the IEP team reconvened for [Student's] annual IEP review. The IEP team agreed to an IEP that would support [Student's] transition to an out-of-district placement, as well as, support his postsecondary goals. At the time of the meeting, [Student's] parents were not ready to transition [Student] full-time to the district's adult transition program following his senior year. It was agreed that [Student] would continue to receive special education services at his home high school starting the Fall of 2020. It was also agreed that alternate options would continue to be explored, which included the possibility of joining the Transition Academy program for part of his school day once COVID-19 community participation restrictions were lifted.

During the summer, [Student] participated in ESY, which included time with one of the Transition Academy teachers. At this same time, parents became less confident about Bancroft.

²¹ Dr. Padilla has a Ph.D. in school psychology and completed a post-doctoral fellowship in neurobehavior. She is a licensed clinical psychologist, a licensed behavior analyst, and a BCBA. She is a former assistant clinical professor at the University of Washington. P49.

The IEP team reconvened on August 25, 2020. During the meeting, the team discussed [Student's] IEP goals and determined a shift in focus. The parents requested a new IEP with a focus on academics and transition, which the IEP team supported. [Student's] placement was also discussed. The team agreed to a partial-day placement at Dolan Academy where instructional services related to [Student's] academic goals would be provided remotely until Covid-19 restrictions are lifted, then shift to in-person. In addition, the team ultimately decided that Transition Academy-Redmond would be a better fit for [Student] long term rather than continuing at Eastlake High School after his senior year. It was determined that while attending the Transition Academy, transition service and other IEP goal areas would be supported through an in-person model on the Transition Academy campus. Then, once Covid-19 restrictions are lifted, community participation options would continue to be explored.

The district-provided behavior specialist helped the team with new IEP goal recommendations, which are included in this new IEP.

D14 p.5.

82. Ms. Parent had requested that Dolan Academy²² start working with the Student because she believed his functional academic and reading skills had regressed. Tr. 369. On August 26, 2020, Ms. McAllister wrote to a staff member at the Dolan Academy and asked if Dolan Academy could provide reading and writing instruction for 2.5 hours per day to the Student. The email stated, "The placement at Dolan would be until the end of the semester or when the out of state placement is able to confirm his enrollment." P24. Ms. McCrath was copied on this email.

The 2020-21 school year

83. The Student attended RTA during the 2020-21 school year. RTA is a community-based program within the District in which students practice vocational skills, social skills, and life skills. Tr. 84. It is located in leased space in the Redmond YWCA. *Id.* at 85. Students at RTA typically attend school four days per week and go out into the community for vocational skill experience on the majority of those days. *Id.* at 1016-17. This has been impacted by COVID-19, however, and the frequency of outings into the community has been greatly reduced. *Id.* at 1028. At the time of the due process hearing, 24 students attended RTA. *Id.* at 85.

84. The Student's special education teacher and case manager at RTA during the 2020-21 school year was Jon Goodman.²³ Previously, in September of 2019, Mr. Trimmell had

²² Dolan Academy is a private educational service.

²³ Mr. Goodman has bachelor's and master's degrees in education, as well as an endorsement to teach special education. Tr. 120-21.

emailed Mr. Goodman regarding the possibility of placing the Student at RTA. Mr. Goodman stated at the time:

TA Redmond is definitely not the right setting for [Student]. Our model is for students to work and eventually navigate the community on their own. They need to manage their own behaviors without the need of adult support. We need to be very cautious not to allow parents to think that they can choose whichever program they want. We are currently dealing with several students at the TA Redmond that should never have been placed here.

P7 p.1.

85. By August of 2020, however, Mr. Goodman no longer had concerns about the Student attending RTA. By then, he had discussed the Student's program with Mr. Trimmell and Ms. McCrath, and felt a "hybrid" program suitable for the Student had been developed. Tr. 92. The Student and one other student were, and continued to be at the time of the due process hearing, in a "hybrid" program at RTA that "had to be developed because of circumstances," according to Mr. Goodman. *Id.* at 87. Mr. Goodman opined that Student "doesn't really fit the model of RTA, so we build certain programs around the space that we have available." The Student might at times join other groups at RTA, but has his own specific program. *Id.* at 87-88. The Student's program consists of attending RTA in the morning, and receiving online Zoom instruction from Dolan Academy in reading, writing, and math in the afternoon. *Id.* at 71, 97. For part of the school year, the Student went home for the Dolan Academy instruction and received support from his Parents. *Id.* at 98. In February or March of 2021, the Student came back to school full time and received his Dolan Academy instruction remotely at RTA. *Id.* at 104.

86. When the Student first started at RTA, Mr. Goodman was in touch with Dr. Martin almost daily to learn strategies for working with him. *Id.* at 109. Once he knew more about the Student, Mr. Goodman held a weekly meeting with Dr. Martin.

87. Ms. Mansanas continued as the Student's one-on-one aide, and provided instruction to him at RTA. Ms. Mansanas was responsible for implementing the Student's PBSP. Tr. 98, 101; P51 p.5. Mr. Goodman did not stay with Ms. Mansanas and the Student during instruction. He would "occasionally" come in to where they were working, but only observed the Student engaging in instruction programs twice. P51 p.5. Dr. Martin consulted with Mr. Goodman and Ms. Mansanas virtually every week, and she would observe Ms. Mansanas work with the Student if Ms. Mansanas asked for help. *Id.* at 7.

88. Kassandra Picchi²⁴ was the Student's Dolan Academy virtual instructor during the 2020-21 school year. Ms. Picchi has never met the Student in person. Tr. 181; P48. She

²⁴ Ms. Picchi has a bachelor's degree in psychology. P48 p.1.

worked with the Student for two and a half hours per day in a one-to-one virtual format. Her work was overseen by a Dolan Academy special education teacher. Tr. 203.

89. While working with the Student, Ms. Picchi observed him to slap his mother on the head, and hit himself in the head. Ms. Picchi often had difficulty understanding what the Student was attempting to communicate. Tr. 183-84. If he asked for an item or activity (such as pizza or chocolate, or a trip to Costco), he [REDACTED] and screamed if told he could not get the item or the outing at that time. P48 p.3. Ms. Picchi also observed the Student to grab his behavior technician's forearms. *Id.* Ms. Picchi observed both his mother and his behavior technicians block the Student's attempts to [REDACTED]. She also observed the Student to eat [REDACTED] almost every time he had access to them. *Id.* Ms. Picchi estimated that the Student became agitated five to ten times in every teaching session. Tr. 190. When he was agitated, he flapped his hands, screamed, ripped paper, and sometimes got up and left the table. *Id.*

90. The Student was accepted to the Bancroft facility in September of 2020. No definitive start date was given, but Ms. McAlister was working to set up the contract as of October of 2020. P29. Lisa Carroll, Senior Admissions Coordinator for the District, informed Bancroft on October 15, 2020, that the District would be "the residential and educational funder." *Id.*

91. On October 29, 2020, the District received a cost breakdown from Bancroft that showed the yearly cost to be \$703,360. P30 p.8. When she was made aware of Bancroft's cost, Dr. Shannon Hitch,²⁵ District Executive Director of Special Services, emailed Ms. McCrath and Ms. McAlister and stated, "Oh My LORD...I am not comfortable with this price tag. I'm hoping nothing has been committed to the parents. Can you bring me up to speed?" *Id.* at 7. Ms. McCrath replied, "For [Student] we have indicated a yes to the family, however I had no idea the cost was this high as the other ones are in the \$250 range. We probably need to see what the options are with them..." *Id.* at 6. Dr. Hitch then replied, "Yeah - we want to make sure that the IEP only notes a residential program but does not list the actual school. I'd like to see if any of the other programs are available as this price is insane." *Id.* at 5. Ms. McCrath replied, "We are already down the road with Bancroft on this one so I want to choose my language in the next meeting. I can say there has been a snag with the business end of things and we have to hold on moving forward with them. Thoughts?" *Id.* at 4. Dr. Hitch responded:

I think we say that the IEP is meant to identify the program and services a student needs however [sic], the decision regarding the actual placement is ours to make as a district. We can say that we pursued getting additional information from Bancroft and learned that they are charging well above what other programs are charging. As stewards of public funds, we need to reconsider and see if another of the programs would be able to serve him. I

²⁵ Dr. Hitch has a master's degree in school psychology and a doctorate of education, and has worked in special education for 30 years. She has experience as a nationally certified school psychologist, an early childhood specialist, a dean of students, and a director of special education. Tr. 286, 308.

would think they could understand when we tell them that the costs are extreme.

Id. at 4.

92. Dr. Hitch testified at the due process hearing that she intended this email to convey that “the IEP identifies residential as the placement, however, it does not identify the specific school.” Tr. 295. Dr. Hitch told Ms. McCrath that “she needed to note that residential would be the area identified on the IEP and that we would determine, as a team, which residential program would be appropriate.” *Id.* at 297. Dr. Hitch asked the IEP team to put residential placement on the Student’s IEP “so that we could look into what our options are.” *Id.* at 314. However, according to Dr. Hitch, ultimately it is the District that selects the location of a student’s placement and signs the necessary contract. *Id.* at 310, 314, 318. Cost is a factor the District considers but it is not the “deciding” factor. *Id.* at 314.

93. Based on all of the Findings of Fact set forth above, it is found that the Student’s IEP team agreed in May of 2020 that he needed a residential placement.

94. When Ms. McCrath shared the news about Bancroft’s cost with the Parents at the Student’s October 2020 IEP team meeting, they acknowledged the District’s concerns about the expense. According to Ms. McCrath, “They were very understanding. And I would say, from my perception, which is just my perception, a bit relieved. There was a – it didn’t end up being a further discussion. They were understanding, and we focused the rest of the meeting on the program at the Transition Academy.” Tr. 370-71. The discussion regarding Bancroft lasted less than a minute. Tr. 1048. Bancroft was not pursued further as a placement by the District. P30 p.3. It is unclear from the evidence why Ms. McCrath perceived the Parents to be “relieved,” or what they seemed to be relieved about.

95. After the IEP team meeting, Dr. Hitch asked Ms. McCrath how the meeting went and “indicated that we would need to look at a variety of different programs to determine which one would be most appropriate.” Tr. 300.

96. Dr. Martin recalls Ms. Parent stating she was not interested in Bancroft as a placement at the IEP meeting, and that she preferred the Student attend RTA. Tr. 1117. The Parents deny they ever informed the District that they were no longer interested in Bancroft or other residential placements for the Student. Tr. 812-13; P52 p.11. Ms. Parent did not feel she could disagree with the District’s concerns regarding Bancroft’s cost, and did not feel she could insist the Student be placed there. *Id.* The Parents were never informed by the District that Bancroft had been eliminated as an option. They learned that from Bancroft staff when they contacted the facility a few months later. The Parents thought Bancroft was still an option but were informed that the District had told Bancroft that the Parents were no longer interested in placing the Student there, and the option was “off the table” because the Student had been removed from the waiting list. *Id.* at 709-710; 813. Ms. Parent asked if the Student could be put back on the waiting list, but Bancroft said the District would have to

do that because they were the guaranteed payer. Bancroft also informed the Parents that two spots had opened up but had been filled. *Id.* at 709-710.

97. No finding is made as to whether the Parents wanted the Student placed at Bancroft at the time of the October 2020 IEP meeting. Regardless of the Parents' specific placement preference, it is clear that the IEP team had agreed the Student needed a residential placement and the District was looking into various facility options.

98. A new IEP was developed for the Student on October 29, 2020, with a start date of November 5, 2020 (October 2020 IEP). D14. Like the previous IEP, the October 2020 IEP states that the issue regarding Bancroft's campus and intensive programs "has been sorted out." It states, "[Student] would be able to attend the campus program even if he started in the intensive program." D14 p.3.

99. The October 2020 IEP also states that, according to his new special education teacher, the Student has "transitioned well and is settling in to his new environment at the Transition Academy... He has already made two snacks following sequenced recipes." D14 p.6. According to the PLOPs, the Student was able to respond to a text message 7% of the time. *Id.* at 9. The October 2020 IEP documents that the Student was unable to respond to a written question with his ACC device independently and required prompting 100% of the time. *Id.* Moreover, the Student's independence and his success on the communication goal that focused on interaction with peers had diminished. *Id.* at 13.

100. The IEP does not state whether the Student made progress on his handwriting legibility goal. The occupational therapist (OT) who worked with the Student reported in her "current update" that he was "working" toward his goals and would transition to a "new group home sometime this fall." D14 p.14.

101. The IEP added a new goal for the Student that requires him to participate in a group activity, such as playing Uno or Kinect bowling. It noted that the Student currently engaged in a group activity for 2 minutes with 3-4 adult prompts and completed zero games. D14 p.7.

102. The IEP noted that, as of September 2020, the Student was not accessing the community due to COVID-19 restrictions. D14 p.5. It also noted that he required one-on-one support throughout the day. *Id.* at 6.

103. One of the behavior goals in the October 2020 IEP reads as follows:

By 10/28/2021, when given an opportunity to participate in work time and leisure time throughout the school day [Student] will participate [REDACTED] an average of 5.4 times a day throughout the school day during a 5 day week over a 3 week [REDACTED] 0 times a day throughout the school day during a 5 day week over a 3 week span as measured by special education teacher/paraprofessional collected data.

D14 p.8. This is identical to the goal in the May 2020 IEP.

104. Dawn Simmons²⁶ is a District SLP who worked with the Student and was a member of his IEP team during the 2020-21 school year. She has extensive experience working with autistic students. Tr. 1056, 1059. Ms. Simmons supported adding a new communication goal to the Student's October 2020 IEP, which reads as follows:

Rational [sic] to Change Goals: Given the change in setting (moving from East Lake High School to the Transition Academy), [Student's] decreased access to peers due to COVID-19 social distancing requirements, as well as Student's increase in physical behaviors, the team discussed adjusting [Student's] communication goals to focus more on functional communication skills. Currently, [Student] does not independently initiate communication to request a break or change in non-preferred activity. Additionally, [Student] requires verbal or visual cues to use his AAC device^[27] to communication [sic] unless given verbal direction. Therefore, the team decided that creating a new goal to focus on his initiation of communication seemed more appropriate at this time.

Current Baseline Data: During structured work activities, [Student] is initiating communication via his AAC device 0 times when provided a visual/gestural prompt during a 15-minute session. At this time, Student requires a verbal prompt (i.e. "What do you need?") plus a gestural prompt (i.e. pointing to his device) to communicate via his AAC device.

Annual Goal: Communication

By 10/28/2021, when given a structured activity at school or home [Student] will initiate communication by using his AAC device (request break, request new activity, gain attention) when provided visual or gestural prompt (i.e. pointing to AAC device, moving device toward [Student]) improving functional communication skills from initiating communication via his AAC device when provided a visual/gesture prompt 0 times during a 15 minutes session, across 2 sessions to initiating communication via his AAC device when provided a visual/gesture prompt 2 times during a 15 minute session, across 2 sessions as measured by SLP and SpEd team data.

D14 p.13.

²⁶ Ms. Simmons has master's degree in speech language pathology and holds a national clinical certificate of competence in speech language pathology. Tr. 1055.

²⁷ The Student uses an AAC (augmentative assistive communication) device, typically an iPad, in order to express his needs and other types of communications. Tr. 508.

105. The secondary transition plan in the October 2020 IEP is essentially the same as the plan in the previous IEP. It notes that the Student's job interests include manual labor, landscaping, and cooking. D14 p.17. The Supports for School Personnel portion of the IEP provides, "The IEP dissemination process is followed with staff, as needed in all settings." *Id.* at 22. The IEP provides that the Student spends 0-39% of his time in "regular class," he does not participate in PE class with his peers, and does not participate in a general education classroom. *Id.* at 25.

106. The PWN for the October 2020 IEP proposed to continue the Student's IEP and states the action will be initiated on November 5, 2020. D14 p.27. It states that a meeting was held on October 29, 2020, and lists the participants. There is no description of proposed or refused actions that occurred at the meeting. The stated reason for proposing or refusing to take action is, "To review IEP goals progress and make any needed changes." *Id.* The PWN does not describe options that were considered or rejected and makes no mention of the Student potentially being placed at a residential facility. It states, "No other options were considered," and "No options were rejected." *Id.*

107. The special education and related services to be provided to the Student pursuant to the October 2020 IEP were as follows:

Special Education and Related Services							
Meeting Date: <u>10/29/2020</u>							
PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.							
Services 11/05/2020 - 10/28/2021							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Adaptive Skills	Special Ed Teacher	Special Ed Teacher	220 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Behavior	Special Ed Teacher	Special Ed Teacher	200 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Social / Emotional	Special Ed Teacher	Special Ed Teacher	150 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Functional Academics - Writing	NPA, paid by LWSD	Special Ed Teacher	250 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Functional Academics - Reading	NPA, paid by LWSD	Special Ed Teacher	250 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Functional Academics - Math	NPA, paid by LWSD	Special Ed Teacher	250 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Communication	Private SLP, paid by LWSD	Speech and Language Pathologist	60 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
Related							
No	Occupational Therapy	Occupational Therapist	Occupational Therapist	120 Minutes / 1 Times Monthly	Special Education	11/05/2020	10/28/2021
Yes	1:1 Aide	1:1 Agency Aide	Special Ed Teacher	1440 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
No	Speech and Language Therapy	Speech and Language Pathologist	Speech and Language Pathologist	30 Minutes / 1 Times Weekly	Special Education	11/05/2020	10/28/2021
Total minutes per week student spends in school:				1440 minutes per week			
Total minutes per week student is served in a special education setting:				1440 minutes per week			
Percent of time in general education setting:				0% in General Education Setting			

108. On October 22 and November 2, 2020, the Student was assessed by the Biobehavioral Program for the purpose of developing an Applied Behavior Analysis (ABA) treatment plan. P33. The assessment determined that when the Student was prompted to communicate with visual cues, rather than being prompted vocally, he engaged in more communication and less problematic behavior. Tr. 467. Dr. Padilla determined that the Student's ability to see visual cues helps him communicate, but the Biobehavioral Program had to use large cues and visuals in order for him to be able see them. *Id.* at 468.

109. Dr. Padilla worked with the Student 47 times (all virtually, not in-person) to assess and treat his challenging behaviors, in particular his SIB. Tr. 453, 494. She opined at the due process hearing that the Student's SIB had become treatment-resistant and very severe. His functional analysis showed that he was engaging in the behaviors to gain attention, tangible items, and activities; and to escape non-preferred tasks. *Id.* at 459. His SIB, particularly [REDACTED] was also reinforced by the sensory stimulation he received from the behaviors. Dr. Padilla attempted to develop treatments that were effective in reducing the problem behaviors and increasing the Student's communication ability and adaptive skills. *Id.* at 459.

110. Dr. Padilla determined that the Student had mastered many daily living skills, but could not function independently due to the behaviors of concern, which jeopardized his safety and the safety of others. Tr. 464-66. The treatment plan developed by the Biobehavioral Program focused on reducing target behaviors by 80%. P33 p.16. Dr. Padilla focused on helping the Student learn to cope with having to wait for such things as food items and trips to the store, and teaching him to communicate in order to ask for breaks from activities rather than [REDACTED]. Tr. 460. Because the Student's behaviors were so severe, the clinic staff "had to go one by one carefully making sure that the treatments [they] were recommending were effective." *Id.*

111. "Functional communication" was an integral part of the Student's treatment plan. Functional communication training is an evidence-based treatment strategy to reduce challenging behavior and replace it with communication. Functional communication training needs to be implemented every time there is a situation that evokes the Student's problem behavior. Tr. 479-82. It needed to be implemented throughout the day, many times, with the Student. *Id.*

112. Dr. Padilla opined that parent training is an essential part of a behavioral treatment plan for a student because the treatment plan needs to be implemented consistently in the home, the school, and the community by people who are with the student on a daily basis. Tr. 472-73. She opined on the importance of "generalization," meaning that treatment results should spread to other contexts, not just the context in which a skill is taught. *Id.* at 474. Generalization needs to be planned for, and it includes training different caregivers on how to implement the treatment interventions. *Id.*

113. When the treatment at the Biobehavioral Program concluded in January of 2021, the Student's [REDACTED] had decreased but was not resolved. Dr. Padilla's opinion at that time was that the Student needed intense treatment in an out-of-home placement,

particularly since it was difficult to find a community-based team that would work with him due to his size and the severity of his behavior. Tr. 462, 476. The Student had also exhibited failure to generalize behavior into other settings and would become aggressive with his family when they attempted to implement the treatment plan. *Id.* at 478-79.

114. On January 21, 2021, Ms. Parent emailed Mr. Goodman asking for a revised PWN from the October 29, 2020 IEP meeting. P34. In this email, the Parents expressed interest in a residential program in South Carolina called Springbrook and said they had completed the application for that facility. Ms. Parent was “unsure what the next steps were going to be for the team” due to having no information in the PWN, and she requested an explanation “as to which direction the team was intending to go.” *Id.* Mr. Goodman responded by saying, “I don’t see anything in the PWN about Bancroft. I remember Stacy [McCrath] saying that the cost was prohibitive and the [sic] we would need to look at alternatives. I’ve cc’d Stacy on this email in case she wants to clarify or discuss further.” *Id.*

115. In January of 2021, Mr. Goodman’s IEP progress report noted, “We are seeing very little [REDACTED] at the Transition Academy. Over the last four data points (days) the date reflects an average of 2 pokes per day.” P40 p.7.

116. In February of 2021, Ms. Mansanas left Basic Beginnings. Olivia Jewell²⁸ was hired by Basic Beginnings to work with the Student at RTA. Ms. Jewell is an RBT. Ms. Troutman trained Ms. Jewell for approximately three weeks regarding how to work with the Student. Tr. 44.

117. During the time they worked with the Student, Ms. Mansanas and Ms. Jewell were required to keep data regarding the Student’s behavior. They monitored and recorded his rate of “successful” [REDACTED] during the school day, i.e., the number of times he made contact with his eyes. P41; Tr. 55-56. Attempts at [REDACTED] that were blocked were not recorded in the data. Tr. 56. Multiple [REDACTED] *Id.* at 278. Ms. Jewell also began keeping data regarding “[REDACTED] and making requests” in April of 2021, but she does not feel she received adequate training as to how to gather and record the data required by the forms. *Id.* at 66.

118. Ms. Jewell currently works with the Student and testified at the due process hearing. She rides with the Student in private transportation to and from RTA. Tr. 47. For as long as she has worked with the Student, he has not used the kitchen or the laundry room at RTA. *Id.* at 53. Ms. Jewell accompanied the Student on outings to restaurants approximately once per week in the spring of 2021. *Id.* at 53-54.

119. Dr. Martin expects paraeducators, such as Ms. Jewell, to adjust their strategies in the moment, if needed, to work more effectively with the Student. Tr. 1139-40. Dr. Martin expects everyone working with the Student to “think about what to do differently” when the Student engages in problematic behaviors. When asked if an RBT from Basic Beginnings would be

²⁸ Ms. Jewell has a bachelor’s degree in sociology and is currently pursuing a bachelor’s degree in special education. Tr. 70.

qualified to make such a strategy readjustment, Dr. Martin stated that she and the RBT would go over the situation together in training. *Id.* She emphasized that ultimately the teacher would determine if a paraeducator needed more training, and the teacher, as the instructional leader, would be looking at the data and interacting with the staff. *Id.* at 1140.

120. On March 17, 2021, Dr. Martin requested that the hours she was contracted to work with the Student be increased by “a few hours a month” because he was having a “challenging year” and there had been changes in staffing. P36.

121. In March of 2021, the Student’s IEP was amended for the purpose of adding BCBA minutes and ESY services. D17 p.30. The IEP took effect on April 8, 2021. The amended IEP set the Student’s graduation/exit date as June 8, 2023. *Id.* at 2. The IEP team considerations included the fact that the Parents wanted someone to focus on the Student’s daily behaviors in collaboration with Dr. Martin. The team determined that Ms. McCrath would look into options for this. *Id.* at 3.

122. Ms. McCrath does not recall any discussion of residential placement at the March 2021 IEP meeting. Tr. 378. Ms. Parent testified that the Parents brought up Bancroft and told the team they wanted Bancroft to “still be on the table.” Tr. 727.

123. Most of the Student’s March 2021 PLOPs are unchanged from the previous IEP. D17. The IEP continues to note a current baseline pertaining to communication as, “During structured work activities, [Student] is initiating communication via his AAC device 0 times when provided a visual/gestural prompt during a 15-minute session. At this time, [Student] requires a verbal prompt (i.e. “What do you need?”) plus a gestural prompt (i.e. pointing to his device) to communicate via his AAC device.” *Id.* at 16.

124. The PWN regarding the April 2021 IEP notes that Kathleen Peterson, a member of the Student’s IEP team and clinical director at Maxim,²⁹ the agency that was selected to provide the BCBA services added to the IEP, proposed using a behavior technician provided by Maxim. The Parents were opposed to this because the proposed technician had no experience with the Student. D17 p.30. The team ultimately determined that Maxim would provide a BCBA to coach Ms. Jewell. *Id.* at 31. BCBA services were added to the IEP in order to make sure the Student’s program was implemented “with fidelity” and to provide greater oversight to his aide. Tr. 375. Shari Corboy was the Maxim BCBA. *Id.* at 376-77.

125. The PWN makes no mention of residential placement being discussed at the IEP meeting. D17 pp.30-31.

126. The special education and related services, and supplementary aids and services provided to the Student pursuant to the April 2021 IEP were as follows:

²⁹ Maxim is a private healthcare provision company that contracts with the District. D17 p.1.

Special Education and Related Services (Amendment)

Meeting Date: 03/25/2021

PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.

Services 04/08/2021 - 10/28/2021

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Adaptive Skills	Special Ed Teacher	Special Ed Teacher	220 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Behavior	Special Ed Teacher	Special Ed Teacher	200 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Social / Emotional	Special Ed Teacher	Special Ed Teacher	150 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Functional Academics - Writing	NPA, paid by LWSD	Special Ed Teacher	250 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Functional Academics - Reading	NPA, paid by LWSD	Special Ed Teacher	250 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Functional Academics - Math	NPA, paid by LWSD	Special Ed Teacher	250 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Communication	Private SLP, paid by LWSD	Speech and Language Pathologist	60 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
Related							
No	Occupational Therapy	Occupational Therapist	Occupational Therapist	120 Minutes / 1 Times Monthly	Special Education	04/08/2021	10/28/2021
Yes	1:1 Aide	1:1 Agency Aide	Special Ed Teacher	1440 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021
No	Speech and Language Therapy	Speech and Language Pathologist	Speech and Language Pathologist	30 Minutes / 1 Times Weekly	Special Education	04/08/2021	10/28/2021

Total minutes per week student spends in school: 1440 minutes per week
Total minutes per week student is served in a special education setting: 1440 minutes per week
Percent of time in general education setting: 0% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Agency Aide	1:1 Agency Aide	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	04/08/2021	10/28/2021
No	BCBA, paid by LWSD	BCBA, paid by LWSD	Special Education Teacher	6 Hours / 1 Times Monthly	Special Education	04/08/2021	10/28/2021
No	BCBA, paid by LWSD	BCBA, paid by LWSD	Special Education Teacher	4 Hours / 1 Times Weekly	Special Education	04/08/2021	10/28/2021

Description of Services:

Supplementary Aids and Services:
 Transportation: 120 minutes per week to and from school (when riding in contract car).
 BCBA 1: Program Support 6 hours monthly
 BCBA 2: RBT Supervision 4 hours weekly

D17 p.27.

127. On April 17, 2021, Ms. Parent again emailed Mr. Goodman and inquired about the status of the revised PWN from the October 2020 IEP meeting. Ms. Parent wrote, "The PWN related to the October IEP meeting said nothing of the discussion and decision made related to Bancroft/residential school options... I asked for a more representative PWN in an email I sent in January and you indicated that you would need to defer to Stacy McCrath for details and specific wording...Unfortunately, we have not received the revised PWN." P39 pp. 1-2.

128. A revised PWN pertaining to the October 2020 IEP meeting was provided to the Parents by email on April 27, 2021, and is dated January 22, 2021. It proposes to initiate the Student's IEP on January 29, 2021. P39 p.6. The PWN states, "At the IEP meeting on 10.28.20, the District informed parents that it would not be able to move forward with a placement at Bancroft RTC, due to availability and prohibitive cost. The team agreed to serving [Student] in person at Transition Academy-Redmond in the AM session and provide academic reading instruction provided by Dolan Academy, remotely in the PM." *Id.* The reasons for the proposed action state, "The district in good stewardship of public funds could not support placement at Bancroft... Team discussed need to target [Student's] regressing literacy skills." *Id.*

129. Ms. McCrath did not follow up on any other residential placement options for the Student after the October 2020 IEP meeting. Tr. 344.

130. The Parents dispute that the team agreed at the October 2020 IEP meeting to serve the Student long-term at RTA. Tr. 735.

131. On May 18, 2021, the IEP team met to discuss the Student's ESY program, and the Parents requested that the Student be placed in a residential treatment center. The District personnel declined to agree to fund a residential placement because, in their view, the Student was "currently accessing his educational services in the District without need for a more restrictive, out-of-state program." D22 p.6. Ms. McCrath recalls that the "school team" felt the Student was making good progress and they were not seeing the concerns that had existed in the 2019-20 school year. Tr. 378. The District offered at this meeting to conduct a reevaluation of the Student and the Parents agreed to a reevaluation.

132. The Parents were "shocked" to learn at this meeting that the District felt the Student was making progress. They were informed that the District felt the Student's recent behavior, including [REDACTED] were not cause for concern. P52 p.14. The Parents articulated at this meeting that the Student had not learned any new skills to replace his problematic behaviors. *Id.* Moreover, Ms. Parent expressed that, based on information she received from Ms. Jewel and work samples that were sent home, the Student was currently working on academic skills that he had mastered in 2018. For example, the Student was "counting butterflies," which required him to count two small groups of butterflies that totaled to less than ten, and add them together. The Student was already fluent in this skill and had been since 2018. Tr. 736-38.

133. On May 25, 2021, the Parents filed the Complaint in this action.

134. Shari Corboy's "BCBA School Case Notes" dating from May 10, 2021, through August 12, 2021, were admitted as evidence at the due process hearing but Ms. Corboy did not testify.³⁰ P42. The note from May 10, 2021, documents that the Student hit the behavior

³⁰ The notes are handwritten and difficult to read. Many of the entries cannot be interpreted by the ALJ.

technician three times in the car on the way to school that day. *Id.* at 1. The note from May 18, 2021, documents that the Student had a “pee accident” in the morning and later threw a pyrex dish across the room. *Id.* at 3. The note from August 12, 2021, documents that that the Student exhibited the longest and most intense “stim” Ms. Corboy had seen from him, and that “the eye poke is back.” It also documents the occurrence of six arm bites, presumably on the Student’s own arm, similar to biting “an ear of corn.” *Id.* at 6.

135. On June 15, 2021, the Student’s IEP team met to review the reevaluation of the Student that had been conducted by the District (2021 Reevaluation). D22. Mr. Parent had signed the consent form for the evaluation and specifically requested that the following areas be assessed: “self-injurious behavior, appropriate interactions with others (and understanding of), aggressive to others [sic], property destruction and appropriate behavior in public (and understanding of), his understanding of the world around him and expectations of him.” *Id.* at 5.

136. The 2021 Reevaluation was conducted by District psychologist Katherine Tom. It determined that the Student continued to qualify for SDI in the areas of functional academics reading, functional academics writing, functional academics math, social/emotional, adaptive, behavior, and speech/language therapy. D22 p.6. The 2021 Reevaluation report is lengthy, and most of it is based on the 2019 Reevaluation and a review of existing data. The 2021 Reevaluation concludes, based on a review of existing data, that the Student has made progress with the support provided at RTA, and he would likely continue to benefit from improving his skills that increase positive classroom behaviors. *Id.* at 24. The 2021 Reevaluation further concludes that the Student is making steady progress in using his communication device during structured work activities while at school but continues to need support to initiate communication via the device. *Id.* at 33

137. The Student’s OT noted in the 2021 Reevaluation that the Student’s ability to complete simple snack preparation and manage his impulses while in the kitchen has decreased. He demonstrated unsafe behavior while in the kitchen and had a tendency to place items in his mouth. D22 p.34.

138. As part of the 2021 Reevaluation, an FBA was conducted by Ms. Corboy. Data for the FBA was collected in May and June of 2021. The data demonstrated that the Student engaged in [REDACTED] and the positive replacement behavior known as manding,³¹ three out of six days. D22 p.47. The FBA, dated June 9, 2021, concludes that the Student’s behaviors of concern ([REDACTED]) “are maintained by the functions of the behavior: access to tangibles, social attention, escape from demands, and automatic

³¹ “Manding” is a behavior term that means requesting. Functional behavior communication training aims to replace problem behaviors with requests or “mands.” Tr. 484-85.

reinforcement in the form of sensory input.” D22 p.46. The FBA recommends that behavior be addressed across all aspects of the Student’s whole day. *Id.*

139. The Parents dissented from the 2021 Reevaluation results. They noted that [REDACTED] was not addressed in the 2021 Reevaluation. D22 p.57. The Parents provided detailed medical information regarding the decline of the Student’s visual acuity and noted that he may require a corneal transplant due to this decline. *Id.* at 58. The Parents further noted that the Student is isolated from the rest of the RTA students for most of the day and sits in a room with only his aide. He has outings infrequently due to his aggressive behavior. *Id.* The Parents noted that the Student’s participation in the cooking activities at RTA was significantly lower than that of other students and that he was getting no instruction in gardening/landscaping. *Id.*

140. A clinical note from Northwest Eye Surgeons, dated August 13, 2020, is appended to the 2021 Reevaluation. In it, Dr. Audrey Rostov, M.D., states that it is “extremely important” the Student’s [REDACTED] cease and be “completely controlled” before consideration can be given to any surgical procedure to improve his vision. D22 p.69.

141. A new IEP was developed for the Student in July of 2021. D23. The July IEP’s “Present Levels of Educational Performance” section states, “[Student] is making steady progress in using his communication device during structured work activities while at school. During 2 recent data collection sessions, [Student] independently selected ‘all done’ when provided with the visual and auditory prompt of ‘work 1’ being selected on device by staff. He required visual prompts (pointing to device) to select ‘I need help’ when he did not know what to do during a work activity.” *Id.* at 27.

142. Ms. Simmons opined at the due process hearing that the Student is making progress using his AAC device to communicate when he is finished with work and for selecting a break or a self-soothing task. “He still benefits from visual or verbal cues to use the device” but he is using it more than he did in the fall of 2020. Tr. 1070.

143. The July 2021 IEP states that the Student now requires two behavior aides to provide support throughout the day in order to help minimize behavior triggers, implement positive behavior supports, and support the Student when he is in crisis. D23 p.15. Dr. Martin did not agree with this change because she thought it would interfere with the Student’s independence and keep him from making progress. Tr. 1150. Ms. McCrath testified that the second aide would primarily be needed during community outings. *Id.* at 386.

144. In Ms. McCrath’s opinion, the placement described in the July 2021 IEP is less restrictive than a residential placement and will better prepare the Student to be successful in the community. Tr. 387. Ms. McCrath explained her opinion as follows: “I don’t believe, from my experience, that residential programs can authentically prepare students for their – for their activities in the community, in their home community, and I believe that this program and our program does provide that support and provide that opportunity for students so that

when they age of out of our system at 21, they will – we want them to be familiar and able to be successful in our community, in their local community.” *Id.*

145. Mr. Goodman opined that the Student has done “quite well” since the summer of 2020. “He transitioned to the academy very well. He has adapted to his new communication device extremely well. He uses it independently. And he accesses the remote services from Dolan not completely independently, but a significant level of independence.” Tr. 128. Mr. Goodman did not describe the degree to which he had observed the Student use the communication device, or the basis for his assertion that the Student has done “quite well.”

146. The behavior goal related to ██████████ was removed from the July 2021 IEP, and ██████████ was to be monitored and addressed through the Student’s BIP³² and through program adjustments. The IEP states that data indicates the Student ██████████ an average of one time per day throughout the school day. D23 p.18.

147. The July 2021 IEP’s “Supports for School Personnel” were unchanged from previous IEPs. D23 p.36. An updated BIP, written by Ms. Corboy, is attached to the July 2021 IEP. *Id.* at 44- 48. It addresses ██████████ and functional communication, among other things. The BIP’s intervention strategies include “care coordination,” which states, “There is a strong recommendation for coordinated care of services across all settings to ensure consistency when responding to challenging behaviors as well as setting up environments that promote successful teaching of skills.” D23 p.45. It calls for “structured opportunities embedded for [functional communication training] across the day, including home.” *Id.* at 46.

148. A PWN was issued on July 30, 2021. It states in “Description of any other options considered and rejected” and “Reasons we rejected those options” that the Parents requested residential placement and services outside of the normal school day, and that the team does not agree that a residential placement or services outside the normal school day are necessary in order for the Student to receive FAPE. D23 p.43.

Current status

149. Currently, the Parents rarely take the Student to the grocery store or other places in the community because the Student hits people. Tr. 808. Mr. Parent has to place himself between the Student and breakable items, although the Student still manages to break bottles if he is able to access them. The family needs to be very careful at places such as Starbucks because the Student will go behind the counter to grab food. *Id.* at 809. Recently, when the Student was at the grocery store, he grabbed numerous pickle bottles off the shelf and threw them on the floor. When Ms. Parent attempted to stop him, he hit, kicked, and bit her. *Id.* at 166-67. Approximately 10 store employees had to block the Student’s access to jars until he finally sat on the floor and stopped breaking things. *Id.* Mr. Parent no longer feels the family can manage the Student’s behavior and protect themselves from injury. *Id.* at 811.

³² The Student’s behavior-related document was now referred to as a BIP.

150. The Student can no longer accomplish activities of daily living he had once mastered. For example, he cannot cook as well as he used to because he cannot see the markings on a measuring cup or measuring spoons due to his decreased vision. Tr. 164. He has fewer available communication buttons on his AAC device, down to 16 from 32, because the buttons need to be very large so he can see them. *Id.* at 165. The Student is now resistant to doing chores and things he used to do without any problem. His willingness to have demands placed on him has dramatically decreased. *Id.* at 171.

151. It is found that the Student's current needs are just as great, or greater, than they were when the District determined that he should be placed in a residential facility in May of 2020.

152. The Parents are requesting as relief in this action that the Student be placed at Shrub Oak International School (Shrub Oak). Information about Shrub Oak was presented at the due process hearing by Caitlin Sweetapple. Ms. Sweetapple³³ is the Director of Education at Shrub Oak, which is located in Mohegan Lake, New York. P53 p.1. Shrub Oak is a private coeducational therapeutic day and boarding school for students age 8-30 who are on the autism spectrum. It focuses on students with complex challenges who have high personal attention needs. Shrub Oak is approved by OSPI as a non-public agency.³⁴ *Id.* at 2.

153. Shrub Oak staff members have reviewed extensive materials pertaining to the Student as well as videos of his behavior. The Student has been accepted into the Shrub Oak "Founders Program." This program currently serves 12 students with profiles similar to that of the Student, and the program's classrooms each contain four students. Tr. 649. There is a working farm and garden that is scheduled into the students' days, as well as a life skills house that enables students to practice hands-on skills. *Id.* at 653-59.

154. The Founders Program provides BCBA's and one-on-one behavior technicians. P53 pp.3-4. If the Student were to attend Shrub Oak, he would initially receive one-on-one supervision around the clock. SLPs, OTs, and nurses would also be available to provide services. *Id.*; Tr. 684. The Student's program would focus on increasing independence, supporting life skills, increasing functional communication, and increasing his ability to self-advocate and regulate his body. P53 p.4. According to Ms. Sweetapple, staff at Shrub Oak would be capable of addressing the Student's SIB. *Id.* at 5. He would receive a "sensory diet" if recommended by the OT; this is designed to give autistic students sensory input from such things as deep pressure and functional movement in order to help them regulate their bodies. Tr. 662, 684.

³³ Ms. Sweetapple has a master's degree in special education and adapted physical education. She is currently a doctoral candidate in Education Leadership for Diverse Communities. She is also an Advanced Crisis Prevention Institute Trainer. P 53 pp.1-2.

³⁴ A non-public agency is a private school or facility approved by OSPI with which school districts can contract for provision of special education services. Tr. 1036. See WAC 392-172A-04080.

Expert Testimony

Dr. Padilla

155. Dr. Padilla reviewed Ms. Corboy's BIP prior to the due process hearing. Tr. 486. Dr. Padilla continues to be of the opinion that the Student needs intensive out-of-home intervention. *Id.* at 487-888. Dr. Padilla conferred with Ms. Sweetapple prior to the due process hearing and asked about Shrub Oak's routines, academics, behavior support, SIB support, reinforcement strategies, coordination with psychiatry, and social engagement. Dr. Padilla opined that, based on what she learned in the conversation, Shrub Oak is able to meet the Student's needs. *Id.* 489-91.

156. Dr. Padilla worked extensively with the Student over 47 sessions. She described how she drew on her knowledge, skill, experience, and training to develop a precise FBA and treatment plan for the Student. She described efforts to go "one by one" through treatments she developed to assess if they were effective. Dr. Padilla assessed the Student's ability to generalize behaviors, and described her efforts to reduce problem behaviors and increase the Student's communication and adaptive skills. She assessed whether his SIB was amenable to treatment, and examined why the Student engaged in SIB as part of the treatment plan. Due in large part to the methodical and precise nature of her extensive work with the Student, Dr. Padilla's opinion is found to be compelling and persuasive, and is given very substantial weight.

Dr. Uherek

157. Dr. Ann Uherek is a doctor of psychology (Psy.D.) and licensed clinical psychologist who has worked with the Student and his family for twelve years. P43; P44 p.1. Dr. Uherek has served as the director and clinical team lead of Bellevue Children's Department of Child Psychiatry, a satellite facility of Seattle Children's Hospital. She currently has a private practice providing psychological evaluations and treatment. *Id.* Dr. Uherek has over 35 years of experience providing therapy to children and adults. P43.

158. Dr. Uherek provides family therapy and parent training to the Parents and the Student's brother biweekly. Tr. 589. She has also consulted on behavior intervention programs for the Student and has attended his IEP meetings in the past. P44 p.2.

159. Dr. Uherek conducted psychological evaluations of the Student in 2010, 2013, and 2016. P44 p.3; Tr. 522. Dr. Uherek noted in her 2016 evaluation that the Student was overly dependent on verbal prompting by caretakers. She recommended increased use of visual cues in order to increase the Student's independence. *Id.*

160. The last time she saw the Student in her office in August of 2019, Dr. Uherek observed him to take a picture off the wall and throw it, pull a quilt from the wall, hit and attempt to bite his Parents, and tear off his clothing. P 44 p.2. Dr. Uherek has reviewed the FBA conducted

by Dr. Padilla and has received reports about the Student from his Parents and brother. *Id.* She has also reviewed the reevaluations of the Student done by the District. *Id.* at 3

161. Dr. Uherek opined at the due process hearing that the Student has the ability to learn and has demonstrated that ability across different settings. Tr. 545-46. She opined that the Student currently has a similar level of functioning to that which he had in 2016, and is not able to maintain functional and behavioral skills in order to use them across multiple environments. P44 p.3. In her opinion, the Student exhibits aggression and SIB when he is asked to do a non-preferred task, when he is denied what he wants, when he is bored, and when he is frustrated by his inability to communicate. *Id.* at 8.

162. Dr. Uherek reviewed the 2021 Reevaluation and noted that a new communication evaluation was not performed. Rather, the communication portion came from the 2019 evaluation, and there was no new testing - only observational information. According to Dr. Uherek, "I did not see anything in this evaluation that demonstrated a significant improvement in his functioning. And in fact, I think that at best, it shows that if you put him in a room all by himself with one person in that most restrictive kind of a setting, yes, he'll show less [problematic] behavior. But that's it." Tr. 586.

163. Dr. Uherek opined that, once a person's severe problem behaviors exhibited in multiple environments become "entrenched," an intensive, round-the-clock intervention program is needed. P44 pp. 9-10. She further opined:

The more entrenched, the harder it is to change that behavior. This is not an easy process. It becomes a habit. It's very well learned. And they keep going back to it. And when it becomes automatic, it's very hard to interrupt it. So not only do you need a more intensive intervention, but you need more time to teach the replacement skills and extinguish the old behavior, the problem behavior you're trying to get rid of. So, you know, in my experience, it can take up to a couple years to really get this behavior under control so people are functioning at a better level and don't go back to these old behaviors that worked so well.

Tr. 564.

164. Dr. Uherek has toured Shrub Oak virtually, conferred with staff members, and conferred with Ms. Sweetapple. Dr. Uherek recommends that the Student be placed in a residential treatment facility and recommends Shrub Oak. P44 p.10.

165. Dr. Uherek's opinion that the Student's 2021 Reevaluation did not demonstrate significant improvement in his functioning is supported by the evidence presented at the due process hearing. Her opinion that entrenched behaviors require round-the-clock intervention is based on years of experience working with individuals who have challenging behaviors, and is consistent with the opinion of Dr. Padilla. The opinions Dr. Uherek expressed are well-reasoned and are given substantial weight.

Dr. Jones

166. Dr. Christopher Jones testified as an expert for the Parents at the due process hearing. Dr. Jones holds a Ph.D. in developmental psychology. He is a BCBA and a licensed behavior analyst. He is an adjunct faculty member at the University of Washington Applied Behavior Analysis Graduate Program. P46. Dr. Jones was a consultant at the University of Washington Haring Center from 2014-2020, where he provided clinical support to challenging students and their IEP teams within school districts. *Id.* Dr. Jones has experience reviewing IEPs and has participated in the IEP team process. Tr. 841.

167. Dr. Jones was asked by the Parents to conduct an evaluation of the Student's educational programming and current placement. Dr. Jones wrote an evaluation report based on his review of records and his two observations of the Student at school. Tr. 837, 843-45; P50. During the observations, Dr. Jones observed that the Student would work on a given task for 5-15 minutes, and then get a break. The Student chose to lie on the couch in the classroom during breaks and play with a fidget or his phone. Tr. 911-12. In Dr. Jones's opinion, the Student "had few demands placed on him at school and spent considerable amounts of time lying on the couch." P50 p.6.

168. Dr. Jones opined that the Student's case is complex because he engages in challenging behaviors for all four reasons that are identified by behavior analysts – to access tangible items, to access attention, to obtain sensory stimulation, and to escape or avoid something. Tr. 860. The interventions that should be implemented to address the Student's behavior are very different depending on the reason for the behavior. This necessitates intervention by a person with the background, education, and experience to determine in the moment the reason the behavior is occurring, and to know how to respond appropriately. A typical one-on-one aide does not have the necessary training and experience to do this. *Id.* at 860-62.

169. Dr. Jones opined that the October 2019 IEP is not appropriate because it makes almost no mention of the Student's increasingly challenging behaviors. P50 p.2. Dr. Jones opined that the FBA in place as of May 2019 (exhibit P1) does not make clear how often the target behaviors are occurring, and contains a misleading graph as to their frequency. The graph contains only three months of data and gives the impression that the behaviors are decreasing. However, if the two "outlier" days of very high target behavior frequency, which skew the data, are eliminated, the graph of target behavior frequency becomes a horizontal line, indicating no progress. Tr. 850. The Student's target behaviors will be a concern until they are eliminated or "zeroed out," according to Dr. Jones. *Id.* at 851. According to Dr. Jones, the Student needed "a lot more" behavioral services than were provided in the October 2019 IEP. *Id.* at 863. Additionally, Dr. Jones opined that the amount of speech and language services in the IEP were insufficient to set up and monitor a functional communication training program at the intense level the Student required. *Id.* at 866-67.

170. Dr. Jones also opined that the October 2019 IEP was not appropriate because the Student's one-on-one aide had too much responsibility for instructing the Student, and the

IEP did not contain adequate supports regarding personnel training and supervision. Tr. 853-54. Dr. Jones emphasized that, given the extent of the Student's challenging behaviors, the aide would need support because an aide does not have the background, education, or experience to work independently with someone with the complex needs and challenges presented by the Student. *Id.* at 854. Moreover, if the District was, in fact, providing supports for the aide, those supports would not go with the Student if he were to leave the District because they are not written into his IEP. *Id.* at 854-55. In Dr. Jones's opinion, the complexity of the Student's FBA and behavior support plan required his one-on-one aide to have a great deal of training, and ongoing supervision by someone who possesses extensive experience working with students with severely challenging behavior. *Id.* at 856, 859.

171. Dr. Jones opined that the May 2020 IEP was not appropriate because it discontinued the "soothing activity" goal that was intended to provide a functional replacement for the Student's challenging behavior. P50 p.3. Dr. Jones saw no evidence that the Student had made enough progress on this goal that it could be subsumed into his daily scheduling goal as the IEP team contemplated. *Id.* This IEP also continued to contain insufficient support for the one-on-one aides, who lacked the supervision and training necessary to modify their educational approaches with the Student in response to his behavior. *Id.* According to Dr. Jones, there is a general guideline in behavior support that "if there are three days with no progress, you change something." Tr. 871-72. The Student's aides were not sufficiently trained to make such changes. Moreover, in Dr. Jones's opinion, behavior data should have been collected daily and every occurrence of challenging behavior by the Student should have been documented until the behavior was under control. *Id.*

172. With regard to the data collected by Basic Beginnings staff in April and May of 2020, Dr. Jones noted that the Student made almost no progress on his goals for an entire month. On several behavioral goals he scored zero on every opportunity every day the goal was worked on. The aide engaged in the same ineffective teaching approach with the Student with no success for extended periods of time, but nothing was changed. In Dr. Jones's opinion, this is not the fault of the aide but is the "fault of the school district for not provided [sic] sufficiently trained professionals to provide oversight on [Student's] educational programming." P50 p.5.

173. Dr. Jones opined that the October 2020 IEP was not appropriate because it again called for the use of untrained one-on-one aides who did not have sufficient supervision. P50 p.3. Dr. Jones opined, "The extent of [Student's] emotional and behavioral needs at this time were far beyond a 1:1 aide with little behavioral background combined with occasional, undocumented support by a district behavior specialist." *Id.* He opined that the IEP should have had a much greater emphasis on functional communication and on oversight of the programming. Tr. 879. The PBSP contained in the IEP is almost identical to the previous PBSP; this implies that either the previous plan was working, or there is insufficient data to know whether the plan needs to be changed. In Dr. Jones's opinion, a behavior support plan is supposed to be an ongoing and changing document that adjusts as a student's behavior progresses or worsens. *Id.* at 880.

174. Dr. Jones opined that the March 2021 IEP was also not appropriate. That IEP states in the “Measurable Annual Goals” section that the Student does not independently initiate communication to request a break or change a non-preferred activity. The Student also requires verbal or visual cues to use his AAC device to communicate. D17 p.16. Dr. Jones opined that these are “basic communication skills” that the Student does not independently initiate, and the Student’s communication abilities consist of “almost nothing.” Tr. 889. This indicates that the Student has learned that his behavior works better than his device for communication:

So if I smack myself in the head and you say, “Okay. You don’t have to do this work anymore,” well, then that – that works a lot better than handing you a break card or pointing to my device and saying, “I want a break,” because that takes ten seconds whereas smacking my head takes one, and it’s much more efficient... So that’s what he’s learned over time.

Id.

175. Dr. Jones opined that the communication services offered in the March 2021 IEP, consisting of 90 minutes per week, were insufficient to set up a proper functional communication training system. Tr. 890. According to Dr. Jones, “[Student] has developed a learning history which was insufficiently supported across previous IEPs and the extent of his self-injury, aggression, and property destruction are beyond the capabilities of this educational team, even if supported by a Board Certified Behavior Analyst with extensive experience.” P50 p.3.

176. Dr. Jones noted that the progress report used when developing the March 2021 IEP contains very little data. For example, with regard to the [REDACTED] goal, the progress report contains a narrative stating, “We are seeing very little [REDACTED]” and noting that there was an average of [REDACTED] per day over four days. P40 p.7. This is insufficient information on which to base an IEP because trends over time need to be examined. According to Dr. Jones, “If you’re going to be able to look at whether or not a program is working, you have to look at how is – what are the data showing you over that whole long period of time because he could have a good week. He could have a bad week. But what is the average over the course of the period telling us?” Tr. 898.

177. Dr. Jones examined the data regarding [REDACTED] collected by Basic Beginnings in 2020-21 (exhibit P41). The data does not make clear whether all attempts at [REDACTED] were being recorded, or only successful attempts. If the latter, there is no record of attempts that were blocked by the therapist. Tr. 899. Moreover, the data shows no progress in reducing [REDACTED] and there is no indication of how the approach to the behavior was changed over time, if at all, in response to the lack of progress. *Id.* at 899-90.

178. Dr. Jones also opined that the August 26, 2021 BIP written by Ms. Corboy uses approaches and strategies that have been used with the Student for years without success. The BIP does not set forth how to determine the function of the Student’s behavior at a given

moment even though he engages in challenging behaviors across all functions. Without knowing the function, the therapist cannot determine the correct response. Tr. 892-94.

179. In Dr. Jones's opinion, the District is using a "tip toe" approach with the student, avoiding his triggers rather than teaching him to cope with them. For example, the Student has a history of [REDACTED]. Rather than teaching the Student to tolerate those objects in his environment, the team does not allow the objects to be in the environment. P50 p.6.

180. Dr. Jones emphasized that the Student's special education services need to focus on functional communication. According to Dr. Jones, "The Student is behaving to tell us something...he's communicating through his behavior because he doesn't have a more functional way that's as effective. ... He doesn't have enough verbal skills to be able to get all of those needs and wants met... So a good placement will target functional communication very strongly as well as focusing on adaptive skills that he needs to become more independent." Tr. 864.

181. Dr. Jones opined that the Student requires a residential placement because the level of challenging behavior he exhibits necessitates one-on-one support outside the school day. Tr. 913. Dr. Jones examined information about Shrub Oak and notes that the facility's advisory board contains a number of people who are experts at working with people who have the Student's needs. Dr. Jones determined that Shrub Oak builds functional communication training into everything that is done throughout the day and that this would meet the Student's needs. Tr. 914.

182. Dr. Jones wrote a lengthy "Expert Opinion Evaluation Report" pertaining to the Student. P50. The "Overall Conclusions" section of that report provides as follows:

Based on the available information provided by the school district, observations, and interviews, it is quite clear that insufficient [sic] experienced and inadequately supervised educational staff have been working with [Student] for nearly 2 complete school years spanning from September 2019 through March 2021. Documentation suggests this pattern likely spans longer than those two years, but this report will focus on that time. The lack of adequately trained and supported/supervised staff, absence of sufficient data collection to make effective educational decisions, together with insufficient Individual Education Plans in place resulted in a significant lack of progress and ongoing regression in [Student's] skill development for that time period. While the district has increased support and oversight in [Student's] current classroom at the Redmond Transition Academy, those supports are insufficient to adequately make up the educational time that was lost from the previous 2 years where the Lake Washington School District failed to provide a Free and Appropriate Public Education to [Student] and this current classroom does not allow for a least restrictive environment to ensure [Student's] success. As has been recommended by outside support services as well as district personnel

previously in [Student's] educational career, I recommend that [Student's] education be supported through an out of district placement equal to or better than Shrub Oak International School. The district's current educational environment is insufficient to meet the particular needs that [Student] has and a residential placement such as Shrub Oak will increase the likelihood that [Student] will be able to more efficiently stabilize his challenging behavior, develop a functional communication system, tolerate increased levels of educational demands, and more effectively develop productive Activities for Daily Living (ADLs) that will help [Student] live more independently as he progresses into adulthood.

Id. at 1-2.

183. Dr. Jones's opinions are very detailed and are supported by specific evidence. His observation that the District's assessments of the Student's progress are supported primarily by narrative statements, and do not examine trends over time, is supported by the evidence and is well-taken. Dr. Jones's observation that data was not collected on a regular basis and the District therefore could not determine whether interventions were working is also supported by the evidence, and raises the question of whether the Student was actually progressing in his programming at all.

184. Moreover, Dr. Jones very persuasively explained that the interventions that should be implemented to address the Student's problematic behaviors are different depending on the reason for the behavior. Because the current BIP does not set forth how to determine the reason for the Student's behavior at a given moment, Dr. Jones convincingly made the point that the Student's service providers in the District cannot know how to effectively respond to his behaviors.

185. Dr. Jones's explanation of his report and his recommendations reflect a thorough assessment of the Student's needs, and starkly highlight the shortcomings in the programming the Student has been and is receiving. For these reasons, Dr. Jones's opinions are given very substantial weight.

186. The District argues that Dr. Jones is not an impartial or reliable expert because he has worked on cases with the Parents' attorneys once or twice before. District Post-Hearing Brief (District's Brief) at 39; Tr. 919. This argument is not persuasive and does not impact the weight accorded to Dr. Jones's opinions.

Dr. Martin

187. Dr. Martin was a member of the Student's IEP team throughout the time period relevant to this action. She does not presently recommend that the Student be placed in a residential treatment center. Tr. 1129-30. Very significantly, she has never recommended that any student she has worked with be placed in a residential treatment center. *Id.* According to her description of her role, Dr. Martin has always focused on greater inclusion

and participation by the Student in the general education setting; however, she would have supported a residential placement for him in 2019 had the Parents wanted that. *Id.* at 1130, 1136. Dr. Martin opined that the Student can currently access his education in the District. *Id.* at 1131-32. She did not provide an explanation or any specific data to support this opinion. Rather, she opined that the Student’s family is “an incredible resource” and “there are areas we should think about and collaborate more and think about continuing to grow and continue to improve his programs.” *Id.* at 1131. However, she is concerned about the lack of community support for the family. *Id.* at 1132.

188. Dr. Martin described in her testimony “conversations on and off” around the Student’s [REDACTED] “for years,” and testified that “we have attempted different interventions.” Tr. 1089. She also testified, “We have always talked about the idea of functional communication” for the Student, and “it’s been part of what we’ve been trying to achieve with him for years.” *Id.* at 1098. According to Dr. Martin, “Our hypothesis always has been that if we provided the Student with more functional ways to communicate, then [he] wouldn’t engage in so many challenging behaviors.” *Id.* at 1099. She also testified, “We had a lot of conversations about how to generalize skills and what that looked like.” *Id.* at 1106.

189. Dr. Martin’s opinion regarding residential placement lacked the factual support and specificity that was provided by Drs. Padilla and Jones. Although Dr. Martin identified appropriate areas of intervention for the Student, she worked on those areas for very significant periods of time without demonstrating progress through data. She did not explain how she changed the Student’s programming in response to lack of progress. She did not provide any specific support for her opinion that the Student can access his education in his current placement. She did not explain why she would have supported a residential placement in 2019 but does not support one now. Dr. Martin did not explain how the Student’s program has changed or how his behavior has improved since she opined in 2019 that he was unsafe, his aggression was significant, and his behavioral supports had not succeeded in decreasing his extreme behaviors. Moreover, Dr. Martin demonstrated a strong preference for “inclusion” of students in their home school district and community, and against residential placement.

190. For these reasons, Dr. Martin’s opinion is found to be less compelling and less persuasive than the opinions of Drs. Padilla and Jones, and is therefore given less weight.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings 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 IDEA; Chapter 28A.155 Revised Code of Washington (RCW); Chapter 34.05 RCW; Chapter 34.12 RCW; and the regulations promulgated pursuant to these statutes, 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. See *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Since the Parents are the party seeking relief in this case, they have the burden of proof. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102, 101 S.Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

3. The IDEA and its implementing regulations provide federal funds 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 IDEA, 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).

4. A FAPE consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the

child is receiving a “free appropriate public education” [FAPE] as defined by the Act.

Id. at 188-189.

5. The Supreme Court clarified the substantive portion of the Rowley test quoted above in 2017:

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).

6. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry that must focus on the unique needs of the student at issue. As the U.S. Supreme Court has made clear, “A focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s “*unique needs*.” *Endrew F.*, 137 S.Ct. at 999 (emphasis in original). “An IEP is not a form document” and the “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* “Above all, an IEP team is charged with developing a ‘comprehensive plan’ that is ‘tailored to the unique needs of a particular child.’” *L.C. on behalf of A.S. v. Issaquah Sch. Dist*, 2019 U.S. Dist. LEXIS 77834 *21, 119 LRP 18751 (W.D. Wash. 2019)(quoting *Endrew F.*, 137 S.Ct. at 994).

7. Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefit.

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

Whether the District violated the IDEA and failed to offer the Student FAPE by failing to issue a PWN that documented the IEP team’s decision to change the Student’s placement to residential placement, and the reasons and evidence used to make that determination³⁵

8. The IDEA’s requirements regarding the provision of PWN are enumerated in WAC 392-172A-05010. That regulation provides, in part:

³⁵ For clarity of analysis, the issues are addressed in a different order than that in which they are listed in the issue statement.

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

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

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

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

9. The purpose of the PWN “is to provide sufficient information to protect the parents’ rights under the [IDEA].” *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992). The U.S. Court of Appeals for the Ninth Circuit addressed the importance of the PWN requirement in *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994), stating:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in ‘presenting complaints with respect to any matter relating to the ... educational placement of the child.’”

(Citation omitted.) *Union* involved a school district’s failure to make *any* formal written offer of placement, but courts have relied on *Union* to find that an unclear IEP does not permit

parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. *S.H. v. Mount Diablo Unified Sch. Dist.*, 263 F. Supp. 3d 746, 761 (N.D. Cal. 2017).

10. Verbal discussions with parents do not satisfy the PWN requirement. In *Mount Diablo*, the hearing officer in the administrative proceeding was unable to determine, even after a full hearing, what the school district was offering with respect to speech/language services for the student. The district court found the “confusion” caused by lack of specificity in the IEP deprived the parent of her right to meaning fully participate in the IEP process. *Id.* at 763-64. The present case is similar to *Mount Diablo* in that the evidence demonstrates confusion on the part of IEP team members as to what had been decided about the Student’s placement and when. The PWN for the October 2019 IEP is somewhat ambiguous in that it states “a residential placement was rejected,” but the reason for such rejection was “lack of information.” The PWN says that the team could not make a confident decision about placement of the Student at Heartspring and equivalent residential facilities, and that Ms. McCrath would gather more information to “help make a decision.” This implies that no decision as to residential placement was made. Thus, it is unclear whether the team decided the Student needed a residential placement as of October of 2019, and if not, why it was considering placement at Heartspring and other residential facilities. The October 2019 IEP itself, however, continued to contemplate the physical placement of the Student at Eastlake High School. It is concluded that, despite the ambiguities in the PWN, the October 2019 PWN’s plain wording states that a residential placement was rejected at the time, and a preponderance of the evidence does not support finding that the PWN was inaccurate. It is concluded that the Student’s IEP team did not make a determination that the Student required a residential placement as of October of 2019.

11. The District’s actions after the October 2019 IEP meeting, however, indicate that a residential placement was being actively considered. The District sent referrals for the Student to several residential facilities and copied the Parents. Representatives from Heartspring came to observe the Student. Both Ms. McCrath and Ms. Parent believe the team agreed that the Student needed a residential placement as of the May 2020 IEP meeting; this is *highly* persuasive as to the decision made at the meeting. The PWN of May 2020 does not state that a residential placement was offered, and says the Student’s placement at a building in the District would continue. It goes on to reference, in a confusing fashion, that Bancroft might accept the Student within six months and the team needed to prepare for that. Bancroft accepted the Student in September of 2020, and by the time the District received the cost breakdown from Bancroft in October of 2020, Ms. McCrath had indicated “a yes” to the family. It is therefore found by a preponderance of the evidence that the team agreed, and the District proposed, to change the Student’s educational placement to a residential facility in May of 2020. The PWN issued after the May 2020 IEP meeting did not meet the requirements of the IDEA and WAC 392-172A-05010 because it did not accurately reflect the team’s decision.³⁶

³⁶ Consequentially, if, as the District argues in its briefing, the Parents rejected residential placement at some point and the team agreed with this rejection, a PWN should have been issued at that time to reflect that decision. No such PWN was issued until July of 2021.

12. Similarly, the PWN provided to the Parents after the October 2020 IEP meeting was wholly inadequate and did not meet the requirements of the IDEA and WAC 392-172A-05010. It proposes to continue the Student's IEP effective November 5, 2020, but contains no description of proposed or refused actions. It does not describe options that were considered or rejected, even though the cost of Bancroft and the District's unwillingness to go forward with that placement had been discussed at the meeting. The PWN makes no mention of placement of the Student at a residential facility even though it is undisputed that a specific facility had been considered and rejected. The Parents twice requested a more complete PWN, which was finally provided to them in April of 2021, but was dated January 22, 2021.

13. Procedural safeguards are essential under the IDEA, particularly those that protect the parents' right to be involved in the development of their child's educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). "Denying parental access to the IEP process is a serious procedural violation of the IDEA." *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). "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." *Id.* (quoting *Amanda J.*, 267 F.3d at 882).

14. Failure by a district to provide PWN as required is a procedural violation. As noted above, procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy if they impeded a child's right to FAPE, impeded a parent's opportunity to participate in the decision-making process as to their child, or caused a deprivation of educational benefits.

15. In the present case, the evidence is overwhelming that the District's failure to provide PWN as required impeded the Student's right to FAPE and impeded the Parents' opportunity to participate in the decision-making process as to the Student. If the PWN from the May 2020 IEP meeting had documented the change in the Student's placement to residential, as it should have, the Parents could have enforced the right to that placement either by insisting that a suitable placement be found and implemented, or by bringing a due process action and invoking their "stay put" rights under WAC 392-172A-05125 if the District failed to act. The Parents also could have advocated for increased services for the Student to support the needs the team had determined were so intensive as to require a residential placement. Instead, the Parents were left floundering, not knowing what the plan was, and, in their own words, "unsure as to which direction the team was intending to go." Likewise, if the PWN had clearly rejected a residential placement, the Parents could have filed for due process rather than waiting to see what the District would do next. This confusion persisted for a year, until the District finally clearly refused to place the Student in a residential facility in May of 2021. It is concluded that the failure to provide PWN as required by the IDEA prevented the Parents from participating in the decision-making process for the Student. It also denied the Student FAPE in that the PWNs do not document the team considerations that the Student needed 24-hour intensive intervention in order to make educational progress. As a result, he was not

in the appropriate placement during the prolonged period of confusion following the May 2020 IEP meeting.³⁷

Whether the District violated the IDEA and failed to offer the Student a FAPE by failing to discuss the Student's rejection from residential placements, and the District's decision to reject placements, in an IEP team meeting based on the Student's individualized needs and not administrative cost³⁸

16. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s “*unique needs*.” *Endrew F.*, 137 S.Ct. at 999 (emphasis in original). Although the cost of a placement is a factor that can be considered when developing an IEP (see *Sacramento City Unified School District Bd. of Education v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994)), it is not the only factor and is certainly not the deciding factor. See *Florence County Sch. Dist, Four v. Carter*, 510 U.S. 7, 114 S.Ct. 361 (1993) (rejecting the argument that excessive cost could excuse the school district from reimbursing parents for a private placement).

17. In the present case, it is undisputed that, at its October 2020 meeting, the IEP team did not consider whether Bancroft was an appropriate placement for the Student given his unique needs. Rather, the District informed the team that Bancroft was too expensive and could not be considered. The “discussion” about Bancroft lasted less than a minute. This clearly shows the decision to reject Bancroft as a placement was not based on the unique needs of the Student as is required by the IDEA.

18. This failure to consider the Student’s unique needs when developing his IEP constituted a denial of FAPE.

19. With respect to the assertion within this issue that the District failed to discuss the Student’s rejection from residential placements in an IEP team meeting, this assertion is not addressed in the Parents’ Post-Hearing Brief (Parents’ Brief). It is unclear what the Parents contend should have been discussed and how lack of such discussion deprived the Student of FAPE. The Parents have not met their burden to prove by a preponderance of the evidence that the District denied the Student FAPE by failing to discuss his rejection from residential placements in an IEP team meeting.

³⁷ Some of the issues heard in this action pertain to whether the District substantively provided the Student FAPE, and may not need to be reached due to the conclusion that the District committed procedural violations. However, in the interest of providing a thorough analysis of the issues that supports the remedies ordered below, all issues will be addressed herein.

³⁸ The Parents’ Post-Hearing Brief argues that the District “predetermined” the Student’s placement in violation of the IDEA. Predetermination is an IDEA procedural violation that has been extensively analyzed by the courts. However, it was not raised as an issue to be heard or decided in the present case. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 USC. § 1415(f)(3)(B). “Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019) (upholding ALJ’s refusal to address claims raised for first time in post-hearing brief where parents cited no evidence that parties agreed to expand scope of due process hearing). For this reason, predetermination will not be considered here.

Whether the District violated the IDEA and failed to offer the Student a FAPE by failing to document services provided to the Student in his IEPs

20. An IEP must include, among other things:

A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, evaluation data, and input from IEP team members, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals...

WAC 392-172A-03090(d).

21. “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. WAC 392-172A-01175.

22. “Related services” is defined in WAC 392-172A-01155(1), in pertinent part, as follows:

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education services to benefit from special education services, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, behavioral services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

23. “Supports for school personnel” is not specifically defined in the IDEA. Courts have turned to other sources for guidance as to how to interpret the phrase:

The Official Comments to the Federal Regulations shed some light on the drafters’ intentions: “Supports for school personnel could also include special training for a child’s teacher. However, in order for the training to meet the requirements of [§ 300.320], it would normally be targeted directly on assisting the teacher to meet a unique and specific need of the child, and not simply to

participate in an inservice training program that is generally available within a public agency.”

M.C. v. Knox Cty. Bd. of Educ., 2018 U.S. Dist. LEXIS 95943 *20 (E.D. Tenn. 2018) (citing Federal Register March 12, 1999).

24. The Ninth Circuit addressed the requirement that an IEP set forth with specificity the services to be provided to a student in *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189 (9th Cir. 2017). The *Antelope Valley* court observed that an IEP “provides notice to both parties as to what services will be provided to the student during the period covered.” *Id.* at 1197. The court observed, “Under the IDEA, parental participation doesn’t end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive.” *Id.* at 1198. Moreover, an IEP must contain enough specificity that the type of supports needed by school personnel can be determined. *Bend-Lupine Sch. Dist. v. K.H.*, 2005 U.S. Dist. LEXIS 48076 (D. OR. 2005).

25. In the present case, the Parents contend that the District’s failure to document Dr. Martin’s services in the Student’s IEPs constituted a denial of FAPE. They argue that Dr. Martin worked extensively on the Student’s programming and her services fell plainly within the category of services that should be documented in an IEP. Parents’ Brief at 24-25.

26. It is undisputed that Dr. Martin’s services were never documented in any of the Student’s IEPs. The District concedes this in its brief but argues that the Parents never asked that the District specify “Dr. Martin’s hours” and that the Parents understood her role. District’s Brief at 34. Dr. Martin testified that her services were not enumerated in the IEPs because she did not provide SDI to the Student. However, she described the training she provided for staff members who worked with the Student as “extensive” and “a lot.” Dr. Martin spent the entire summer training Ms. Mansanas to work with the Student. Dr. Martin worked with Mr. Goodman almost daily, and then weekly, when he became the Student’s special education teacher. Dr. Martin developed the Student’s “programs” and discussed with staff members how to help the Student generalize his skills. She reviewed data collected by the Student’s aides. The District admits that Basic Beginnings staff members received “extensive training” from Dr. Martin and she was “heavily involved” in the Student’s program during the 2020-21 school year. *Id.* at 25-26.

27. It is concluded that Dr. Martin’s services should have been set forth in Student’s IEPs of October 2019, May 2020, and October 2020, in the “supports for school personnel” section at a minimum. The training and oversight she provided to the Student’s one-on-one aides, special education teachers, and others, was critical to the provision of special education and related services to the Student. With Dr. Martin’s services absent from the IEPs, the Student was not entitled to them and the Parents had no way to enforce his receipt of them. Had the Student changed school districts, the services Dr. Martin provided would not have gone with him.

28. Again, procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy if they impeded a parent's opportunity to participate in the decision-making process as to their child. It is undisputed that the Student received Dr. Martin's services throughout his time in the District. However, without those services being documented such that the Parents could review them and decide whether to request more services or different services, the lack of documentation impeded the Parents' opportunity to participate in the decision-making process as to the Student. Failure to include Dr. Martin's services in the IEPs therefore denied the Student FAPE.

Whether the District violated the IDEA and failed to offer the Student a FAPE for two years before the filing of the complaint in this matter by failing to offer IEPs that were reasonably calculated for the Student to make appropriate progress – specifically, whether the October 2019 IEP failed to address SIB, did not provide sufficient behavioral and therapeutic-related services to the Student, and did not contain appropriate supportive aids and services for staff training and supervision

29. In developing a student's IEP, WAC 392-172A-03110 requires the IEP team to consider:

- (a) The strengths of the student;
- (b) The concerns of the parents for enhancing the education of their student;
- (c) The results of the initial or most recent evaluation of the student; and
- (d) The academic, developmental, and functional needs of the student.

30. When determining whether an IEP is appropriate, "the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, 458 U.S. at 206-07. The IDEA does not require states to provide disabled children with "a potential-maximizing education." *Id.* at 197 n.1. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.* It is clear in the Ninth Circuit that a student is not denied FAPE simply because the district's proposed educational plan provides less educational benefit than what a student's parent might prefer. However, a reviewing court may fairly expect school district authorities "to be able to offer a cogent and responsive explanation for their decisions that show the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Andrew F.*, 137 S.Ct. at 1002.

31. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 USC § 1414(d)(3)(B)(i); 34 CFR. § 300.324(a)(2)(i). "A functional behavior assessment is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors." *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 *10 (E.D. Cal. June 14, 2016); see *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007).

32. In the present case, the Parents contend the October 2019 IEP denied the Student FAPE because it failed to address his SIB. While it is clear that the Student's behaviors pertaining to property destruction, eloping, aggression, and [REDACTED], among others, were becoming extreme at this point, the evidence does not show by a preponderance that the Student's SIB was interfering with his learning and needed to be addressed in his IEP at this time. [REDACTED] and other SIB were not identified in the PBSP as target behaviors. The PWN pertaining to the October 2019 IEP does not reflect that [REDACTED] or other SIB was raised or discussed as a concern.

33. As noted above, the determination of an IEP's reasonableness is made at the time it was developed, not in hindsight. The Parents have not met their burden to prove that the October 2019 IEP failed to provide the Student FAPE by failing to address his SIB.

34. The Parents next contend that the October 2019 IEP did not provide sufficient behavioral and therapeutic-related services to the Student. The Parents argue in their briefing that the IEP team had decided the Student needed a residential placement at this point and his IEP should have included the intensive services that would support a student with such a placement need. As concluded above, a residential placement was rejected by the IEP team in October of 2019, so this particular argument is not persuasive.

35. However, despite the fact that a residential placement was not decided upon at this point, Dr. Jones still opined that Student needed significantly more behavioral services than the 40 minutes per day of behavior SDI that was provided in the October 2019 IEP. The Student also needed significantly more speech and language services than the 90 minutes per week that was provided. A preponderance of the evidence supports Dr. Jones's opinion in that, at the time the IEP was developed, the Student was completely unable to communicate his needs when he was dysregulated, was unable to monitor his own safety, and was not progressing toward independence. It is concluded that the October 2019 IEP did not contain sufficient behavior and therapeutic-related services to enable the Student to make appropriate progress in light of his circumstances. This constituted a denial of FAPE.

36. The Parents next contend that the October 2019 IEP did not contain appropriate supportive aids and services for staff training and supervision. The issue of Dr. Martin's services not being included in the IEP has been decided above. Although the Student did receive services from Dr. Martin, it is concluded above that October 2019 IEP denied the Student FAPE in that it did not contain appropriate supportive aids and services for staff training and supervision because it did not enumerate Dr. Martin's services.

37. The Parents also contend that the supportive aids and services for staff training that were provided, although not documented, were insufficient. This argument is supported by the evidence. The Student received instruction primarily from Ms. Mansanas, an aide who was not a certified behavior technician and did not have a college degree. The Student's special education teacher had only a "supportive" role day to day. Ms. Mansanas did not have the background, education, or experience to work independently with the Student, given his complex and challenging needs, but she consistently did so. Dr. Martin assisted Ms.

Mansanas if Ms. Mansanas requested help, but Dr. Martin expected everyone working with the Student to “think about what to do differently” and adjust their strategies accordingly when the Student engaged in problematic behaviors. Ms. Mansanas was not provided with the supportive aids and services for training and supervision that she needed in order to deliver services to the Student as contemplated by the IEP. It is therefore concluded that the October 2019 IEP lacked sufficient supportive aids and services for staff training. This was a denial of FAPE.

Whether the District violated the IDEA and failed to offer the Student a FAPE for two years before the filing of the complaint in this matter by failing to offer IEPs that were reasonably calculated for the Student to make appropriate progress, specifically, the May 2020 IEP did not provide sufficient behavioral and therapeutic-related services to the Student, and did not contain appropriate supportive aids and services for staff training and supervision

38. The Parents contend that the May 2020 IEP denied the Student FAPE by failing to provide sufficient behavioral and therapeutic-related services, and failing to contain appropriate supportive aids and services for staff training and supervision. The issue as to the lack of documentation of Dr. Martin’s has been decided above.

39. There is no evidence that the aids and services for training and supervision for Ms. Mansanas changed at all in this IEP. The May 2020 IEP contained the same lack of aids and services as did the October 2019 IEP, and this constituted a denial of FAPE

40. It has also been concluded above that the Student’s IEP team decided to change the Student’s educational placement to a residential facility in May of 2020. Consequently, his IEP should have provided sufficient intensive behavioral and therapeutic-related services to support a student with such a placement need. It did not do so. The special education and related services in the May 2020 IEP were the same as those provided in the previous IEP. No services outside of the school day were added, and the services the Student did receive did not approach the intensity of services he would have received in a residential placement.

41. It is concluded that the May 2020 IEP denied the Student FAPE for these reasons.

Whether the District violated the IDEA and failed to offer the Student a FAPE for two years before the filing of the complaint in this matter by failing to offer IEPs that were reasonably calculated for the Student to make appropriate progress, specifically the October 2020 IEP did not provide sufficient behavioral and therapeutic-related services to the Student, and did not contain appropriate supportive aids and services for staff training and supervision

42. The IEP of October 2020, which had a start date of November 5, 2020, changed some of the Student’s goals. It also increased the number of minutes of SDI he received in adaptive skills by 20 minutes per week, and increased the number of minutes of SDI in the functional academics areas of writing, reading and math. The IEP did not add any new services.

43. It is concluded that the October 2020 IEP contained the same deficiencies as did the May 2020 IEP, and therefore the October 2020 IEP denied the Student FAPE.

Whether the District violated the IDEA and failed to offer the Student a FAPE for two years before the filing of the complaint in this matter by failing to offer IEPs that were reasonably calculated for the Student to make appropriate progress, specifically, the April 2021 IEP did not provide sufficient behavioral and therapeutic-related services to the Student

44. The April 2021 IEP added BCBA support as a supplementary aid and service for the Student. Specifically, it added six hours per month of BCBA program support, four hours per week of RBT supervision by a BCBA, and 120 additional minutes per week of 1:1 aide time. While this may have been a small step in the right direction, the April 2021 IEP still fell far short of providing the intensive service the Student would have been receiving at a residential facility. By this point, Seattle Children's had designed an ABA treatment plan for the Student and had opined that he needed intense treatment in an out-of-home placement. He was not able to generalize the few skills he learned to other settings, and he was working on academic skills he had already mastered. The Student had not been taught how to cope with "triggering" elements of his environment, and not had not learned behaviors that he could use to replace the SIB. The Student was having little to no contact with peers, and was not accessing the facilities available at RTA that were supposed to help him learn vocational skills.

45. Moreover, as Dr. Jones opined, the Student's communication skills at this point consisted of "almost nothing," and his SIB, aggression and property destruction were beyond the capabilities of the District's educational team to address, even with the added BCBA support. The District was continuing to use interventions that had been in place for years with very limited or no success. The communication services offered in the IEP (consisting of 90 minutes per week) were wholly insufficient to support a functional communication training plan.

46. As stated by the Supreme Court in *Endrew F.*,

When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly awaiting the time when they were old enough to 'drop out'" ... The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

137 S.Ct. at 1001 (citations omitted). Unfortunately, the April 2021 IEP continued to provide the Student with a program that did not approach the intensity of services he would have received in a residential placement, and that did not provide the services necessary to appropriately address his needs.

47. It is concluded that the April 2021 IEP denied the Student FAPE.

Whether the District violated the IDEA and failed to offer the Student a FAPE for two years before filing of the complaint in this matter by failing to place the Student in a residential treatment center as his LRE

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

Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:

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

(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

49. “The LRE inquiry is individualized and fact-specific, and must be balanced with the primary objective of providing an appropriate education.” *D.M. v. Seattle Sch. Dist.*, 2016 U.S. Dist. LEXIS 122519 *62 (W.D. Wash. Sept. 9, 2016) (citations omitted). “While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child’s IEP goals.” *City of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996).

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

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

51. Placement in a residential facility is appropriate under the IDEA if it is necessary for the Student to obtain an educational benefit. 34 CFR § 300.104. Thus, a residential placement is “necessary” when a student cannot receive an appropriate education outside a residential placement. *Seattle Sch. Dist., No.1 v. B.S.*, 82 F.3d 1493, 1502 (9th Cir. 1996). If the placement “is a response to medical, social, or emotional problems . . . quite apart from

the learning process,” then it is not necessary under the IDEA. *Clovis Unified Sch. Dist. v. Calif. Office of Admin. Hearings*, 903 F.2d 635, 643 (9th Cir. 1990). For some students, a residential placement may well be the LRE. *Seattle Sch. Dist., No.1 v. B.S.*, 82 F.3d at 1501 (quoting *Board of Educ. v. Diamond*, 808 F.2d 987, 992 (3d Cir. 1986)). In *Seattle Sch. Dist., No.1 v. B.S.*, the Ninth Circuit upheld the lower court’s findings that the student at issue needed a residential placement because she was unable to derive any meaningful benefit from her past education and the school district’s new proposal was “similarly unlikely to provide educational benefit.” 82 F.3d at 1500-01.

52. The IDEA requires a district to provide an education that meets a student’s “academic, social, health, emotional, communicative, physical and behavioral needs.” *Ashland Sch. Dist. v. Parents of E.H.*, 587 F.3d 1175, 1185 (9th Cir. 2009) (citation omitted). Residential placement is appropriate when a student’s behavioral issues are severe and ongoing such that a nonresidential placement can no longer meet his needs. *J.B. v. Tuolumne County Superintendent of Schs.*, 2021 U.S. Dist. LEXIS 64351 *27 (E.D. Cal. March 31, 2021). Moreover, residential placement is appropriate if a student requires a completely consistent environment around the clock in order to learn. *Ash v. Lake Oswego Sch. Dist. No. 7J*, 766 F. Supp. 852, 863 (D. Or. 1991).

53. The Ninth Circuit found that a residential placement was appropriate in *County of San Diego v. Cal. Special Educ. Hearing Officer*, 93 F.3d 1458 (9th Cir. 1996). In that case, the student was hospitalized for violent outbursts related to preparing a school science report, and had been assigned little or no homework because it was regarded as too stressful for her. The court determined residential placement was necessary because the student’s “primary problems” were “educationally related.” 93 F.3d at 1468. Similarly, in *Edmonds Sch. Dist. v. A.T.*, 780 Fed. Appx. 491 (9th Cir. 2019), the court stated, “Students who require residential placement to obtain an educational benefit are often experiencing some acute health crisis at the time they are placed – the severity of their condition is precisely why they need residential treatment.” Moreover, students cannot be separated from their disabilities and school districts have to “take students as they find them.” *Edmonds Sch. Dist. v. A.T.*, 229 F. Supp. 3d 1135, 1143 (W.D. Wash. 2017). A residential placement that addresses the impacts of a student’s disability-related behaviors can be educationally necessary under the IDEA. *Id.*

54. In the present case, the Parents contend the Student should have been placed in a residential treatment facility in October of 2019. Parents’ Brief at 37. The District argues that residential placement “was not, and is not now,” the Student’s LRE. District’s Brief at 35. The District argues that the Student spent most of the 2019-20 school year in a comprehensive high school and made progress, and therefore did not need a residential placement. The District further argues that the Parents are seeking a residential placement for medical reasons, i.e., the Student’s deteriorating eye sight, rather than for his educational needs.

55. A preponderance of the evidence does not support a conclusion that the Student should have been placed in a residential facility in October of 2019. Although his behavior had deteriorated, he was no longer permitted to eat in the school cafeteria, and he had been

excluded from the WANIC program, he was still making progress toward achieving some of his IEP goals. The IEP team started discussing a residential placement at this point, however, and, as found above, by May of 2020 the IEP team had decided that a residential placement was appropriate for the Student. By then, the Student was isolated from his peers, and one residential facility had already declined to accept him due to the severity of his needs. Data collected by Basic Beginnings staff indicated almost no progress on behavior goals, but the interventions and instruction did not change in response. Although progress on goals or lack thereof is not in and of itself determinative of whether an IEP was appropriate, it is a factor to be considered when considering whether an IEP was reasonably calculated to enable a student to make appropriate progress. See *J.G. v. Douglas County Sch. Dist.*, 552 F.3d 786, 801 (9th Cir. 2008) (rejecting claim that IEP was inappropriate despite progress only “in certain areas”). The present case is similar to *Seattle Sch. Dist., No.1 v. B.S.*, 82 F.3d at 1500-1501, wherein the ALJ found that the student’s progress was deteriorating and she was unable to make productive use of what she learned. A preponderance of the evidence supports a conclusion that the Student should have been placed in a residential facility as his LRE in May of 2020.

56. The evidence does not support the District’s contention that residential placement was and is needed primarily for medical needs “quite apart from the learning process.” The Student’s [REDACTED] had not even been addressed in his IEP until May of 2020, at which point the IEP team had determined he needed a residential placement. There is no evidence that vision deterioration was the motivating factor for the team’s decision.

57. The District also argues that the Student’s extreme behaviors are essentially only a problem at home, not at school, and that in-home support is needed but is not the responsibility of the District. District’s Brief at 43-44. This argument is unpersuasive. As recently as June of 2021, the Student was engaging in aggression, property destruction, pica, [REDACTED] and stimming, anywhere from three to six days out of six, at school. During the summer of 2021, he exhibited at school “intense” stim, bit his arm like an ear of corn, and eye poked to a degree that led Ms. Corboy to pronounce, “The eye poke is back.” The dogged persistence of these behaviors in the educational setting cannot be overlooked, despite the District’s argument to the contrary.

58. It is concluded that the Student should have been placed in a residential facility in May of 2020 as his LRE. No such placement was made and this constituted a denial of FAPE by the District.

Whether the District violated the IDEA and failed to offer the Student FAPE for two years before the May 25, 2021 filing of the due process hearing request in this matter by failing to initiate a reevaluation after the October 19, 2019 IEP amendment to consider changing the Student’s placement to a residential placement

59. The Parents contend in their briefing that the District should have initiated a reevaluation of the Student after the October 19, 2019 IEP amendment, or at some other point in the time period before the June 2021 Reevaluation was conducted. Parents’ Brief at

27-28. The Parents argue that “multiple events” occurred in this time period that indicated the need for a reevaluation “to inform [the Student’s] placement.” *Id.*

60. The relevant time period for this issue is not as lengthy as the Parents implicitly assume in their briefing. The issue for the hearing states, “failing to initiate a reevaluation *after the October 19, 2019 IEP amendment.*” It does not reference the later IEPs and amendments as does the first issue for hearing (which references alleged deficits in four IEPs). Nor does the issue state, “after the October 19, 2019 IEP amendment *or at any time thereafter*” as the Parents assume it to mean in their briefing. The District interprets this issue in the same time-limited manner as does the ALJ in that the District only briefed the alleged need for a reevaluation as of October of 2019, not up through 2021. District’s Brief at 39 (stating “District had no obligation to reevaluate Student in October 2019”). While the introductory wording to all of the first ten issues for hearing references a failure to offer the Student FAPE for the two years before the filing of the due process hearing request, that statement refers to the overall provision of FAPE and should not be construed to mean that the alleged failure to evaluate the Student occurred over the entire two-year time period.

61. As set forth in a footnote above, a party requesting a due process hearing is not permitted to raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 USC § 1415(f)(3)(B). “Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise.” *L.C. v. Issaquah Sch. Dist.*, *34-35 (upholding ALJ’s refusal to address claims raised for the first time in post-hearing brief where the parent cited no evidence that the parties agreed to expand the scope of the due process hearing). This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. An exception to this rule is when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-19 (E.D. Cal. Mar. 7, 2019), *aff’d*, 810 Fed. Appx. 588 (9th Cir. 2020); see also *L.C. v. Issaquah Sch. Dist.* at *37 (holding that parent failed to show that any claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: “[b]oth sides in *Antelope Valley* ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”).

62. In the present case, the Parents have not shown that an exception exists to the rule prohibiting consideration of issues not previously raised, or that the District agreed to expand the scope of the issue statement. The time period that will be considered for this issue, therefore, is the time during which the October 2019 IEP was developed and the time shortly thereafter, but not beyond the development of a new IEP in May of 2020.

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

Reevaluation timelines.

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

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

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

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

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

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

64. None of the circumstance enumerated in WAC 392-172A-03015 existed in October of 2019, or in the rest of the relevant time period. The Student had undergone a reevaluation, which included an FBA, in of May of 2019. The Parents and District did not agree that a new reevaluation could occur in October or at any point less than a year after the May 2019 Reevaluation. There is no evidence that the Parents or anyone else requested another reevaluation of the Student in the fall of 2019 or at any point thereafter, and the District did not determine that a reevaluation was warranted. See *M.S. v. Lake Elsinore Unified Sch. Dist.*, 678 F. App'x 543 (9th Cir. 2017) (district had no duty to reevaluate the student when it did not determine a reevaluation was necessary, neither the parent nor the teacher requested a reevaluation, and fewer than three years had elapsed since the previous evaluation).

65. To the extent the Parents argue that the District *should* have determined that the educational or related services needs of the Student warranted a reevaluation, that contention is not supported by the evidence. The May 2019 Reevaluation identified the Student's significant communication disorder. The May 2019 FBA acknowledged and attempted to address the Student's increasingly aggressive and destructive behaviors. The October 2019 IEP team needed information about which residential facility would be best for the Student, but the evidence indicates that information about the various facilities was lacking, not information about the Student's needs. The other information deemed lacking, according to the October 2019 PWN, was data that was being collected in an ongoing manner by the Student's one-on-one aide and which was available to the District without a reevaluation.

66. A preponderance of the evidence does not indicate that any events or situations occurred in the relevant time period that should have caused the District to initiate a reevaluation of the Student. The Parents have not met their burden to prove that a reevaluation should have been initiated by the District after the October 19, 2019 IEP amendment.

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

67. The Student is almost [REDACTED] and is nearing the end of his IDEA eligibility. The evidence is overwhelming that the Student lost educational opportunity in numerous respects as a result of the District's failure to provide him with FAPE. The District's failure to adequately address the Student's extreme behaviors and lack of communication skills led to the loss of opportunity for an education with his peers, loss of opportunity to gain the ability to functionally communicate, loss of opportunity to develop independence, and loss of opportunity to develop skills necessary to transition to the community when the Student leaves public school. The Student's IEPs contemplate that he would be able to be employed, live in a supported environment, and participate in community-based activities upon leaving school. He currently lacks the ability to achieve any of those things. The behaviors and other concerns that led the IEP team to recommend residential placement in May of 2020 still persist. It has been found that the Student's current needs are just as great, or greater, than they were in May of 2020.

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

Whether the Parents are entitled to their requested remedies.

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

Prospective placement at Shrub Oak

70. The Student is eligible to receive services from the District until the end of the school year in which he turns 21 years old, i.e., until the end of the 2022-23 school year.³⁹

³⁹ WAC 392-172A-02000 provides, in part:

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education services; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education services. The student whose twenty-first birthday occurs after

71. As set forth above, the Student should have been placed in a residential facility as his LRE in May of 2020. A preponderance of the evidence demonstrates that, as of the time of the due process hearing, the Student continued to need a residential placement in order to benefit from his education. As Dr. Uherek opined, nothing in the 2021 Reevaluation demonstrated a significant improvement in the Student's functioning. She recommended that the Student be placed in a residential facility, in part due to the entrenched nature of his problematic behaviors and SIB. Dr. Padilla reviewed the Student's most recent BIP before the due process hearing and continued to be of the opinion that he needs a residential placement. Dr. Jones performed a thorough review of the Student's past educational programming, and observed him in school just prior to the due process hearing. Dr. Jones opined that the Student continues to lack basic communication skills, that he has received and continues to receive inadequate functional communication instruction, and that the most recent BIP uses approaches and strategies that have been used with the Student for years without success. As such, he, too, recommended placement in a residential facility. All three of these experts opined that Shrub Oak can meet the Student's needs. Moreover, the information provided by Ms. Sweetapple at the due process hearing demonstrated by a preponderance of the evidence that Shrub Oak is capable of meeting the Student's needs.

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

73. Shrub Oak is approved by OSPI as a non-public agency. It accepts students who are up to 30 years old. The Parents have demonstrated by a preponderance of the evidence that the District is not able to offer the Student an appropriate placement, and there is little to no reason to conclude the District will be able to offer the Student an appropriate placement during the duration of his IDEA eligibility. It is therefore concluded that the Student should be placed at Shrub Oak pursuant to a newly developed IEP immediately, and should remain there pursuant to an IEP(s) until the end of his IDEA eligibility.

Placement at Shrub Oak as compensatory education

74. The Parents assert that the Student should receive two years of Shrub Oak programming past the end of his IDEA eligibility as compensatory education.

75. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 370, 105 S.Ct. 1996 (1985); *Parents of Student W. v. Puyallup School Dist.*, No. 3. 31 F.3d 1489, 1496 (9th Cir. 1994). Compensatory education is an appropriate remedy when a student has been denied FAPE in that "[c]ompensatory education is an equitable remedy that seeks to make up

August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2)(e).

for 'educational services the child should have received in the first place,' and 'aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA.'" *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir 2011) (quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)).

76. Because compensatory education is an equitable remedy, there is no obligation to provide a day-for-day compensation for time missed. "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d at 1489. An ALJ may fashion individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:

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

631 F.3d at 1126.

77. After a careful review of the record, it is concluded that the Student is entitled to an additional 12 months of residential placement at Shrub Oak beyond the duration of his IDEA eligibility, to be paid for by the District, as compensatory education. This is a reasonable and appropriate remedy given the robust nature of the programming at Shrub Oak, and is designed to place the Student in the same position he would have occupied but for the District's violations of the IDEA.

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

ORDER

1. The Parents have proven by a preponderance of the evidence that the Lake Washington School District violated the IDEA and denied the Student FAPE in multiple ways, as set forth above.

2. The District is ORDERED to develop IEPs for the Student that place him at Shrub Oak International School for the duration of his IDEA eligibility, i.e., until the end of the 2022-23 school year. The District is ORDERED to convene an IEP team meeting within ten days of the date of this order for the purpose of developing a new IEP that places the Student at Shrub Oak.

3. The District is further ORDERED to pay for 12 additional months of placement of the Student at Shrub Oak after his IDEA eligibility ends, and to assure there is no gap in the placement at the time the IEP placement ends and the compensatory education placement begins.

4. The Parties are ORDERED to arrange for placement of the Student at Shrub Oak as soon as the facility is able to receive him. The District shall reimburse the reasonable expenses incurred for the Student and Parents to travel to Shrub Oak, including meals, lodging if needed during travel, and up to two nights of additional lodging for the Parents in the vicinity of Shrub Oak once the Student has been placed in the facility. The District shall also reimburse the reasonable expenses incurred for the Parents' return travel to Washington State, including lodging as needed.

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

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

7. The District is further ORDERED to reimburse reasonable expenses incurred for up to two trips by the Student to Washington State in his last year of placement at Shrub Oak if Shrub Oak determines the Student needs to return home intermittently as part of a transition plan. This includes reimbursement for a Parent or other adult to accompany the Student during travel.

Served on the date of mailing.



Jacqueline H. Becker
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Parents

[REDACTED]

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Dated December 7, 2021, at Seattle, Washington.

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