

**WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
DUE PROCESS HEARING**

In the Matter of:

[Redacted]

Petitioner,

vs.

Crook County School District #1,

Respondent.

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

Case No. H-001-26

Hearing Officer:
Amy J. Goetz

This matter came on for eight days of hearing before Impartial Hearing Officer Amy J. Goetz on September 22-26, October 27, November 18, and December 22, 2025. The first five days of hearing were conducted in person at the Respondent’s Service Center, and the last three days were conducted virtually by agreement of the parties.

Sulaiman Raja and Donna Sheen of Wyoming Children’s Law Center, Inc. represent Petitioner. Karen A. Haase and Amanda S. Dabney of KSB School Law, PB LLO represent Respondent.

PROCEDURAL HISTORY

On August 1, 2025, Petitioner filed a due process hearing complaint with the Wyoming Department of Education (WDE). Hearing Officer Amy J. Goetz was appointed to hear the matter. The first prehearing conference was convened on August 20, 2025, and four issues were identified as pending for hearing:¹

1. Whether the District violated its child-find obligations by failing to identify the Student as eligible for special education on the basis of Autism, from 10/16/23 to 8/1/25;

¹ First Prehearing Order, August 21, 2025, amended August 23, 2025 to correct a typographical error.

2. Whether the District failed to provide the Student with a free appropriate public education by:
 - a. Failing to identify all of the Student's disabilities and needs, from 10/16/23 to 8/1/25;
 - b. Failing to implement the Student's IEP and appropriately monitor progress, from 10/16/23 to 8/1/25; and
 - c. Failing to provide placement for the Student in the least restrictive environment, from 10/16/23 to 1/1/24, and from 5/22/25 to 8/1/25;
3. Whether the District failed to provide the Student's Parent with a meaningful opportunity to participate in the development of the Student's IEP and in decisions regarding the provision of a free appropriate public education to the Student, from 5/22/25 to 8/1/25; and
4. Whether the District violated the confidentiality of the Student and Parent by disclosing confidential information at its 9/23/24 School Board meeting.

On August 11, 2025, Respondent served and filed its response to the complaint, and on August 13, 2025, the parties participated in a resolution session.² The parties identified several prehearing motions regarding discovery, virtual testimony, dismissal of claims, and alteration to the stay-put placement, and timelines for motions were established.³ The parties jointly requested and were granted an extension of the hearing decision timeline to October 27, 2025.⁴

Motions and responses were timely filed and additional motions and responses were filed and decided. On August 26, 2025, the Hearing Officer denied Petitioner's motion to alter the stay-put placement.⁵ On August 27, 2025, the Hearing Officer granted in part and denied in part Petitioner's motion for virtual testimony.⁶ On August 27, 2025, Petitioner served and filed a reply to Respondent's response to her complaint and

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Order on Motion to Alter Stay-Put Placement*, August 26, 2025.

⁶ *Order on Motion for Virtual Testimony*, August 27, 2025.

withdrew Issue 4 which was dismissed.⁷ On August 28, 2025, the Hearing Officer granted Respondent's motion to determine the scope of records request, and denied Petitioner's motion for a protective order.⁸ On August 30, 2025, the Hearing Officer denied Respondent's motion to dismiss claims.⁹ On September 5, 2025, the Hearing Officer granted both parties' motions for additional virtual testimony of witnesses with safeguards.¹⁰ On September 6, 2025, the Hearing Officer granted Petitioner's motion to release one of her witnesses from the subpoena to testify and to permit virtual testimony from another witness.¹¹ On September 6, 2025, the Hearing Officer denied Respondent's request for a status conference regarding discovery.¹² On September 18, 2025, the Hearing Officer denied Respondent's motion *in limine* and to quash subpoenas.¹³

During the first five days of hearing the parties agreed to implement an interim IEP for the Student pending the final decision, and evidence regarding the pending juvenile court truancy proceedings was identified that was determined relevant to adjudication of the claims in this proceeding.¹⁴ On September 28, 2025, the Hearing Officer ordered implementation of the parties' stipulated Interim IEP and production of juvenile court truancy records.¹⁵ On October 2, 2025, the Hearing Officer granted the parties' request for and scheduled an additional day of hearing, and also granted the parties' request to extend the hearing decision timeline to December 16, 2025.¹⁶

On October 8, 2025, a status conference was convened at the request of the parties, and on October 9, 2025, the Hearing Officer issued an order regarding discovery.¹⁷ On October 27, 2025, the Hearing Officer issued an order setting an additional day for hearing at the parties' request.¹⁸ On November 7, 2025, Petitioner filed a notice of discovery

⁷ Order on Motion to Dismiss Claims, August 30, 2025.

⁸ Order on Motions to Determine Scope of Records Request and for Protective Order, August 28, 2025.

⁹ Order on Motion to Dismiss Claims, August 30, 2025.

¹⁰ Order on Motions for Virtual Testimony, September 5, 2025.

¹¹ Order on Motions to Release Witness from Subpoena and for Virtual Testimony, September 6, 2025.

¹² Order on Request for Status Conference Regarding Discovery, September 6, 2025, amended on September 15, 2025.

¹³ Order on Motion In Limine and to Quash Subpoenas, September 18, 2025.

¹⁴ Order for Interim IEP and Production of Records, September 28, 2025.

¹⁵ *Id.*

¹⁶ Order Scheduling Continued Hearing and for Extension of Timelines, October 2, 2025.

¹⁷ Order on Discovery, October 9, 2025.

¹⁸ Order to Continue Hearing, October 27, 2025.

dispute, and on November 10, 2025, the Hearing Officer issued an Order setting timelines for submission of arguments and authorities.¹⁹ On November 14, 2025, the Hearing Officer issued an order after review of the parties' arguments and authorities directing each party to disclose to the other all communications with educational consultants and communications with the juvenile court.²⁰

On November 19, 2025, the Hearing Officer issued an order setting an additional day for hearing at the parties' request, and extending the decision deadline to January 23, 2026, also at the parties' joint request.²¹ On December 2, 2025, the Hearing Officer issued an order compelling Respondent's limited production of requested discovery and ordering Respondent's financial responsibility for interim ABA services as offered by Respondent.²²

A total of twenty-two witnesses were called at hearing, fourteen by Petitioner and eight by Respondent. A total of one hundred sixty-nine exhibits were entered into the record, one hundred and twelve offered by Petitioner, fifty-three offered by Respondent, and four offered jointly.

Post-hearing briefs were served and filed on January 9, 2026.

STATEMENT OF THE ISSUES

1. Did Respondent violate its child-find obligations by failing to identify the Student as eligible for special education on the basis of Autism, from 10/16/23 to 8/1/25?
2. Did Respondent fail to provide the Student with a free appropriate public education by:
 - a. Failing to identify all of the Student's disabilities and needs, from 10/16/23 to 8/1/25;
 - b. Failing to implement the Student's IEP and appropriately monitor progress, from 10/16/23 to 8/1/25; and

¹⁹ *Order on Discovery Disputes*, November 10, 2025.

²⁰ *Order on Motions to Compel and for In Camera Review*, November 14, 2025.

²¹ *Second Order Scheduling Continued Hearing and for Extension of Timelines*, November 19, 2025.

²² *Order on Motions for Discovery Deadlines, Interim IEP Services, to Quash Discovery Requests, and for a Protective Order*, December 2, 2025.

- c. Failing to provide placement for the Student in the least restrictive environment, from 10/16/23 to 1/1/24, and from 5/22/25 to 8/1/25?
3. Did Respondent fail to provide the Student's Parent with a meaningful opportunity to participate in the development of the Student's IEP and in decisions regarding the provision of a free appropriate public education to the Student, from 5/22/25 to 8/1/25?

SUMMARY OF CONCLUSIONS

Respondent did not violate its child-find obligations on and after October 16, 2023, when it determined that the Student did not meet applicable eligibility criteria as a student with an Autism Spectrum Disorder.

Respondent violated its obligation to provide the Student with a free appropriate public education on and after October 16, 2023, by failing to identify all of ^[their] disabilities and needs, and by failing to provide an appropriate placement in the least restrictive environment.

Respondent violated its obligation to afford Petitioner a meaningful opportunity to participate in the development of the Student's IEP and in decisions regarding the provision of a FAPE on and after May 22, 2025.

Based upon all of the proceedings herein, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The Student [Redacted]
repeated kindergarten and first grade.
Ex. P-15 at 167.
2. The Student lives alone with [Redacted] Mother
[Redacted]
Ex. P-12 at 145; Tr. at 97.
3. The Student began receiving special education services in kindergarten under the primary classification of Speech Language Impairment, and was later determined eligible under the categories of

Other Health Impairment, Specific Learning Disability, and Speech or Language Impairment –

Ex. P-12 at 148.

4. The Student is a medically and psychologically complex child, and over the course of many years has been assigned the following diagnoses:

- a) Focal Epilepsy;
- b) Obstructive and Central Sleep Apnea, mild to moderate;
- c) Generalized Anxiety Disorder;
- d) Attention Deficit/Hyperactivity Disorder (“ADHD”), Combined Type;
- e) Autism Spectrum Disorder, level 2, moderate, with provisional Pathological Demand Avoidance (“PDA”);
- f) Global Developmental Delay;
- g) Left Frontal Periventricular Heterotopia with Cortical Dysplasia;
- h) Intellectual Disability, Mild;
- i) Recurrent Ear Infections;
- j) Chiari I Malformation, status post decompression surgery in 2017;
- k) Laryngomalacia in 2020;
- l) Bipolar I Disorder;
- m) Iron Deficiency;
- n) Insomnia, not otherwise specified;
- o) Recurrent Headaches, not otherwise specified;
- p) Anisomelia (leg length discrepancy);
- q) Episodic Hypoglycemia;
- r) Allergies, unspecified;
- s) Endocrine dysfunction;
- t) Obesity, and
- u) Behavioral Dyscontrol.

Exs. P-77, 78, 79, 81, 85, and J-2.

5. The Student has always had problems with consistent school attendance, attending school at the following rates of total school days:

84.22%	[Redacted]	(2017-2018),	87.82%	[Redacted]	
(2018-2019),	86.18%	[Redacted]	(2019-2020),	90.46%	
[Redacted]	(2020-2021),	74.67%	[Redacted]	(2021-2022),	84.56%

[Redacted] (2022-2023), 61.40% [Redacted] (2023-2024), and .023% (2024-2025). R-31.

6. Petitioner testified that the increase in the Student's school absences is attributable to three factors: 1) Respondent's failure to identify and understand the full extent of the Student's disabilities and impact on ^[their] educational needs; 2) the Student's increasing difficulties keeping up academically with ^[their] peers and the lack of adequate special education responses; and 3) Respondent's intense focus on truancy, shaming and punishment to increase the Student's attendance. Tr. at 38-101, 450-563, 700-713, and 1903-2055.

7. Petitioner testified that the Student's attendance and work production was best with a teacher who understood ^[them] built a relationship and trust with ^[them] accommodated ^[their] needs including leaving ^[them] alone for a few minutes if ^[Student] fell asleep in class, and sometimes had lunch with ^[them] or stayed after school to help ^[them] Tr. at 454-455. Respondent argued that the increase in the Student's school absences is attributable to the effects of Petitioner's lack of contingency management in the home and the Student's unrestricted access to parent attention, technology and gaming. Tr. pp. 1003-1005.

8. Petitioner testified credibly that she spends hours trying different methods and implementing professional recommendations to get the Student to go to school. Tr. at 700. She testified that she tries to stick to a morning routine and encourage the Student to get ready to go to school. Tr. at 700-701. Petitioner testified that it is her expectation that the Student will attend school every day that school is in session, which she conveys to ^[them] daily. Tr. at 701-702. Petitioner testified that she makes sure she uses positive messaging to the Student to encourage ^[them] to go to school, and is careful about the methods she uses to get ^[them] to go to school, cautious that physical force may be detrimental to ^[their] wellbeing, and interfere with ^[their] ability to learn while at school. Tr. at 702-703. Petitioner testified that she has tried both positive and negative reinforcements with the Student. Tr. at 704. Petitioner also testified that she engaged in training and tried numerous interventions recommended to her to help the Student with ^[their] struggles getting to school, especially with sleep. Tr. at 457-462; Ex. P-67.

9. Respondent regularly issued many letters to Petitioner from 2020 through 2024 notifying her of the Student's absences and of the District's policy on student attendance, including that a maximum of eight absences per semester can be excused with limited exceptions, such as medical certification specifying dates to be excused. Exs. P-1 and 2. Those letters also address policies regarding trancies, tardies and the impact of student attendance on success. *Id.*

10. Petitioner testified that she understood the notices of the Student's absences were not the same as a notice of truancy. Tr. at 492-493.

11. Respondent's School Board declared the Student habitually truant on December 18, 2023 and September 23, 2024. Exs. P-24 and P-43.

12. Respondent completed a reevaluation of the Student and its Evaluation Report and Eligibility Determination dated March 24, 2023 referenced a 2018 Evaluation Report from Tanya Brown, Ph.D., L.P., Department of Psychiatry, Mayo Clinic reporting the Student's cognitive ability in the low average range (23rd percentile), and reporting clinically significant concerns for externalizing behaviors, hyperactivity, attention problems, behavioral symptoms, atypicality, and social skills, with "at-risk" concerns for aggression, conduct problems, internalizing behaviors, anxiety, somatization, adaptive skills, leadership and functional communication. Ex. P-12 at 141.

13. Dr. Brown's full report²³ also indicated that the Student's reading, writing and math testing revealed below average and well-below average skills, clinically significant concerns with executive functioning, average to low average language skills, and clinically significant concerns around atypical behavior, hyperactivity, attention problems, adaptability, aggression and anxiety. Ex. P-78 at 795.

²³ Dr. Brown's report is inexplicably marked "Never Rec'd by District" even though it was considered and portions of it included by Respondent in its March 24, 2023 Evaluation Report. Ex. P-78 at 794 and P-12 at 141.

14. Dr. Brown expressed concern with the use of physical restraints with the Student at school and recommended provision of a functional behavior analysis if behavior challenges were noted and development of a behavior intervention plan, as well as planned periods of physical activity. *Id.* at 795.

15. Dr. Brown assigned diagnoses of seizures, relative weakness in fine motor coordination, marked impulsivity, and anxiety. *Id.* at 796.

16. In a follow-up Evaluation Report dated July 11, 2022, and provided to the Respondent on March 9, 2023,²⁴ Dr. Brown assigned diagnoses of seizures, “marked behavioral challenges including aggression, irritability, and impulsivity consistent with general executive functioning challenges, depressive symptoms and anxiety,” “significant variability in cognitive functioning,” math weakness, fine motor coordination weakness, and impaired processing speed. P-78 at 800.

17. Dr. Brown reported that school had gone increasingly well over the years with “gentle, guided structure,” but that “[their]” behavior at home has remained a clear challenge and seems to have exhibited no improvement across time, with the death of “[their]” father exacerbating “[their]” longstanding challenges.” *Id.* at 800-801. Dr. Brown concluded that, although the Student did not meet diagnostic criteria for Autism Spectrum Disorder, interventions used with students with autism would be helpful, even though “[Student]” “is best understood as a child with complex neurologic/brain abnormalities.” *Id.* at 801. She also recommended parenting support as the Student is “very complex” and “challenging.” *Id.* And, Dr. Brown recommended identifying the Student as eligible under the Other Health Impaired criteria to help “understand “[their]” neurobehavioral presentation more thoroughly” as well as to “consider an autism categorization despite the fact that “[Student]” does not meet criteria for a medical diagnosis of autism given the types of behavioral interventions that are most likely to be helpful to support “[their]” engagement in the classroom/at school.” *Id.*

18. Dr. Mullins, the Student’s longstanding psychologist and therapist who evaluated “[them]” and diagnosed “[them]” with Autism, testified about her concerns with the Mayo evaluation, in that it was administered by a

²⁴ Ex. P-87 at 904.

psychometrist and relied solely on one measurement, the ADOS. Tr. at 380-384.

19. Dr. Brown's reports do not state that the Student cannot attend school regularly and on time nor do they state that the Student's disabilities do not impact ^[their] attendance. Ex. P-78.

20. The March 24, 2023 Evaluation Report contained information from ^[their] current teacher describing the following concerns with the Student's behaviors: motivation, need for more one-to-one attention than others, completing less schoolwork than others, frequently failing to give close attention to details, making careless mistakes, difficulty organizing and sustaining attention during ^[their] tasks and play, often not seeming to listen when spoken to directly, not following through on instructions, failing to finish homework, very slow and hesitant oral responses to questions, giving up easily on difficult tasks, often losing personal belongings and forgetting ^[their] task, easily distracted, often appearing lethargic or sluggish as lacking energy, awkward motor activity, appears clumsy, talks much less than others, often interrupts or intrudes on others' conversations or games, typically withdraws from turn-taking activities, and a primary concern for the low amount of schoolwork completed. Ex. P-12 at 143.

21. ^[their] teacher also described the following concerns with the Student's behaviors in class: very serious inattentiveness (just sitting unless guided), slightly serious impulsiveness (makes noises), very serious uncooperative behavior and withdrawal (refusing to complete work, sitting without working and staring into space), serious inappropriate but nonaggressive behavior (gets in others' space, makes growling or other noises), and slightly serious aggressiveness (shoves away activities or games). *Id.* ^[their] teacher rated as "extremely limited" the following skills: basic writing and written expression; she rated as "very limited" the following skills: reading fluency and math reasoning; and she rated as "limited" the following skills: oral expression, reading and reading comprehension, and math calculation. *Id.*

22. The March 24, 2023, Evaluation Report reflected concerns with the Student's language skills: uses short sentences and mumbles words making it difficult to understand ^[them] uses rushed/quick speech, speaks in a low and quiet voice, occasionally has a nasal voice quality, difficulty with

motivation and task completion, and requires prompts and encouragement to complete low-interest tasks. *Id.*

23. The March 24, 2023 Evaluation Report also reflected^[their] Parent's concerns as follows: late development of early motor skills, difficulty with sound sleep, learning later than others and with more difficulty, more difficulty with social skills than others, learning problems, being "emotional but stubborn," seems unhappy at times, intense periods of high energy followed by periods of sadness or depression, often fidgets or squirms, sluggish and lacking energy in social situations, motor activity slower than others, often interrupts or intrudes on other's conversations or activities, typically withdraws from activities involving turn-taking, frequently fails to give close attention to details or makes careless mistakes, difficulty organizing and sustaining attention, often does not seem to listen when spoken to directly, avoids engaging in difficult tasks, easily distracted and forgets instructions, serious problem behaviors at home (biting nails, pacing, talking fast, feeling sick), aggressiveness (throws things, hits and kicks), and slightly serious inattentiveness, impulsiveness and uncooperative behavior. *Id.* at 144.

24. The March 24, 2023 Evaluation Report included a measure of the Student's intelligence in the very low range (FSIQ 77, at the 6th percentile), with processing speed in the extremely low range, at the 1st percentile. *Id.* at 144-45.

25. The March 24, 2023 Evaluation Report also included standard scores on measures of the Student's academic achievement, without reference to percentile scores, range of performance, or any explanation of the meaning of the scores. *Id.* at 145.

26. The March 24, 2023 Evaluation Report included standard scores on measures of the Student's language skills, again without reference to percentile scores, range of performance, or any explanation of the meaning of the scores. *Id.* at 146.

27. The March 24, 2023 Evaluation Report included scores on measures of gross motor skills, reflecting skills in the well-below average range in the following areas: upper-limb coordination (age equivalent 5 years), body coordination (1st percentile with age equivalent bilateral

coordination at 6 years and balance at 4 ½ years), and strength and agility (1st percentile and age equivalence of 4 years). *Id.*

28. The March 24, 2023 Evaluation Report included scores on measures of fine motor skills, reflecting skills in the well below average range on manual dexterity, and in the below average range on precision, integration and manual control. *Id.*

29. The March 24, 2023 Evaluation Report referenced an attached report from the Student's neurologist, Dr. Fine dated 3/24/23, that was not attached to the exhibit, as the only information regarding the Student's medical conditions. *Id.* at 147.

30. A letter from Anthony Fine, M.D., Department of Neurology, Mayo Clinic, dated March 24, 2023, describes "additional information" about the Student's medical condition, including "seizures arising from ^[their] left frontal lobe secondary to a brain malformation" that may cause "attention and behavioral difficulties given the disruption of normal brain function" and impacting the Student's attention, judgment, insight, behavioral regulation and memory, making ^[them] "more likely to exhibit behavioral outbursts, difficulty following directions, reduced attention, and impulsivity." Ex. P-81 at 832. Dr. Fine indicated that the Student "has the emotional regulation of a much younger child, specifically a toddler or preschooler, which compounds ^[their] difficulties with academic performance" and "has mild intellectual disability." *Id.*

31. Dr. Fine took over the Student's care from a prior Mayo physician and has treated ^[them] since 2021. Ex. P-81; Tr. at 433. Dr. Fine's treatment involved making sure the Student's medications for seizures were at the appropriate dose for ^[their] age, and addressing developmental concerns with ^[their] cognitive, behavioral, and academic functioning. Tr. at 433-434. From a 2016 MRI scan, Dr. Fine testified that the Student has three brain abnormalities affecting ^[their] brain signaling: (1) Left frontal periventricular heterotopia with overlaying cortical dysplasia, (2) mild global volume loss and demyelination, and (3) Chiari I malformation, with CSF flow obstruction at the craniocervical junction. Tr. at 438-443. Dr. Fine testified that these conditions, together with brain dysfunctions associated with ADHD and autism, "are all associated with abnormal sleep . . ." Tr. at 443-444. He also testified that "difficulties with sleep or multiple neurologic concerns leading to sleep disruption . . . [will] absolutely . . . carry forward

to the next day and . . . functioning and behavior.” ” Tr. at 445. Dr. Fine’s testified that, “in someone who is not well-rested your emotional reserve and kind of resilience for any changes or tasks, especially in a child with autism, it can be more challenging.” Tr. at 445-446. Dr. Fine testified that the Student’s conditions do not render ^[them] unable to attend school at all, but that it is possible they would prevent ^[them] from being in school for more than forty-five minutes at a time. Tr. at 446-447. Dr. Fine testified that it can be appropriate for a school district to allow a student with sleep issues to begin the school day late and have tardies excused. Tr. at 448.

32. Prior medical information from Mayo Clinic Department of Neurology provided by Petitioner to Respondent included a letter dated November 3, 2021 from Dr. Fine regarding the emotional impact of the sudden and unexpected death of the Student’s Father, including emotional lability and outbursts and recommending flexibility and emotional support. Ex. P-81 at 831.

33. Prior medical information also included a letter from Dr. Fine dated July 22, 2021 that contained the same information as in his letter dated March 24, 2023, and Progress Notes from Eric Payne, M.D. dated January 14, 2020 reflecting the Student’s “mild motor and language delay, status post symptomatic Chiari I malformation repair, intermittent hypoglycemia, focal epilepsy, prominent behavioral issues, sleep disturbance, [] evidence of a left frontal gray matter heterotopia and underlying cortical dysplasia . . . [as well as] nonspecific T1 and T2 hyperintensities over the bifrontal regions of ^[their] subcortical white matter.” Exs. P-81 at 830 and P-80 at 826. Dr. Payne’s notes also reflect headaches every 1-2 weeks, sleep maintenance difficulties, the Student’s trauma response to the use of physical restraint at school, including school anxiety, and the absence of seizures since March 2016. Ex. P-80 at 827-28.

34. Dr. Payne provided diagnoses of focal epilepsy with secondary generalization, left frontal periventricular heterotopia with overlying cortical dysplasia, nonspecific bifrontal T2 hyperintensities, status post Chiari I malformation repair, iron deficiency with increased period limb movements during sleep, global developmental delay, particularly in speech and motor, behavioral dyscontrol, and ADHD. Ex. P-80 at 829.

35. The March 24, 2023 Evaluation Report contained information regarding Medical or Health Factors limited to vision and hearing screenings. Ex. P-12 at 144.

36. The March 24, 2023 Evaluation Report concluded that the Student was eligible for special education under the categories of Other Health Impairment, Specific Learning Disability, and Speech or Language Impairment – Language. Ex. P-12 at 148.

37. An Individualized Education Program (“IEP”) was developed by the Student’s IEP Team on March 24, 2023. Ex. P-15. The education concerns were similar to those in ^[their] prior IEP with “a new concern regarding Student’s social skills and positive peer relationships,” noting an increase in behaviors and refusals in all settings, impacting ^[their] ability to participate in class. *Id.*, and Ex. P-87 at 905.

38. The March 24, 2023 IEP lists the Student’s disability categories as “HL”²⁵ and LD – Math Reasoning. Ex. P-15 at 164.

39. The March 24, 2023 IEP indicates that absences and tardies are a concern that affect the Student’s daily progress in school. *Id.* at 165.

40. The March 24, 2023 IEP indicates that “extended core class interventions” in math, writing and ELA were provided to the Student but “they have not assisted in reducing ^[their] absences, or increase ^[their] work production while at school.” *Id.*

41. The March 24, 2023 IEP reports the Student was exhibiting increased behaviors at school, increased tardies and absences, “and is falling behind in the fourth grade curriculum, which causes ^[them] to get frustrated,” with more refusals and behaviors in all settings. *Id.* at 168.

42. The March 24, 2023 IEP reflects well below average gross motor skills and abilities and a report from ^[their] Adaptive Physical Education teacher that “I am very concerned about [the Student]’s gross motor skills and abilities. *Id.*

²⁵ The Hearing Officer assumes this notation references the Other Health Impairment category of eligibility.

43. The March 24, 2023 IEP reflects the Student's language skills needing improvement in the areas of nonliteral language, double meanings, grammatical morphemes, inferences, age-appropriate language, complete sentences, speaking clearly, and understanding pragmatic language. *Id.* at 170.

44. The March 24, 2023 IEP reflects counseling services to help the Student code ^[their] attendance, identifying emotions, triggers and coping skills, and a concern with peer relationships and friendships. *Id.*

45. The March 24, 2023 IEP reflects that the Student's behavior impedes ^[their] learning or that of others, and that ^[Student] has communication needs." *Id.* at 171.

46. The March 24, 2023 IEP reflects the Student's eligibility for Extended School Year services and notes that ^[Student] "has missed school or had tardies due to ^[their] motivation, anxiety, and behaviors." *Id.*

47. The March 24, 2023 IEP contains eight goals: to improve math, reading, writing, gross motor, social skills, fine motor, physical therapy, and speech/language skills. Ex. P-15.

48. No goal to increase the Student's attendance or positive behavior interventions and supports were included in the March 24, 2023.

49. No family counseling, parent training services, or social skills instruction were included in the March 24, 2023 IEP. Ex. P-15.

50. A PWN dated March 24, 2023, documented that Respondent recommended placing the Student in a four- to six-week Comprehensive Assessment and Treatment Program at the University of Utah, to better understand ^[their] mental health and behavioral issues, that was rejected by Petitioner. Ex. P-16; Tr. at 1299-1230, and 1500-02.

51. Petitioner privately obtained and provided to Respondent an Evaluation Report dated September 1, 2023, from Wendy Mullins, Ph.D., LP, LMB Therapy, concluding that the Student met diagnostic criteria for an Autistic Disorder, Level 2 (Moderate), as well as Attention-Deficit/Hyperactivity Disorder (by report), Generalized Anxiety Disorder (by report), Mild Intellectual Disability (with impairment in processing speed), and

Global Developmental Delay affecting fine and gross motor coordination, and indicating a need to rule out Bipolar 1 Disorder. Ex. P-79.

52. Dr. Mullins testified that she has provided regular individual psychological therapy services to the Student since 2017. Tr. at 270:10-18.

53. Dr. Mullins testified that it was immediately clear to her that the Student was on the autism spectrum. Tr. at 278:9-10.

54. Dr. Mullins deferred that diagnosis to the Student's care team at Mayo Clinic to evaluate ^[their] complex profile. Tr. at 273:2-6, and 273-4:13-7.

55. Dr. Mullins testified that the Student had a history of trauma from the medical interventions, including brain surgery, and that Respondent's use of restraints and seclusions would trigger stress responses and be frightening. Tr. at 275-276:16-14.

56. Dr. Mullins testified that her report and conclusions included input from the Student's psychiatric and educational providers. Tr. 286-287:18-3.

57. Dr. Mullins' report indicated that the Student has shown a circumscribed interest in gaming characters, and plays video games with others online under parental supervision which has been "a perpetual source of contention and combat for ^[them] as ^[Student] struggles to self-regulate with electronics usage. While ^[Student] occasionally complies easily with limits, ^[Student] oftentimes will respond with heightened agitation, name-calling, intense banging of controllers, and at times physical aggression towards ^[their] mom. This type of reaction may also be provoke[d] with ^[their] mom's instruction to get ready for school, as separating from her to go to school has historically been met by great struggle." Ex. P-79 at 812.

58. Dr. Mullins' report demonstrated the Student's impaired communication, social, sensory processing, and cognitive skills as well as a restricted range of activities. Ex. P-79.

59. Dr. Mullins recommended that the Student be qualified for special education under the category of Autism; that ^[Student] receive maximum services for speech/language, occupational therapy, social skills and behavioral interventions (including school-based ABA therapy); that ^[Student] be

provided significant supports in school around transitions, schedule changes, novel expectations, multi-step tasks, prioritizing task, self-direction and social situations; that^[their] IEP includes executive functioning goals and accommodations; that^{[Stude} receive instruction in social pragmatic communication; and that^[Student] be provided fine and gross motor and coordination skill instruction. *Id.* at 818-819.

60. Dr. Mullins testified that, without a doubt, the Student's school absences are due to^[their] physical and mental health disabilities – “they are a direct link.” Tr. at 327-331.

61. Dr. Mullins testified that she had no doubt that the Student was autistic. Tr. at 286:10-11. Dr. Mullins testified that the Student exhibits many traits consistent with “Pathological Demand Avoidance.” Tr. at 326-330. For example, she testified that she observed the Student become “frozen” which is a trait of PDA when there is “explicit, extreme avoidance of demands or the persistent drive for autonomy.” Tr. at 327. She also observed “erratic mood fluctuations or erratic changes in mood.” Tr. at 328-329. Dr. Mullins testified that overcoming school avoidance would require “a lot of intervention and a lot of years.” Tr. at 380.

62. Dr. Mullins testified that her work with Petitioner and the Student since 2017 gave her ample opportunity to assess Petitioner's parenting techniques over many years. Tr. at. 293. Dr. Mullins testified that Petitioner has been very receptive to professional input in supporting the Student. Tr. at 293-294.

63. Dr. Mullins testified that she attended an IEP Team meeting for the Student in October 2023, after her Evaluation Report was submitted to Respondent, but that it was not discussed. Tr. at 287-289.

64. Dr. Mullins testified that the Student meets state eligibility criteria for Autism Spectrum Disorder, and gave examples of^[their] impairments in each area. Tr. at 301-313.

65. Dr. Mullins wrote a letter on June 10, 2025 that was provided to Respondent, indicating that the Student's “history of school avoidance concerns [are] related to compounded clinical, neurological, developmental, and physical conditions . . .” Ex P-79 at 824.

66. Cherise Lerew, Ph.D., Black Hills Psychology, testified that she has provided intermittent psychological counseling services to the Student since 2019 when Petitioner sought her services to assist with the Student's resistance to regular school attendance, in order to supplement the services provided by Dr. Mullins with a resource closer to home. Tr. 392-394.

67. Dr. Lerew testified that she had reviewed the evaluations of the Student performed by Dr. Wallis, Dr. Mullins, and Respondent. Tr. at 397.

68. Dr. Lerew testified that the Student demonstrated deficits in four of the five areas identified by state eligibility criteria for Autism Spectrum Disorder as required to meet criteria. Tr. at 400-404.

69. Dr. Lerew testified that the Student's disabilities, including autism, impact ^[their] ability to attend school. Tr. at 416. "Oh, I definitely think when I met ^[them] day one, I feel like it's had a big impact." *Id.*

70. An IEP Amendment IEP was developed on October 16, 2023 to change the Student's placement to the Skills Center, to add group social skills instruction, to collect data from a wearable device (an Oura Ring),²⁶ and to stop recording tardies in response to concerns over the Student's attendance. Ex. P-20.

71. Dr. Mullins attended the IEP Team meeting on October 16, 2023. Tr. at 287. Petitioner testified that Dr. Mullins' Evaluation Report had been provided previously to Respondent but not discussed. Tr. at 49-50. Instead, IEP Team discussions focused primarily on the Student's truancy, but did not include a manifestation determination to determine the relationship between the Student's absences and ^[their] disabilities. Tr. at 50. School personnel stated they did not have enough documentation to consider Student's absences as disability related. Tr. at 50, and 1326-28. Respondent proposed having the Student wear a personal device called an "Oura ring" to collect data to "determine if there are any disability related factors and revisions to ^[their] program." Exs. P-20 and 21; Tr. at 1326-27.

²⁶ Petitioner revoked consent to the use of the Oura Ring on October 24, 2023, because the Student's sleep apnea would be monitored through ^[their] physician. Ex. P-87 at 910.

72. Dr. Mullins referred Petitioner to Jacqueline Waldie, a non-attorney education advocate to help her navigate the special education process. Tr. at 635. On or around October 20, 2023, Petitioner engaged Ms. Waldie. Tr. at 53. Ms. Waldie has been working with Petitioner since then. Tr. at 636. Ms. Waldie testified that she attended many IEP Team meetings for the Student and noted that there “was a fixation on attendance.” Tr. at 637. Ms. Waldie testified that “attendance was the symptom, it wasn’t the problem.” Tr. at 637-638.

73. On November 10, 2023, Petitioner submitted a Freedom of Information Act (“FOIA”) request, and a Family Educational Rights and Privacy Act (“FERPA”) request seeking, among other records, the Student’s education records. Ex. P-2 at 40-46; Tr. p. 492.

74. On November 16, 2023, less than a week later, Petitioner received a call from Principal Wiegel and Superintendent Broderson informing her that they would refer the Student to the school board for a determination that ^[Student] was a habitual truant, and then also to the County Attorney’s Office for prosecution. Ex. P-4 at 49. Petitioner then received correspondence from Respondent dated November 16, 2023, stating the same. Ex. P-2 at 47-48; Tr. at 58. Petitioner testified that she had never received a phone call from Respondent regarding truancy before that call. Tr. at 496.

75. Petitioner testified that she began to distrust Respondent’s motives to observe the Student at home after Respondent declared ^[them] a habitual truant and referred the matter for prosecution to the Crook County Attorney. Tr. at 678, 857, 1229, and 1906. Petitioner testified that the relationship between her and Respondent continued to deteriorate as school personnel focused more on the Student’s absences and the perception that she was neglecting ^[them] rather than determining and providing effective interventions to help increase the Student’s engagement. Tr. at 1903-04, 1906, and 1911-12.

76. The October 16, 2023, IEP indicates that the Student “is a young man who is describe[d] as having complicated health related conditions that are at the core of ^[their] absences. The school has employed motivational and education program revisions with the intent of improving ^[their] attendance to no avail.” Ex. P-14 at 143.

77. The Prior Written Notice dated October 16, 2023, indicates that the IEP Team considered conducting a re-evaluation based on the private autism evaluation but “rejected that option as IEP services are not based on an eligibility category but based on the needs of the student, and the team feels that [Student’s] needs are currently being met . . .” Ex. P-21 at 205.

78. The October 16, 2023 IEP indicates the Student’s disability categories as “HL” and LD – Math Reasoning. Ex. P-14 at 142.

79. The October 16, 2023 IEP did not include a goal to increase the Student’s school attendance, nor family counseling, parent training, or behavior interventions including ABA therapy.

80. On October 23, 2023, specialized instruction in reading, math and writing were dropped from the Student’s IEP and replaced by general education instruction to work towards grade level standards. Ex. P-15 at 187-188.

81. On November 1, 2023, physical therapy related services were added to the Student’s IEP with Petitioner’s consent. Ex. P-87 at 911.

82. On December 6, 2023, the Student’s treating psychiatrist, Dr. Heather A. Spain, Monument Health, wrote a letter that Petitioner provided to Respondent, stating: “[i]n my clinical opinion, ^[their] underlying sleep disorder as well as mental health diagnoses are likely impacting ^[their] ability to go to school, stay at school, and succeed academically.” Ex. P-83.

83. On December 18, 2023, without conducting a manifestation determination, Respondent’s school board found the Student to be habitually truant, and referred the matter to the County Attorney’s Office for prosecution. Ex. P-24; Tr. at 456, 1304, 1339-40, 1343, 1370, and 1434.

84. Petitioner testified that Respondent was trying to focus the blame for the Student’s absences on her and what was happening in her home. Tr. p. 456.

85. Respondent did not inform Petitioner about the Crook County Truancy Prevention Program and did not refer the Student to this program prior to seeking truancy consequences. Tr. at 1492.

86. At an IEP Team meeting on December 20, 2023, Dr. Mullins asked Respondent to conduct a Functional Behavior Assessment by a Board Certified Behavior Analyst (“BCBA”) to determine the functions of Student’s behavior. Petitioner testified that Respondent’s personnel stated they needed something in writing to explain what is keeping the Student from attending school consistently. As of that date, Petitioner had already provided Respondent with many documents detailing the Student’s disabilities and impact. Ex. P-2 at 58; Tr. at 60. Those documents included:

- a) Dr. Christina Sander’s November 28, 2018 medical letter;
- b) Dr. Tanya Brown’s July 20, 2018 and July 11, 2022 neuropsychological evaluations;
- c) Dr. Mullins’s August 23, 2019 letter;
- d) Information from Dr. Mullins and Dr. Brown to the IEP Team on September 18, 2020;
- e) Dr. Anthony Fine’s September 22, 2021 and March 23, 2023 medical letters; and
- f) A February 20, 2023 email letter from Dr. Mullins.

Exs. P-77, 78, 79, 81; Tr. pp. 60-61.

87. Petitioner testified that, at the December 20, 2023 IEP Team meeting, “[t]he school did agree we need to create a plan that is implemented consistently, with fidelity and that data is being tracked daily. Even though all these things were tried, sometimes they were not tried for very long and then the plan was changed or abandoned.” Tr. at 643-644.

88. On December 21, 2023, Respondent proposed a reevaluation of the Student, including a functional behavior assessment (“FBA”) as requested by Petitioner. Ex. P-25.

89. Respondent refused Petitioner’s request for a Board Certified Behavior Analyst to conduct the FBA. Ex. P-87 at 912.

90. Petitioner provided consent to the reevaluation on January 11, 2024. *Id.*

91. A letter from the Student's primary pediatrician, Dr. Tara Ulmer, dated December 15, 2023, was obtained by Petitioner and provided to Respondent on December 26, 2023. Ex. P-84; Tr. at 534. Dr. Ulmer's letter identified the Student's extensive medical care and diagnoses and concluded:

From a behavioral aspect, [the Student] has a lot of strengths but as often seen with kids with developmental delays and multifactorial issues, this can often be unpredictable. Also, a significant contributing and complicating factor for [the Student] is ^[their] sleep apnea and insomnia, which is being addressed with several medical and behavioral interventions. Sleep is critical for success and during periods of worsened insomnia, [the Student]'s capacity to get up and "push through the day" just really is not there. Therefore, it is absolutely necessary that ^[Student] be allowed to get adequate sleep for the day, even if it does mean ^[Student] is late for school. My absolute professional opinion is that this needs to be taken into full consideration for [the Student]'s school accommodations.

Ex. P-84 at 841-842.

92. A Progress Report on the Student's IEP goals was issued by Respondent at the end of December 2023 reflecting little to no progress on most of ^[their] goals. Ex. P-87 at 911.

93. On January 1, 2024, the Student's IEP Team considered shortening ^[their] school day due to related health conditions after additional interventions were implemented and medical documentation was provided. Ex. P-27.

94. On January 11, 2024, Petitioner filed a complaint with WDE alleging that Respondent violated the IDEA in its identification, evaluation, placement, and provision of a free appropriate public education obligations to the Student, and WDE issued a decision on March 11, 2024. Ex. P-87.

95. WDE issued a Complaint Decision and Corrective Action in Complaint #C-015-24 on March 11, 2024, concluding that "despite behavior, including absenteeism, and peer relationship concerns, the District did not assess the Student's functional behavior, adaptive behavior,

and/or social emotional needs” thereby failing to assess the Student in all areas related to the suspected disability. P-87 at 913.

96. WDE’s Decision concluded that Respondent refused to conduct additional assessments because the Student’s current needs were being met under the eligibility category of OHI, rather than ^[their] unique disability-related needs, and that it should have based the determination on whether ^[their] new medical diagnosis impacted ^[their] educational needs. *Id.* at 914.

97. WDE determined that Respondent failed to conduct a comprehensive evaluation in March 2023, resulting in a denial of a FAPE. *Id.*

98. WDE also determined that “[a]n eligibility classification does not dictate the services or placement of a student.” *Id.*

99. WDE concluded that the Student’s IEPs did not include “positive behavioral interventions and supports and other strategies to address the Student’s absenteeism” and that a goal to address attendance was included in ^[their] March 2022 IEP but removed from ^[their] March 2023 IEP despite ongoing attendance concerns. *Id.* at 916. WDE concluded that, other than counseling services presumably to aid the Student with social skills, there did not appear to be consideration for any other services or supports to assist the Student to attend school in the March 2023 IEP. *Id.*

100. WDE further concluded that the March 2023 IEP did not specify paraprofessional support for the Student or group social skills sessions. *Id.*

101. WDE concluded that if a more restrictive program than general education is likely to provide a student with a meaningful benefit while a less restrictive program does not, ^[Student] is entitled to be placed in the more restrictive setting, and that evidence of little to no advancement towards IEP goals can demonstrate the need for a more restrictive setting. *Id.* at 917.

102. WDE also concluded that the Respondent’s unilateral determination of the goal and the frequency and duration of physical therapy services without parental participation also resulted in the denial of a FAPE. *Id.* at 919.

103. WDE concluded that a school district must consider a private evaluation provided by parents, but need not adopt its recommendations. *Id.* at 920.

104. WDE also concluded that Dr. Brown's July 11, 2022, report was not considered by the District at any time after receipt, but that Dr. Mullins' September 1, 2023, report and Dr. Brown's July 20, 2018 report were considered. *Id.* at 920-921.

105. WDE ordered the Respondent to provide staff training, conduct an autism assessment, ensure that its FBA addressed the Student's absenteeism, and provide compensatory education services. *Id.* at 923-24.

106. On October 25, 2024, WDE notified the Respondent that its Corrective Action was deficient, in that: 1) a discrepancy between statements regarding the impact of the Student's behaviors on ^[their] learning must be reconciled, including whether or not the behavior is disability related; and 2) its School Avoidance Plan failed to identify the functions of the Student's school avoidance behavior, without which WDE could not determine that the Plan contained targeted interventions and strategies to address the reason for the behavior. *Id.* at 929-930.

107. On January 27, 2025, WDE notified the Respondent that its Corrective Action was complete. *Id.* at 935-940.

108. In accordance with the WDE Corrective Action, Respondent provided a reevaluation of the Student to determine eligibility under the Autism Spectrum Disorder criteria and issued an Evaluation Report on April 25, 2024. Ex. P-38.

109. The April 25, 2024 Evaluation Report included the results of speech and language assessments performed by Ashley Gomez, a speech language pathologist employed by Respondent. Ex. P-38.

110. Ms. Gomez administered two selected subtests of the Comprehensive Assessment of Spoken Language, Second Edition (CASL-2), on January 18, 2024, and the full Clinical Assessment of Pragmatics (CAPS) battery on February 6, 2024. *Id.*

111. Results from the CASL-2 indicated average scores in the area of inference and pragmatic language. Exs. P-28 and P-38.

112. Results from the CAPS indicated below average scores on three of six subtests in the areas of Social Context Appraisal (9th percentile), Paralinguistic Decoding (2nd percentile), and Paralinguistic Signals (16th percentile). Ex. P-38 at 422.

113. Results from the CAPS indicated average scores on the other three subtests and for the Core Pragmatic Language Composite. *Id.*

114. Ms. Gomez observed the Student at school and interviewed ^[their] teachers, reporting that ^[Student] “demonstrates immature conversational exchanges,” has difficulty connecting and relating to peers because of ^[their] focus on limited topics, conversed in a “younger or immature voice,” did not show an understanding of how to initiate interactions with peers, including conversations and activities, and often watches ^[their] peers play unless adults facilitate ^[their] involvement, despite ^[their] desire to participate. Ex. P-28 at 224.

115. Ms. Gomez concluded that the Student’s absences limit ^[their] exposure and opportunities to join group activities, and that when at school for an entire day “it does seem like ^[Student] engages himself with ^[their] peers.” *Id.*

116. Ms. Gomez also concluded that the Student demonstrates difficulty with perspective taking of others, and recommended continued speech and language services on pragmatic skills in the areas of perspective taking, understanding nonverbal cues, and nonliteral language, and increasing attendance to provide more exposure and opportunities to interact with same-age peers. *Id.*

117. Comparing the results of Respondent’s assessment from its March 24, 2023 Evaluation Report where it was determined the Student continued to meet eligibility under the Speech and Language Impairment criteria with the results of its April 25, 2024 Evaluation Report where it was determined ^[Student] did not, reveals the following: the 2023 evaluation administered the full battery of subtests from the CASL-2 and reflected scores in the area of inference (SS 83) and pragmatic language (SS 84), while the 2024 evaluation administered only two of the twelve subtests,

reflecting nominal improvement in inference (SS 85) and pragmatic language (SS 88). Ex. P-12 at 146 and Ex. P-28 at 222. The 2024 evaluation did not re-administer additional subtests from the CASL-2 that showed lower performance in the 2023 evaluation in the areas of expressive vocabulary (SS 76), grammatical morphemes (SS 79), grammaticality judgment (SS 87), nonliteral language (SS 71), and double meaning (SS 79). *Id.*

118. The April 25, 2024 evaluation revealed parent and teacher ratings on the Student's functional communication skills on the Behavior Assessment System for Children-Third Edition (BASC-3) in the at-risk range. Ex. P-35 at 386. One of the Student's teachers reported ^[Student] demonstrates poor expressive and receptive communication skills, difficulty sharing ideas, feelings or experiences, gathering information, communicating clearly, and beginning conversations. Ex. P-32 at 284-285. That teacher also reported the Student has problems making friends and joining activities, and that "academic problems are considered a significant problem for [the Student]." *Id.* at 286-288.

119. The teacher reports of the Student on the BASC-3 reflected an Autism Probability at the 92nd and 94th percentile. Exs. P-31 at 254 and P-32 at 297.

120. The April 25, 2024 evaluation reported parent and teacher ratings on the Student's use of atypical language showing consistent concerns across raters from slightly elevated to very elevated ranges on the Autism Spectrum Rating Scales (ASRS). Ex. P-35 at 389.

121. The April 25, 2024 evaluation also included the results of an occupational therapy evaluation performed by Erika Krebsbach, an occupational therapist employed by Respondent. Exs. P-38 and R-7.

122. Ms. Krebsbach administered the Sensory Profile and received ratings from Petitioner and two classroom teachers, and conducted observations at school. Ex. R-7.

123. Parent ratings revealed abnormal sensory responses to oral, auditory and movement stimuli. Ex. P-38 at 423.

124. Teacher ratings revealed abnormal sensory responses to touch stimuli according to one teacher. *Id.*

125. Parent and teacher ratings on the ASRS also showed elevated concerns with sensory sensitivity. Ex. P-35 at 389.

126. Ms. Krebsbach concluded “[i]t is apparent that [the Student] responds differently to auditory, visual, touch and movement input in the home environment compared to the school environment and that^[their] responsivity to various sensory stimuli does not seem to negatively impact^[their] learning capacity or^[their] ability to function in the classroom.” Ex. R-7 at 1.

127. Ms. Krebsbach recommended continued assessment of the Student’s sensory needs, and continued occupational therapy services weekly “to promote progress towards functional independence in age-appropriate activities, as well as to address visual-perceptual/motor skills, fine motor precision and integration, sensory processing/integration/modulation, generalized strength and activity tolerance.” Ex. R-7 at 2.

128. The April 25, 2024 evaluation reported parent and teacher ratings on the BASC-3 revealing elevated concerns with peer and adult socialization, and the ADOS-2 assessment revealed elevated parent and teacher concerns with social/emotional reciprocity, and concerns that the Student “displayed a lack of insight about social situations and relationships,” and “a lack of awareness of others’ feelings.” Ex. P-35 at 391.

129. The April 25, 2024 evaluation recommended strategies to increase the quality of social interactions with peers and increase the Student’s understanding of social cues. Ex. P-35 at 396.

130. The April 25, 2024 evaluation reported parent and teacher concerns with the Student’s elevated behavior rigidity on the ASRS, and highly specific topics of interest referenced to an unusual degree on the ADOS-2, with a conclusion that a restricted range of interests or preoccupation with one narrow interest does not significantly interfere with educational performance or social interaction. Ex. P-35 at 392-393.

131. The April 25, 2024 evaluation included a functional behavior assessment (“FBA”) conducted by Joan Hawkinson, MEd, Behavioral Interventionist and Special Education Program Consultant, in two phases. Ex. P-38 at 424-425.

132. Ms. Hawkinson is not a Board Certified Behavior Analyst. Tr. at 730. Her training in ABA occurred thirty-five years ago in 1989. Tr. at 731. She has not engaged in professional presentations or appearances over the recent years. Tr. at 734.

133. During the first phase of the FBA, alternate seating options and an altered visual schedule were provided to the Student. *Id.* “Most importantly, the staff engagement process and problem solving approaches employed since the onset of the FBA have led to a significant increase in [the Student’s] classroom participation. The focus of these strategies is to create an atmosphere of belonging and relevance for [the Student] . . . [h]is apprehension to do independent work without reassurance from a paraprofessional or ^[their] teacher has decreased . . . [and] [h]is attending skills and willingness to volunteer answers during whole group instruction has also increased.” *Id.* at 424. “However, it is important to note that these achievements could not be accomplished without associated strategies, aids and services.” *Id.*

134. The second phase of the FBA was aimed at determining the function of the Student’s school absences, despite an increase in ^[their] attendance. *Id.*

135. During the second phase of the FBA the interventions decreased “to assist with establishing self-confidence.” *Id.*

136. The second phase of the FBA demonstrated that being at school matters for the Student, and impacts ^[their] academic performance, ^[their] emotions, and ^[their] self-esteem. *Id.* ^[their] classroom teachers noted that “the more [the Student] is in a class, ^[their] skills and ^[their] engagement in class increases.” *Id.*

137. The FBA reported the Student’s attendance and arrival time between August 29, 2023 and April 18, 2024 (118 days), with full school day attendance 16% of the days, absence without medical excuse 15% of the days, and late arrivals 84% of the days, for a total percentage of

attendance at 62% of available instructional time. *Id.* “Continued progress in school is likely jeopardized with that level of absences and non attendance.” *Id.*

138. The FBA noted reports of the Student picking ^[their] nose, skin and teeth, complaining of ailments, and being tired at school persisted and increased. Ex. P-34 at 351.

139. The FBA reported that the Student’s social skills are both a skill and performance deficit. *Id.* at 368.

140. The FBA reported that the Student’s initial responses to Petitioner’s requests were “no,” “be quiet,” and “don’t talk to me.” *Id.* at 369.

141. The FBA reported that the Student wanted Petitioner with ^[them] even at play and is extremely concerned about her getting hurt. *Id.* at 370.

142. The FBA reported that the Student is apprehensive about change. *Id.*

143. The FBA reported Petitioner’s perception that the Student’s refusal and resistant behavior is worse at home. *Id.* at 371.

144. The FBA concluded with recommendations including regular consultation with the Student’s private therapist and parent training. *Id.* at 373.

145. The FBA noted that, over eighteen school days, the Student benefited from 1:1 supports after school, with consistent attendance (17/18), full assignment completion (12/18), partial assignment completion (3/18), with “attitude and work ethic [] significantly improved.” Ex. P-39 at 441-442.

146. Dr. Lerew testified that, as a school psychologist she has administered several FBAs, and found Respondent’s FBA lacking in that it failed to identify the source of the Student’s strong avoidance of school and improperly contained numerous opinions rather than data. Tr. at 404-407.

147. The FBA noted that Petitioner refused to consent to in-home observations of the Student's behaviors resulting in an inability to help problem-solve home behaviors that might help improve^[their] attendance, but also noted that Petitioner wanted to first exhaust the possibility of other medical/health related conditions contributing to absences before accepting the offered assistance. Ex. P-39 at 444 and 448.

148. Petitioner refused to allow Ms. Hawkinson to enter the family home for an observation during Phase 1 of the FBA. Ex. P-34 at 35; Tr. at 747:20–750:17.

149. Ms. Hawkinson attempted numerous times to facilitate meetings with Petitioner and Student in the community, but those efforts did not result in a meeting. Ex. R-21; Tr. at 805–815.

150. Petitioner testified that Ms. Hawkinson's constant calls and texts were focused on what Ms. Hawkinson wanted Petitioner to do differently, with no ideas of solutions when Petitioner reported that the suggestions didn't work and the Student was still refusing to comply. Tr. at 1921.

151. Petitioner testified that she did her best to work with Ms. Hawkinson, but none of her suggestions or advice for working with the Student were effective or even made sense. Tr. at 1920-23. The School Avoidance Intervention Plan promised that Respondent would implement supportive interventions. Tr. at 1544-1545. Part of the Plan was to partner with Petitioner to locate and provide supportive community services, but Respondent made no efforts to connect Petitioner to any outside support services. Tr. at 1545.

152. Although Petitioner testified she had lost trust in Respondent's staff and administration that would not acknowledge the Student's diagnosed autism and were pursuing truancy prosecution, she acknowledged that the Student still had positive relationships with other school staff and she asked to involve those personnel who had good established relationships with Student to work with^[them] Tr. at 1027-29, and 1904-06.

153. On February 22, 2024, Petitioner's advocate, Ms. Waldie, informed Petitioner that it is "not the typical or ethical practice of a BCBA to

observe the child in their home because of events at school and it shifts perspective to blaming the parent.” Ex. R-40.

154. Ms. Waldie also told Petitioner, “Do not let them into your home. Again it is overstepping their boundary as an educator.” *Id.*

155. Two professionals testified that observing a student in the home environment does not constitute an atypical or unethical practice when exploring the reasons for school avoidance. Tr. at 1731:18–1732:14, and 2182:1-4. In-home observation would be the only way to identify the function of school avoidance that occurs before a student arrives at school. Tr. at 1710:4–1711:16, and 1734:4–14.

156. The FBA noted that “[s]ince the start of interventions in January to the present there has been marked improvement in [the Student]’s behavior and affect at school,” that Petitioner commented that ^[Student] was happier and seemed more content, and was better once in the car and leaving the car to enter school, and that data showed ^[Student] was more comfortable and productive at school. *Id.* at 448. “The most significant intervention implemented during this intervention assessment is the staff engagement process and problem-solving approaches that have been employed.” *Id.* at 450.

157. The FBA noted that Petitioner “doesn’t have a routine to get [the Student] to school, yet she is hesitant to work with the school to help identify strategies.” *Id.* at 448.

158. The FBA noted: “In regards to [the Student] and school absences, it is vitally important that the unknown variables and interactions occurring at home that are contributing to ^[their] absences be investigated and efforts put forth to resolve the situations that are impeding ^[them] from attending school.” *Id.* at 449.

159. The FBA noted that Petitioner provided medical reports and private evaluations of the Student that invited collaboration but that Petitioner would not give Respondent permission to “freely communicate” with providers. *Id.* at 450.

160. The FBA recommended that, because Petitioner would not accept in-home assistance from Respondent, “the district should give

consideration to providing parent training from an outside entity. If [the Student]’s mother prefers an ABA approach, perhaps in the home ABA therapy could be secured,” and training should be offered to Petitioner and school staff to “bridge the gap” between them, including training based on Ross Green’s CPS model recommended by the Student’s therapist. *Id.* at 451.

161. Petitioner testified, consistent with the record, that Respondent never offered to provide ABA services, but that she wanted those services for the Student, both in the home and at school. Tr. at 466.

162. The FBA concluded that “the function of [the Student]’s behavior contributing to ^[their] school absences is primarily due to factors that are more appealing to ^[them] outside the school environment. The desired tangibles ^[Student] has access to in ^[their] home environment are competing with ^[their] desire to attend school on time consistently, along with the attention, whether negative or positive, that ^[Student] is receiving at home.” *Id.* at 451-452.

163. The FBA noted that the Petitioner had not provided the Respondent with “any report that provides a medical rationale for ^[their] extensive absences other than ‘be flexible,’” and that Respondent “does not have evidence that [the Student] is a child with severe disabilities that justifies ^[their] extensive absences.” *Id.* at 452.

164. The FBA posits that flexibility in attendance expectations for the Student would require Respondent to “ignore the state statutes regarding attendance and ignore the district policy with respect to this issue” and that the parties were working “in silos.” *Id.* at 452-453.

165. The FBA author recommended collaboration and partnership with the parties and providers to work on the Student’s behavior to attain the shared goal of school attendance, with consistent and focused interventions to address the functions of ^[their] behavior. *Id.* at 453.

166. The April 25, 2024 evaluation also included administration of the School Refusal Assessment Scale – Revised (C) (“SRA”) in order to evaluate school refusal symptoms and causes through three interviews with the Student. Ex. P-38 at 425.

167. The SRA elicited information only from the Student on the reasons for ^[their] absences from school, and ^[Student] reported that the two most prominent reasons for ^[their] school absences are to seek/obtain attention from significant others outside of the school setting, and to access/obtain tangible reinforcement outside of the school setting. *Id.* The Student identified the third most prominent reason to avoid a sense of general negative affectivity at school. *Id.* ^{[[their]} ratings also imply that the function of ^[their] behavior for being absent from school is because of the relationships and tangible things outside of school are more appealing than those in school.” “In simpler terms [the Student] receives greater reinforcement for being out of school than ^[Student] receives while attending school.” *Id.* at 426.

168. Jodi Lehman, School Psychologist for Respondent, testified that information on the cause of school refusal from the parent is important, as is information from teachers and school staff. Tr. at 1118.

169. The April 25, 2024 evaluation reviewed previous intellectual ability testing from March of 2023 where the Student scored at the 6th percentile, in the very low range, on the full-scale measure of the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), with extremely low performance in processing speed at the 1st percentile. Ex. P-38 at 427.

170. The April 25, 2024 evaluation reported standard scores on two subtests of academic achievement testing with the Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ-IV), reflecting math problem solving skills at SS <40 and written expression skills at SS 77, without reference to percentile scores, range of performance, or any explanation of the meaning of the scores. *Id.* at 427-428.

171. School staff concluded that the Student did not display impaired communication, abnormal sensory processing, impaired cognitive development, or an abnormal range of activities that adversely affected Student’s educational performance but that ^[Student] did exhibit deficits relating to people. Ex. P-37.

172. The April 25, 2024 evaluation report concluded that the Student remained eligible under the Other Health Impairment and Specific Learning Disability categories, was no longer eligible under the Speech or Language Impairment category, and was not eligible under the Autism Spectrum Disorder category. Ex. P-38 at 430.

173. Petitioner testified that the IEP Team did not discuss Dr. Mullins' evaluation of the Student and autism diagnosis at the meeting to discuss Respondent's April 25, 2024 evaluation report and eligibility, contrary to the information contained in the next IEP. Tr. at 505-506; Ex. P-38 at 420.

174. Following receipt of the April 25, 2024 evaluation report, Petitioner requested an independent educational evaluation (IEE) be provided at public expense. Answer to Complaint; Tr. at 1392:12–16.

175. Instead of agreeing to provide a publicly-funded IEE, Respondent filed a complaint and request for a due process hearing in May 2024 to defend the adequacy of its evaluation. Answer to Complaint; Tr. at 1392:20–23.

176. At the October 24, 2024 IEP Team meeting (four days before the hearing was scheduled to begin), Respondent suggested that the Student's placement should be moved to a residential setting, and Petitioner decided, given her limited resources, that she would abandon her request for an IEE in order to preserve her resources to contest this anticipated proposal to change placement. Tr. at 83-84.

177. Petitioner agreed to withdraw her request for a publicly-funded IEE and agreed to an order that Respondent's evaluation of the Student was appropriate and that she was not entitled to an IEE at public expense. Answer to Complaint; Tr. at 83:25–84:6.

178. On April 25, 2024 a new IEP was developed that continued to identify the Student's disability category as "HL" and LD – Math reasoning. Ex. P-40 at 455.

179. The April 25, 2024 IEP identifies educational concerns including attendance, math, writing, executive functioning, behavior, expressive and receptive language, pragmatic language, gross motor skills. *Id.*

180. The April 25, 2024 IEP identifies the Student's language skills needs in pragmatics, classroom engagement with peers, perspective-taking, inferencing, nonliteral/figurative language, and nonverbal cues. *Id.* at 460.

181. The April 25, 2024 IEP reports that the Student could correctly identify social conflicts and generate two resolutions, meeting ^[their] goal. *Id.* at 461. The counselor recommended removing individual counseling and moving the Student to the regular classroom Life Skills curriculum available to all students. *Id.*

182. The April 25, 2024 IEP provides that transportation to school will be provided if Petitioner calls to request it. *Id.*

183. The April 25, 2024 IEP continues to reflect that the Student's behavior impedes ^[their] learning and that of others, and that ^[Student] has communication needs. *Id.* at 462.

184. The April 25, 2024 IEP provides eight goals: to increase school attendance, to improve math skills, to improve reading comprehension skills, to improve writing skills, to improve social skills in adapted physical education, to improve executive functioning skills and following multiple-step direction, to improve balance and mobility, and to improve pragmatic language skills. Ex. P-40.

185. The goal to improve the Student's attendance indicates that "staff will achieve this by implementing targeted interventions to address the root causes of school avoidance, fostering a supportive environment, and actively involving parents in the process." *Id.* at 464.

186. The attendance goal reflects a baseline of 18/118 days of full-day attendance (15%), 54/118 days of attendance before 10:00 a.m. (46%), and 30/118 days of attendance after 11:45 a.m. (25%). *Id.* at 464.

187. Progress reports reflect that, from April 25, 2024 to October 24, 2024, the Student attended a full-day of school 1/55 days (.018%), attended before 10:00 a.m. 6/55 days (11%), and attended after 11:45 5/55 days (.09%). *Id.* at 464-466. All other progress reports noted: "Unable to progress current goal due to student absences and lack of supporting data," "no progress," or "insufficient progress." *Id.* at 467-473.

188. The April 25, 2024 IEP provides specialized instruction in math, writing, reading, and social recreation skills, and related services of speech and language, occupational therapy, parent counseling and training, and transportation, as well as ESY services. *Id.* at 474-475. The IEP also

provides supplementary aids and services including sensory strategies and implementation of a School Avoidance Intervention Plan, as well as collaboration among school, home, and private providers. *Id.* at 476-477, 479.

189. The April 25, 2024 IEP included two services related to parent counseling and training: the “Intention to Action Series: Facilitating Executive Function at home Webinar,” and “Jointly attended school and/or parent identified school avoidance training.” Ex. P-40 at 475. Petitioner testified that neither parent training was provided as she was either not able to access the training, or the training was not arranged by Respondent, and that group counseling for the Student also never occurred. *Id.*; Tr. at 457.

190. The School Avoidance Intervention Plan dated May 1, 2024, identified additional support interventions: “created momentum in the school environment,” identified indicators of engagement and waning engagement with “corresponding interventions,” and “initiated joint staff/student problem solving.” Ex. P-41. The Plan identified consistent communication to the Student when absent by sending messages of “I noticed,” “I care,” and “I won’t give up on you”; home visit with a focus on care and concern²⁷; and partner with Petitioner to understand her perspective, provide support services, and help to navigate outside supports. *Id.*

191. Respondent’s expert, Dr. Ernst, testified that the Plan addressed only part of the problem and did not bring about the desired results, to increase the Student’s attendance, because “it’s narrow in focus and scope.” Tr. at 1028. Dr. Ernst referred to the Plan as “a general approach. This is not a specific plan. And any – but, yeah, I really stress this, like any effective behavioral plan is very specific. So that’s not what is in this plan here.” Tr. at 1036.

192. Dr. Ernst testified that in everything he reviewed, he had not seen a behavioral plan to address the home aspect of the Student’s school refusal. Tr. at 1044.

²⁷ This intervention was crossed out on the Exhibit because it was later removed at Petitioner’s request.

193. Dr. Ernst was asked at hearing “[d]o you know how the school determined the reason that [the Student] was avoiding school” and testified:

Well, so, no. In fact, I don't -- I don't know if this is school avoidance at all. As I stated earlier, I mean, so that -- I have question about even the title of the plan, like I said, where that conclusion was drawn that [the Student] is avoiding school. Maybe ^[Student] feels compelled to stay home. Like I said, maybe ^[Student] feels like ^[their] mom needs ^[them] there as an alternative reasoning. So ^[Student] is motivated to stay home, ^[Student] is not avoiding school, you know. ^[Student] is maybe avoiding being away from ^[their] mom, as an alternative explanation. So I don't know. And I'll repeat this, I think we are guessing at why ^[Student] is not attending school.

Tr. at 1759: 7-18.

194. Dr. Ernst believed that if home observations and a behavioral plan were carried out consistently, with fidelity, and with the opportunity for modification, that he was “100% confident” that improvements could be made over time and avoid a need for residential placement. Tr. at 1045-1047. Dr. Ernst testified that a timeframe for effectiveness of that plan, to demonstrate improvement in school attendance at the rate of perhaps 10%, could realistically be expected to be shown in six to eight weeks. Tr. at 1048. Dr. Ernst testified that a school district could provide that behavioral plan so long as it was developed and implemented with the required level of expertise. Tr. at 1053.

195. On May 3, 2024, Petitioner sent a letter to Respondent stating that “no member of Crook County Public School is welcome on my private property” and directing Respondent to stop coming to her home. Ex. P-101 at 1091.

196. On May 15, 2024, Respondent issued a PWN refusing to attribute the Student’s attendance problems to ^[their] disabilities, refusing to remove the IEP goal related to attendance, refusing to remove parent training from the IEP, and refusing to discontinue implementation of the school avoidance intervention plan but agreeing to remove the in-home services as requested. Ex. R-10. The PWN indicates that “[t]he district does not refute [the Student]’s medical diagnoses, but the district is not in receipt of specifics regarding how these medical diagnoses present a

complex neurological profile that would interfere with ^[their] school attendance. To date, the district has not been afforded an opportunity to consult with the medical providers that have clearly offered their assistance within the medical documents currently on file.” *Id.* at 1.

197. Petitioner continued to refuse to allow Ms. Hawkinson to observe the Student in ^[their] home because she did not trust that Ms. Hawkinson would provide an objective assessment of the family’s home environment. Tr at 455-456, and 1904-06.

198. In June 2024, Petitioner engaged PDA North America and began working with educational consultant Zachary Morris. Ex. P-67.

199. Petitioner testified that she and Dr. Mullins received training from PDA North America to better understand and support the Student, and that her relationship with the Student improved throughout this time and after. Tr. at 70, 462, and 701; Ex. P-67.

200. Mr. Morris has never spoken with Student and has never observed the Student in the school or community setting. Tr. at 220:9–22.

201. Mr. Morris advocates a no pressure, low demand approach for individuals with a PDA profile, including the Student. Ex. P-68.

202. Petitioner implemented a no pressure, low demand approach with the Student in the home setting. Tr. at 76:8–19. Petitioner informed Respondent of her implementation of the no pressure low demand approach in September 2024. Tr. at 1368:23–1369:10.

203. Since Petitioner engaged Mr. Morris and implemented the no pressure, low demand approach, the greatest number of days the Student was present in the school building for any amount of time in a single month is nine partial days. Ex. P-89; Tr. at 232:9–22.

204. Mr. Morris opined that a residential placement for the Student would be contraindicated given ^[their] diagnoses and historical experiences, would remove ^[them] from consistent access to ^[their] main co-regulator (^[their] mother)”, would negatively impact ^[their] wellness “and lead ^[them] even further away from engaging with both school and other areas of ^[t] life.” Ex. P-89 at 718-720.

205. Leading up to the first day of the Student's sixth grade year in the fall of 2024, ^[Student] was very excited and eager to attend, and the first day of school on August 20, 2024, ^[Student] successfully attended without incident. Tr. at 81.

206. On August 21, 2024, the Student returned to school, but at some point during the morning, ^[Student] laid ^[their] head down on ^[their] desk in math class and ^[their] assigned paraprofessional responded by removing ^[their] desk, even though that intervention was never discussed by ^[their] IEP Team, or included in ^[their] IEP or any behavior support plan. Exs. 55 at 649-50, 660, and 99 at 1077-78, 89; Tr. at 81-82.

207. On October 11, 2024, Petitioner provided to Respondent a Psychological Evaluation of the Student from Aaron Wallis, Ph.D., Psychological Solutions, to determine whether the prior diagnosis of Autism Spectrum Disorder was accurate, and to determine "if some of ^[their] challenges might also be labeled under the symptom cluster Pathological/Pervasive Demand Avoidance" (PDA). Ex. P-85.

208. Dr. Wallis recounted the Student's extensive medical and psychiatric history from birth. *Id.* at 848-851.

209. Dr. Wallis noted that the Student "continues to struggle with restful sleep and is often very difficult to wake in the mornings which has been a source of frustration for ^[them] ^[their] family, and ^[their] school;" that "[h]e often refuses to get up in the morning and will hit or attempt to hit Ms. Lill if she gets too close to ^[them] and that on days when ^[Student] does not want to get up ^[Student] spends hours fighting with Petitioner. *Id.* at 847-848.

210. Dr. Wallis reported that Petitioner has provided the Student with consistent private psychological evaluations and treatment, including play therapy and family support for years. *Id.* at 850.

211. Dr. Wallis reported the Student's performance on a measure of intellectual ability given the WISC-V with a full-scale IQ of 71, at the 3rd percentile, "generally considered to be indicative of an intellectual disability, particularly given ^[their] history of developmental delays." *Id.* at 856.

212. Dr. Wallis reported the Student's performance on the Wide Range Assessment of Memory and Learning 3rd Ed. (WRAML3) as

indicating extremely low (0.2 percentile) verbal immediate memory, very low (4th percentile) visual immediate memory, low average (14th percentile) attention/concentration, and extremely low (0.8 percentile) general immediate memory. *Id.* at 857.

213. Dr. Wallis reported the Student's performance on the Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th Ed. (VMI-6) as in the low to very low range, with performance in the <.02 to 5th percentile. *Id.* at 858-859.

214. Dr. Wallis reported the Student's performance on the Behavior Rating Inventory of Executive Function, Second Ed. (BRIEF-2) as primarily in the significant range on most scales. *Id.* at 859-860.

215. Dr. Wallis reported the Student's performance on the Delis-Kaplan Executive Functioning System (D-KEFS) with scores ranging from low average to extremely low, with a number of subtests invalid or not administered, and revealed major difficulties with visual scanning, numerical processing, visual attention, motor functions, alphabetical processing, visual attention, understanding instructions even with multiple repetitions and rephrasing, retrieval, and cognitive rigidity. *Id.* at 861-862. These results "suggest significant difficulties that are consistent with global developmental delay and intellectual disability," noting a significant discrepancy between school ratings and the current evaluation. *Id.* at 862.

216. Dr. Wallis reported the Student's performance on the Autism Diagnostic Observation Schedule-2: Module 3 (ADOS-2) as well above the cut-off score to determine an Autism Spectrum Disorder, and much higher than previously reported ADOS-2 scores. *Id.* at 862-863. In the ADOS-2 the Student's communication was often difficult to understand, ^[Student] often spoke in short fragments or with repetition, ^[their] prosody and volume were halting and inconsistent, ^[Student] made humming or grunting sounds, ^[Student] muttered or sang to himself, and ^[Student] used slightly odd phrasing. *Id.* at 863. During administration, the Student talked about ^[their] interests, was unresponsive to social gestures, made gestures not well coordinated with ^[their] speech, had markedly inconsistent eye contact, did not display any clear imaginative behaviors, had difficulty recognizing and understanding emotions, disengaged from conversations not directed and sought a break or discussion of ^[their] interests, had difficulty defining social relationships,

paced often, had difficulty shifting attention and tasks, and regularly returned conversation to ^[their] limited interests. *Id.* at 864-865.

217. Dr. Wallis reported adult ratings of the Student's behavioral and sensory functioning on the Sensory Processing Measure, Second Ed. (SPM-2) as reflecting "significant sensory sensitivities" and indicating visual, auditory, tactile, taste, smell, body awareness, balance, motion, praxis, and social participation processing challenges. *Id.* at 865-866.

218. Dr. Wallis reported adult ratings of the Student's social responsiveness on the Social Responsiveness Scale-2 (SRS-2) consistently showing impairment in all areas across raters, with all but one score indicating a pronounced level of impairment, and indicate "consistent and pervasive issues with most aspects of social reciprocity." *Id.* at 867-868.

219. Dr. Wallis also reported adult ratings of the Student's functional skills from the Adaptive Behavior Assessment Scale, Third Ed. (ABAS-3), including conceptual (communication and academic), social (interpersonal and social competence), and practical skills (independent living and daily living). *Id.* at 868-869. The Student's score fell into the extremely low range, commensurate with expectations given ^[their] tested intellectual ability, and highlighting significant struggles in all adaptive behaviors, "suggesting ^[Student] will have serious and substantial difficulties establishing himself independently and functioning appropriately for ^[their] age." *Id.*

220. Dr. Wallis concluded that the Student's IQ scores have been variable, and current testing shows performance at the upper end of the range for Intellectual Developmental Disorder, with significant adaptive functioning challenges that "are clear, consistent, and chronic." *Id.* at 870-871. Dr. Wallis reported that Petitioner "manages most aspects of [the Student's] daily activities and self-care, and even so ^[Student] struggles to attend school, get ready for the day, and take care of personal hygiene." *Id.* at 871.

221. Dr. Wallis also concluded the significant inconsistency in the Student's behavior between settings does not exclude an autism diagnosis, and that ^[their] extensive medical history and concerns "may contribute to ^[their] challenges" but do not preclude an autism diagnosis. *Id.* at 873.

222. Dr. Wallis reported studies establishing that individuals with ASD, especially those with comorbid difficulties like an Intellectual Developmental Disorder, “are at much higher risk for school refusal or absenteeism. This is even more likely if bullying is present as it has been in the past for [the Student].” *Id.* at 873. Dr. Wallis cited studies finding that students with disabilities “can be expected to have elevated levels of both unauthorized and authorized absence related to their disability and co-occurring health conditions;” that children with autism “often find the school environment particularly challenging due to insufficient accommodations;” that bullying victimization is more common in children with autism than their peers without autism; and that “the high prevalence of co-existing neurodevelopmental conditions, mental disorders, and somatic health conditions . . . are also likely to impact on school absenteeism.” *Id.*

223. Dr. Wallis concluded that consistent school attendance is important for the Student but “it is also well established that individuals with ^[their] medical and diagnostic profile have difficulties with school attendance. This can be due in part to the overwhelming sensory information coming at an ASD person in the morning, bright lights, increased noise, and general activity can feel overwhelming when they first wake up. Additionally, individuals with significant executive functioning challenges (like [the Student]) already struggle with initiation, and getting out of bed when fatigued is a significant initiation demand.” *Id.*

224. Dr. Wallis also emphasized the impact of the Student’s diagnosed sleep disorder on the “significant difficulty getting out of bed and to morning activities on time due to poor sleep quality and extreme fatigue.” *Id.*

225. Dr. Wallis concluded: “To be clear, medically diagnosed sleep apnea, executive dysfunction, and an autism diagnosis do constitute a medical rationale for excessive absences. A rationale is not meant to excuse the difficulty or absolve [the Student] from making changes, but it does provide a robust justification for flexibility and a behavior plan specifically designed to support [the Student] in attending school. It is this examiner’s opinion that [the Student] needs to continue ^[their] attendance goal on ^[their] IEP; however, ^[Student] may benefit from starting with a shorter day or a later start and increasing ^[their] time in school each day as ^[Student] is able to do so. The IEP team, working with [the Student]’s mother, can develop a behavior plan that will, hopefully, provide the supports and reinforcement that ^[Student]

needs to go to school and stay in school. If such a behavior plan is not effective after being modified as needed, a more restrictive setting may be needed for [the Student] to benefit from^[their] education.” *Id.* at 874.

226. Dr. Wallis explained that the Student may experience “autistic burnout” consisting of “chronic exhaustion, loss of skills, reduced tolerance for stimulus that affects all parts of a person’s life for weeks to months at a time” resulting from “chronic life stress and a ‘mismatch of expectations and abilities without adequate support’” to explain^[their] cyclical ability to keep up with daily activities. *Id.* at 874. Dr. Wallis explained that the Student may react to chronic overwhelming stress and struggles to meet expectations by finding himself “out of resources and may retreat into isolation or strong interests to soothe himself.” *It.* He also explained that it is not uncommon for individuals with ASD to “hold it together” at school “and have much more visible struggles at home, in part because they expend significant effort to behave appropriately in the highly structured school environment, and ‘let go’ when they get home. This can lead parents to observe many more struggles than schools do and can create frustration for all parties when expectations for [the Student] differ because observations of^[their] behavior differ between settings.” *Id.*

227. Petitioner testified that when she picks up the Student from school^[Student] typically asks to go right home, and once home goes “straight to the bathroom almost 100 percent of the time. And there^[Student] will be for sometimes an hour, two hours.” Tr. at 452-453. This pattern disrupts the Student’s schedule but “[h]e needs that time to regulate and process where^[Student] doesn’t even want to interact verbally with me.” Tr. at 453-454.

228. Dr. Wallis also explained that “[b]urnout also likely contributes to chronic absenteeism for [the Student] and Ms. Lill’s efforts at ensuring^[their] attendance and perspectives on^[their] attendance difficulties should be taken into account,” consistent with guidance from the National Center on Educational Outcomes. *Id.*

229. Dr. Wallis explained an emerging conceptualization of a specific subset of ASD “characterized by obsessive resistance to ordinary demands, use of socially manipulative or outrageous behaviors to avoid demands, sudden changes in mood associated with control needs, and ‘surface sociability’ known as Pervasive or Pathological Demand Avoidance (PDA), based on an intense need for autonomy. *Id.* at 875. Dr. Wallis

opined that the Student's difficulties with adaptive functioning, ^[their] intellectual disability and autism diagnoses make it "possible that that pervasive burnout and overwhelm significantly contribute to ^{[[their]]} refusal habits and they may remit once ^[their] functioning improves." *Id.*

230. Dr. Wallis concluded that "[s]hould ^[Student] stabilize and function in a more consistent manner both at home and at school after which ^[their] refusal habits remain, especially refusal as a reaction to requests ^[Student] engage in a desired activity, then [the Student] may be categorized under PDA, though at this time PDA should be considered a provisional categorization for ^[them] *Id.*

231. Dr. Wallis recommended treatment including "overtly and clearly linking ^[their] goals to their interventions" to help the Student feel more in control and to "help ^[them] feel that progress is achievable and treatment providers are there as allies and not adversaries." *Id.* Dr. Wallis also recommended positive reinforcement to "create more stable change over time." *Id.*

232. Dr. Wallis opined that "[w]hile accommodating PDA symptoms enough to prevent high levels of dysregulation can be helpful, PDA research also suggests that a side effect of doing so can be reinforcing problem behaviors and the belief that a person with PDA is not able to cope with distress. Thus, parent coaching and clear family system expectations are common recommendations to ensure that a supportive family can balance deftly between encouraging new skills vital for independence without fostering dependence or emotional dysregulation." *Id.*

233. Dr. Wallis assigned the following diagnoses: 1) Autism Spectrum Disorder, with accompanying intellectual impairment and language impairment, requiring supports for both social and emotional deficits, Social Communication, Severity Level 2, and Restricted Interests/Repetitive Behaviors, Severity Level 2; 2) Intellectual Developmental Disorder (Intellectual Disability), Mild; 3) Developmental Coordination Disorder; 4) Generalized Anxiety Disorder (by history); 5) Specific Learning Disorder, with impairment in mathematics, accurate math reasoning (by history); 6) Attention-Deficit/Hyperactivity Disorder – combined presentation, moderate (by history); 7) Obstructive Sleep Apnea Hypopnea (by history); and 8) Other Problems Related to Education and Literacy. *Id.* at 876-877.

234. Dr. Wallis recommended, *Id.* at 877-881, that:

- 1) the Student continue in ^[their] current education program if ^[Student] is able to improve ^[their] attendance and function well in both school and home;
- 2) if the Student continues to struggle to attend class or if school-based services are insufficient to address ^[their] significant needs, ^[Student] should be placed in an alternate setting, such as a residential program with highly structured, sophisticated services with staff trained to address ^[their] diagnostic needs, but that ABA interventions may not be a good fit;
- 3) if PDA symptoms appear prominent after stabilization, treatment providers will be most successful with an understanding of the unique presentation of PDA and successful interventions, and avoid interventions focused on positive punishment or negative reinforcement;
- 4) individual therapy is an important part of a comprehensive treatment plan, consistency in providers is important, change-oriented therapy will take time, and include support for healthy eating and technology habits;
- 5) future family therapy should address family challenges and grief, with short-term parent coaching, in-home parenting support, and behavioral strategies to support the Student provided by entities outside the school district;
- 6) the Student and ^[their] family should learn more about autism spectrum disorders;
- 7) the Student needs continued assistance to learn social skills and social thinking with mentors and peers to help ^[them] notice when social behaviors are expected and when they are not expected;
- 8) the Student needs to directly address through therapy ^[their] concrete, rigid thinking, “a driving force behind ^[their] historical struggles and reactivity” while involving ^[them] in planning;
- 9) treatment should be aligned to ^[their] specific ASD profile through increased understanding about PDA, with a balance between expectations and flexible accommodations;
- 10) the Student may benefit from biofeedback interventions;
- 11) the Student and ^[their] family need to better understand ^[their] difficulty regulating or modulating ^[their] use of technology;

- 12) the Student should expand ^[their] emotional vocabulary and shift the way ^[Student] relates to emotional experiences;
- 13) the Student's IEP Team should consider ^[them] eligible under Multiple Disabilities, with ASD as a primary eligibility, with specially designed social skills training, behavior interventions, independent living skills and job training, small group instruction in functional academics, tutoring, accommodations and modifications, and occupational therapy to address sensory needs, as well as counseling, and speech and language therapy;
- 14) the Student should be provided a behavior plan to support ^[them] attending for a portion of every school day, providing more positive social reinforcement at school than ^[Student] receives when ^[Student] stays home, including reducing antecedents to school avoidance and a home routine that sets expectations for when ^[Student] misses school;
- 15) the Student's IEP Team should discuss continued transition programming past age eighteen;
- 16) the Student may qualify for Social Security Income and Vocational Rehabilitation services;
- 17) the Student should maintain a regular, structured self-care routine, including following strict sleep hygiene and work through ^[their] discomfort in wearing ^[their] mask to sleep;
- 18) the Student may benefit from pro-social or recreational activities like supervised community service;
- 19) Ms. Lill will be best able to support the Student if she also has support, including parent groups, respite care, or in-home assistance.

235. Dr. Wallis testified that the Student has significant executive function issues. Tr. at 108. He testified that the Student “despite ^[their] friendliness has pretty poor social reciprocity.” Tr. at 109. “^[Student] didn’t make eye contact, except for occasionally when ^[Student] was directly answering questions, but it was poorly modulated.” Tr. at 109.

236. Dr. Wallis testified that the level of the Student's autism “means ^[Student] requires substantial support.” Tr. at 111. Dr. Wallis also diagnosed intellectual disability due to the level of severity and support that the Student requires, and developmental coordination disorder due to “significant developmental and ongoing difficulties with certain fine motor

tasks.” Tr. at 111. Dr. Wallis testified that the discrepancy in IQ scores over time are insignificant because “the severity for intellectual development disorder is based on adaptive functioning and ^[their] adaptive functioning is very low. So ^[Student] has the IQ scores to qualify for the diagnosis, but ^[their] adaptive behaviors are quite impaired.” Tr. at 161:8-14. Dr. Wallis also testified that the Student’s “low processing speed means ^[Student] will be more easily overwhelmed . . . struggle with multi-tasking and . . . is going to hit ^[their] limit of saturation very quickly . . .” Tr. at 163:4-23.

237. Dr. Wallis also gave a provisional classification of Pathological Demand Avoidance. Tr. at 111. Dr. Wallis testified that ^[Student] had no doubt that the Student's autism and intellectual disability impact ^[their] education. Tr. at 121.

238. Dr. Wallis testified that “Student is complex, so ^[their] supports need to be equally complex, and they need to adapt to ^[their] current struggles. Autism is an absolutely vital aspect of ^[their] neuro profile. And in order to understand Student we have to understand autism. And we have to understand not just what the symptoms are in the DSM, but how those play out. We have to understand the role of burnout. We have to understand why ^[their] presentation would differ in different environments and with different people. Then we need to add an understanding of significant executive functioning challenges. Those are common to autism, but ^[their] are above and beyond, and they are likely due at least in part to ^[their] significant medical history.” Tr. at 122-123.

239. Dr. Wallis testified that “this is a young man who when ^[Student] is trying is still struggling. When ^[Student] is at ^[their] best and ^[Student] is abiding by expectations, ^[Student] is doing so out of an intense effort. And that is something that is often missed in young people with autism and with intellectual developmental disorder is that they are trying so hard. And they get rewarded for when they do well for two hours in a classroom, but we do not often see that they leave that classroom and they have a breakdown, they have a fight with their parents, they throw something, they take their backpack--because their nervous system is overwhelmed. Student's nervous system is overwhelmed. So understand that Student has limited resources to deal with demands and that autism and developmental disorder strongly characterize ^[their] struggles.” *Id.*

240. Dr. Wallis testified that the Student's autism directly impacts ^[their] ability to attend school consistently. Tr. at 121, 331, 416. Dr. Wallis, along with Drs. Mullins and Lerew, the Student's treating psychologists, testified that the Student meets at least four of the indicators required to identify a student under the Autism Spectrum Disorders category of Wyoming special education eligibility criteria. Tr. at 113-121, 301-312, and 401-404.

241. Dr. Wallis testified about ^[their] concerns regarding the inconsistent results of autism testing for the Student, as ^{if [their]} autism diagnosis is very, very clear" and that without an autism diagnosis "^[Student] has not gotten autism treatment." Tr. at 138:11-24.

242. Dr. Wallis and other psychological experts who testified agreed that PDA is not a recognized diagnosis in the DSM-5-TR or the ICD-11. Tr. at 141:24-142:4, 992:13-993:22, and 1592:19-1593:3.

243. No United States credentialing body recognizes PDA as a standalone diagnosis, and there is no generally accepted diagnostic criteria for PDA. Tr. at 142:5–143:25.

244. There is no peer-reviewed research demonstrating that students with a PDA profile benefit from a no pressure, low demand approach. Tr. at 144:13–145:4 and 995:14–996:10.

245. Petitioner engaged Dr. Nicole Stewart, a psychologist, to conduct an FBA in connection with the IEE due process litigation. Tr. at 687:14–23, 1392:17–1393:15, and 2052:4–7.

246. Dr. Stewart is a licensed psychologist but is not a BCBA. Tr. at 686:2-4, and 1531:23-1532:2.

247. Dr. Stewart reviewed attendance data, the prior FBA, and IEP documents, and observed the Student at school in September 2024 for approximately four hours. Tr. at 688-689, and 695. Dr. Stewart testified that she had no reason to doubt that the Student was properly diagnosed with autism. Tr. at 696.

248. Dr. Stewart observed the Student in the school setting and did not observe Student struggle with any of the multiple transitions ^[Student] engaged in during the observation period. Tr. at 689:11–691:13.

249. During Dr. Stewart's observation, a fire drill occurred, and the Student did not exhibit a negative reaction to the loud noise. Tr. at 690:11-691:6. The Student transitioned outside during the drill and returned to the school to complete academic work. Tr. at 691:7-13.

250. Dr. Stewart's observations aligned with the school psychologist's observations completed as part of Respondent's last evaluation. Tr. at 692:5-693:12.

251. Dr. Stewart observed that the Student had positive relationships with school staff. Tr. at 695:12-15.

252. Dr. Stewart observed Respondent implementing multiple positive behavioral supports to engage the Student. Tr. at 695:16-23.

253. Dr. Stewart also conducted observations in Petitioner's home. Tr. at 696:7-10.

254. During the home observation, the Student remained in bed and refused to get up, which led Dr. Stewart to discuss strategies for Petitioner to try. Tr. at 696:11-22.

255. Dr. Stewart testified that her school-based observations of the Student were "wildly different" from the beliefs and observations reported by the Student's private providers. Tr. at 697:20-698:5.

256. Respondent did not receive a copy of Dr. Stewart's report because Petitioner revoked consent for Dr. Stewart to communicate with Respondent. Tr. at 697:13-16.

257. Petitioner attempted to implement methods suggested by Dr. Stewart; the methods worked for one day before the Student engaged in negative behaviors. Tr. at 1744:21-1746:25.

258. Respondent's expert, Dr. Ernst testified that abandoning strategies after one day created "a real big problem," because effective behavioral plans require consistency and coordinated implementation. Tr. at 1746:8-20.

259. Respondent attempted to retain Dr. Stewart as a facilitator to support collaboration between Petitioner and Respondent. Tr. at 1394:1–10.

260. Dr. Stewart declined Respondent’s offer to retain her due to Petitioner’s revocation of her authorization to release information and Petitioner’s opposition to working with Dr. Stewart. Tr. at 1398:9–12.

261. On September 23, 2024, in a special school board meeting, the Respondent’s school board determined that the Student was habitually truant, identifying the Student publicly by name. Ex. P-43; Tr. at 82. No referral to the County Attorney for prosecution was made at this time.

262. The IEP Team was convened on October 24, 2025 and WDE issued advised Respondent on October 25, 2024 that it had not fully complied with the Complaint Decision, ordering it to reconvene the IEP Team to address the deficiencies. Ex. P-87; Tr. at 84. Specifically, WDE ordered that the IEP Team must “[d]etermine if the Student’s absences are disability related, including the amount and type of medication the Student takes daily and potential side effects, such as fatigue and insomnia that may impact the Student’s attendance.” Ex. 87 at 933.

263. On November 1, 2024, Respondent issued a PWN to disenroll the Student due to absences from school of ten or more consecutive days. Ex. P-44.

264. Wyoming requires adherence to student enrollment coding in order to ensure school districts receive proper funding. Tr. at 1289:13–1290:2. To comply with this requirement, when a student misses 10 consecutive days, they must be dropped from the school’s rolls and coded as a “141.” Tr. at 1290:6–15. Special education students are given an extra ten consecutive days, and are coded as a “142.” *Id.* If a special education student reaches 20 consecutive days, the student reverts to a 141 code. Tr. at 1290:24–1291:5.

265. As directed by WDE to evaluate the role and potential side effects of the Student’s medications, Respondent retained Dr. Ryan Ernst, a neuropsychologist and licensed medical psychologist, to participate as a member of the Student’s IEP Team. Tr. at 1407:20–1408:3.

266. Dr. Ernst's review of the Student's medications indicated that while certain medications could have drowsiness as a potential side effect, the medications should not pose a significant barrier to ^[their] school attendance. Tr. at 935:4–936:20. Dr. Ernst attended the November 2024 IEP meeting and discussed these findings with the IEP Team. *Id.*

267. Prior to the November 2024 IEP meeting, Respondent provided assignments for the Student to complete at home; however, the Student did not return the assignments. Ex. P-46 at 504; Tr. at 1409:4–1410:11; Ex. R-21 at 203.

268. At the November 19, 2024 IEP Team meeting, Petitioner stated that she did not want Respondent to provide in-home assistance. Ex. R-13a; Tr. at 677:1–8.

269. During the November 2024 IEP meeting, Petitioner's educational advocate, Jackie Waldie, represented to the team that Petitioner was awaiting results from a recent sleep study and that preliminary information indicated Student experienced thirty-three sleep disturbances within one hour of sleep. Ex. R-13b; Tr. at 1427:19–23.

270. Respondent received an email from Petitioner on January 7, 2025, transmitting the results of the sleep study. Ex. P-86.

271. In that email, Petitioner stated that “we can rule out sleep as the primary cause” of Student's absences. *Id.*

272. The sleep study results provided no indication that Student experienced thirty-three sleep disturbances within a one-hour period. *Id.*; Tr. at 1431:4–7.

273. In response to a draft IEP discussed at the November 19, 2024 IEP Team meeting, Petitioner sent Respondent a 30-page, undated letter with numerous objections and included notes from the IEP Team meeting discussions.

274. On November 23, 2024, Ms. Hawkinson drafted and sent a letter to the Crook County Attorney. Ex. P-102.

275. Petitioner was not provided with a copy of Ms. Hawkinson’s letter until discovered in the course of the due process hearing and agreed to be produced by Respondent. Tr. at 1019.

276. Ms. Hawkinson testified that she requested permission to write the letter because she believed it was important for the County Attorney to understand the extensive efforts Respondent had made to address Student’s needs and attendance. Tr. at 1870:11–18.

277. In her letter, Ms. Hawkinson summarized the FBA results and articulated the hypothesis that removing reinforcers from the home environment would likely increase Student’s school attendance. Ex. P-102 at 1093.

278. Ms. Hawkinson also noted in her letter that Petitioner disagreed with the conclusions of the FBA and indicated that “all district-generated strategies and interventions have been rejected by the parent.” *Id.*

279. On November 27, 2024, Respondent proposed a new IEP for the Student after IEP Team meetings on October 24, 2024, and November 19, 2024.²⁸ Ex. P-46.

280. The November 27, 2024 PWN responded to some of Petitioner’s objections, and explained that Respondent proposed a modified schedule with a shortened school day and hybrid virtual and in-person instruction to transition the Student back to regular and consistent in-person attendance. Ex. R-14. That proposal included, among other changes, a new counseling goal with services to assist the Student to identify personal emotional triggers that contribute to school avoidance, develop coping strategies, and use them independently. *Id.* The proposal also added parent counseling and training in nervous system regulation. *Id.* The proposal included specialized instruction and related services provided at school due to “the parent’s repeated and blanket refusal to allow school service providers into the home setting.” *Id.*

281. As a result of the November 2024 IEP Team meeting, the Team agreed to remove transportation services based on Petitioner’s expressed

²⁸ The IEP mistakenly refers to its development at an IEP Team meeting on April 25, 2024, but its contents reflect it was developed after the November 19, 2024 IEP Team meeting.

belief that transportation was unnecessary and data demonstrating that transportation had not improved Student's school attendance. Ex. P-46 at 511; Tr. at 1412:20–1413:20.

282. The November 27, 2024 IEP added a counseling goal focused on identifying emotional triggers contributing to Student's school avoidance. Ex. P-46 at 520; Tr. at 1181:20–1182:2.

283. The IEP Team reinstated the counseling goal based on recommendations from Dr. Wallis, Team input, and data regarding the Student's needs. Tr. at 1180:10–1181:19.

284. School Counselor, Alexandria Johnson, testified that she worked with the Student on teaching ^[them] emotional regulation through the Zones of Regulation program, and the Student used the program strategies while in an educational setting. Tr. at 1175:1–1176:12.

285. Ms. Johnson offered to provide Petitioner with Zones of Regulation material to use at home, but Petitioner declined. Tr. at 1176:13–21.

286. The November 27 2024 PWN indicated that Respondent retained a neuropsychologist, Dr. Ernst, to join the IEP Team to assist in determining the impact of the Student's medication on fatigue, insomnia, and attendance. *Id.* The PWN reflects Dr. Ernst's opinion that "nothing on [the Student]'s medication list would keep ^[them] from attending school." Ex. P-4.

287. The November 27, 2024 PWN reflected IEP Team discussion of a homebound or residential placement for the Student, rejecting homebound services due to Petitioner's refusal to permit school staff to serve the Student at home, because ^[Student] needs access to peers, because that placement would not be least restrictive, and because ^[Student] did not complete work packets sent home. *Id.* The PWN also reflected Respondent's belief that "it is best to try another placement along the continuum of placements before placement in a residential setting" with a limited trial of the hybrid placement. *Id.*

288. Petitioner testified that the IEP Team did not discuss a homebound placement for the Student, and that she had not applied for

homebound services, but that Respondent rejected that option because “[Student] was doing Accellus and it didn’t work, so that proves to us that homebound failed.” Tr. at 501-502.

289. Under the hybrid plan, the Student would not be considered absent or tardy if [Student] arrived at school by 12:20 p.m. Ex. P-46. This start time was recommended by Petitioner’s education advocate and Student’s private therapist. Tr. at 528:21–529:4.

290. Respondent provided the Student with access to an asynchronous online learning platform, Acellus, as part of the hybrid instructional plan. Tr. at 1416:19–25.

291. Petitioner testified that there was no IEP Team discussion or agreement that the Student must complete virtual work through Acellus, the Student had little exposure to a virtual program prior to November 19, 2024, and Respondent did not offer to provide any support or training to Petitioner or the Student to learn and access the program. Ex. P-47; Tr. at 85-87. The Student struggled to access the Acellus program. *Id.*

292. The IEP Team discussed developing a separate behavior intervention plan; however, Ms. Waldie expressed the view that a behavior plan should not be developed before counseling services began. Ex. P-87 at 937. No behavior intervention plan was developed.

293. In addition to changes in transportation and placement, the PWN reflected the addition of a counseling goal, updated baseline data, added objectives to the occupational therapy goal, and specialized instruction addressing attendance and coping strategies, among other changes. Ex. R-14.

294. The PWN also documented Respondent’s refusal to modify the FBA, amend present levels, remove parent consultation and training, develop a sleep plan, discontinue facilitation of communication with private providers, remove visual supports, or eliminate Student’s attendance at school on optional student attendance days to catch up on missing content, known within the District as “Purple Fridays.” *Id.*

295. On November 30, 2024, Dr. Ryan Ernst drafted and sent a letter to the Crook County Attorney’s Office regarding Student. Ex. J-2.

296. Petitioner was not provided with a copy of Dr. Ernst's letter until discovered in the course of the due process hearing, although previously requested by Petitioner once she became aware of its existence, and was subsequently produced Respondent during the course of the hearing. Tr. at 1016-1017. His letter was also not provided to the Student's IEP Team. Tr. at 1018. Counsel for Respondent asserted that she had not read the letter either (*Id.*), but on the next day of hearing admitted she had in fact been provided the letter when it was written, directly from Dr. Ernst. Tr. at 1200.

297. The Hearing Officer expressed concern that two letters from agents of Respondent regarding the Student's attendance problems were sent to the juvenile court without the knowledge or consent of Petitioner and without a valid court order, particularly since a Complaint Decision by WDE previously found Respondent violated FERPA and the IDEA by doing so. Tr. at 1019; Ex, P-88.

298. Dr. Ernst indicated that he was retained by Respondent "to review^[their] academic and medical records and assist, as needed, with proper educational planning and accommodations with particular attention to this student's mental health and medical needs." *Id.*

299. Dr. Ernst identified twenty-one medical and psychiatric disorders carried by the Student and seven medications. Ex. J-2.

300. Dr. Ernst reported PDA has not gained much recognition in the United States, has been a controversial topic among autism experts, reporting that "[p]roblems concerning definition and measurement in the reviewed studies currently limit any conclusions regarding the uniformity or stability of the behaviors described," and concluding that "[i]n addition to a lack of sound research supporting PDA as a diagnostic entity, PDA is not a recognized health condition by [Respondent]." *Id.*

301. Dr. Ernst reported that he had not been provided therapeutic and psychoeducational goals and interventions from the Student's mental health providers. *Id.*

302. Dr. Ernst indicated that two of the Student's current medications can cause sedation and drowsiness, especially in the mornings. *Id.*

303. Dr. Ernst acknowledged the variability among evaluators regarding the Student's diagnosis of autism, but stated "[i]t is important for everyone to consider ^[their] intellectual disability as well," and despite the variability in intellectual testing, "it is apparent ^[Student] has significant cognitive and intellectual impairments." *Id.*

304. Dr. Ernst indicated that ^[their] review of available records did not lead to a conclusion that "it would be in ^[their] best interest to not attend school or to allow for several missed days without a valid medical reason." *Id.*

305. Dr. Ernst found the Student's attendance problems to be complicated, as he believed Petitioner wants the Student "to attend school as well and the problem is getting ^[them] there," pointing to a potential lack of resources and tools necessary to effectively do so, resulting in "deterioration of the parent-child relationship, their individual mental health, and with little to no improvement with school attendance." *Id.*

306. Dr. Ernst reported Petitioner's caution about receiving advice or help from Respondent "and views their attempted interventions as threatening and communication she is the problem or [the Student]'s excessive absences are a result of poor parenting" when excellent parents struggle considerably to get their child with mental health problems to school consistently. *Id.*

307. Dr. Ernst recommended "an understanding and appreciation for the difficult task ^[their] mother has while attempting to get [the Student] to attend school," while the Respondent should help with school attendance by ensuring "there is a specific plan that is being followed that has been designed specifically to improve attendance." *Id.*

308. Dr. Ernst recommended that Respondent offer transportation to the Student with a "school official at ^[their] home to pick ^[them] up in the morning" to "lessen ^[their] defensiveness and increase compliance." *Id.*

309. Dr. Ernst recommended that, consistent with the parties' agreement at the last IEP Team meeting, private occupational therapy would begin providing services in the Student's home and "it is a favorable situation to extend the relationships from school into the home and vice

versa, which will help “the Student” to see everyone is working together to help ^[them] become successful.” *Id.*

310. Dr. Ernst noted that the Student and Petitioner “have had a difficult relationship stemming back several years. [The Student] has been particularly oppositional and defiant with her at times.” Dr. Ernst recommended that the family’s psychologist provide “a concrete and specific behavioral plan directed at improving school attendance” in consultation and collaboration with school officials that would also be implemented at school. Dr. Ernst offered to help Respondent establish an effective behavioral plan for the Student “using positive reinforcement and contingency management.” *Id.*

311. Dr. Ernst reported that the Student’s IEP Team agreed to “start with where things are currently and that is with ^[them] not attending school hardly at all” and agreed to a plan for the Student to attend school part-time in-person with supplemental education via distance education. *Id.* Dr. Ernst recommended adherence to that plan “and adopt an attitude of allowance for possibly slow, yet consistent progress.” *Id.*

312. Dr. Ernst acknowledged that Petitioner “needs to do her part as well. Allowing for continued truancy either by not having a behavioral plan in place, by adopting a plan that allows for excessive absences, or by not following a suitable behavioral plan that has been established, will certainly thwart the best of plans and resources [Respondent] may have to offer. In that event, temporary residential placement remains an option though it is my hope ^[they] can remain at home with ^[their] mother.” *Id.*

313. Dr. Ernst acknowledged Petitioner’s right to elect mental health services she sees fit, and noted that the Student’s current psychologist “is a proponent of what has been called, “demand fading procedure” and utilizing a “low demand environment and communication” consistent with the recommended approach for PDA. Dr. Ernst concluded it would be futile and potentially harmful to the school/parent relationship to debate the existence of PDA and a demand fading procedure, and offered his assistance to Respondent for “alternative strategies for the school to follow in regard to avoiding conflict and avoidance behavior from [the Student] that I believe, at least for the most part, will be acceptable methods of communication with ^[their] mother and psychologist.” *Id.*

314. Dr. Ernst commended Respondent for providing the services of a behavioral analyst who observed “the effectiveness and utility of applied behavioral analysis when combined with directed interventions,” and recommended continued provision of ABA techniques at school. *Id.*

315. Dr. Ernst testified that he recommended that Respondent try other interventions with the Student, including reinforcers to motivate the Student to go to school and want to do the right thing. Tr. at 1031 and 1039. Dr. Ernst recommended that a behavior plan be designed “that makes sense,” and “that is comprehensive” to address “the function of the behavior.” Tr. at 1041.

316. In a response dated December 11, 2024 to Respondent’s request for his suggestions Dr. Ernst wrote: “My Recommendations at this time are to:

- a) Work with me to establish a behavior plan using positive reinforcement and contingency management to reinforce [the Student] for school attendance. That plan will also incorporate how to address pathological demand avoidance that has been discussed.
- b) Communicate and document with ^[their] mother, the need to establish a similar behavior management program at home. We can provide her with an outline of a home plan.
- c) Follow the rest of my recommendations in my attached letter about encouraging school attendance.
- d) Understand that even the best plans to increase [the Student]’s attendance at school can easily be thwarted if not carried out consistently by ^[their] mother, and unfortunately since that may be the very outcome here, continue to apply pressure for the need of ^[their] mother to take specific action and have a specific plan for getting [the Student] to school. The pressure I refer to, is the available legal actions the district has available to them, including residential placement.

Ex. P-107 at 1180.

317. No evidence was admitted at hearing that these recommendations were discussed with Petitioner or the Student’s IEP Team, or were implemented by Respondent, except for pursuit of truancy proceedings.

318. Dr. Ernst was the most credible, unbiased, and compelling professional to testify at hearing. Dr. Ernst testified that neuropsychologists “evaluate how the brain is functioning, how it may have been impacted by illness or injury.” Tr. at 933.

319. Dr. Ernst testified that effects of the Student’s medication on ^[their] school attendance were not a significant issue, although sometimes children with autism can be more sensitive to specific medications. Tr. at 936-937.

320. Dr. Ernst provided a thorough and understandable explanation for the Student’s diagnosed neurological conditions caused by brain abnormalities, particularly the impact on ^[their] judgment, insight, organization and planning abilities, and ^[their] ability to regulate behavior. Tr. at 938-946.

321. Dr. Ernst explained that individuals with impairments in frontal lobe functioning “are not able to kind of create and follow structure themselves, they can’t regulate very well themselves. And so there is a requirement, then, for that to be supplemented or overcome by institution of additional support from the outside. So helping one to – helping to establish structure and routine for them, helping them to regulate those sorts of things.” Tr. at 945.

322. Dr. Ernst explained that IQ scores between 70 and 79 are considered in the borderline impaired range, between impaired and below average. Tr. at 946-947. Dr. Ernst testified that a diagnosis of intellectual disability must also account for “adaptive ability, or the ability to do basic everyday tasks.” *Id.* Dr. Ernst testified that Dr. Brown assessed the Student’s intellectual ability twice, the first time reporting a full-scale IQ of 62 (Tr. at 953), and the second time reporting a full-scale IQ of 89 (Tr. at 963), in the low average range, from a different assessment instrument.

323. Dr. Ernst explained that variability in test performance can be explained by a variety of factors, including engagement, behavioral regulation, emotions, medication, sleep, pain, or distractions. Tr. at 964. Dr. Ernst testified that he views “the highest scores as probably being the most valid indicators of what person’s abilities are” because “although you can perform under your maximum ability, you cannot perform significantly above your maximum ability.” Tr. at 965.

324. Dr. Ernst testified that it is essential in administering evaluations for autism that the administrator is well-known to the subject in order to rely upon the conclusions or diagnoses. Tr. at 971-972.

325. Dr. Ernst testified that he would be “quite hesitant to diagnose [the Student with] autism because I know that there is a substantial neurodevelopmental disorder here that I would anticipate you are going to see some specific outcomes that could easily look like autism or other disorders as well.” Tr. at 979.

326. In reviewing the Respondent’s Evaluation of the Student from April 2024 (Ex. P-35), Dr. Ernst explained that differences between raters at home and school can be explained by “a difference of perspectives, but sometimes it means that there are environmental variables present in one environment and not the other.” Tr. at 982-983. Dr. Ernst testified that discrepant scores from home or school are a clinically-significant problem, because “with a brain-based disorder it should be present in multiple environments” indicating that environmental variables must be understood. Tr. at 983.

327. Dr. Ernst testified that, to reconcile the divergent diagnoses of autism, he would do his own evaluation, because “in the face of conflicting information you do your best to try to get clear, valid information or data.” Tr. at 988-990. Dr. Ernst testified that the diagnoses of autism should have been made in the context of differential diagnoses, “[b]ecause the outcome of ^[their] neurologic history can be so similar to what you maybe think of as autism . . .”, and that the Student presents with an atypical, “muted version” of autism that could be caused by ^[their] neurologic history. Tr. at 990-992.

328. Dr. Ernst testified that Dr. Brown’s evaluation of autism was not limited to the ADOS-2 but included clinical observations, evaluation of the Student’s adaptive ability, and behavioral functioning. Tr. at 955-958. Although Dr. Brown did not diagnose the Student with autism, Dr. Ernst agreed with her that the Student exhibits some of the behaviors of individuals who do have autism. Tr. at 960.

329. Dr. Ernst testified that PDA is a theoretical construct, not a diagnosis, it is subject to debate in the autism community, and may be “just a description of certain behavior.” Tr. at 992. He testified that PDA is “an

unstable characterization because even those within the PDA world, there is variability of what they consider – what they think of as PDA.” Tr. at 993.

330. Dr. Ernst testified that there are no data or studies to support treatment for individuals with the cluster of symptoms seen as PDA with a low-demand, no-pressure approach. Tr. at 995-996.

331. Dr. Ernst was concerned that the low-demand approach is not just inconsistent with but “the opposite of” the “tons of data” from research showing that what works for individuals with frontal lobe impairment is “much more support, consistency, routine, structure.” Tr. at 996-997. “So with the low-demand approach, I said, with bringing that into the forefront of interventions, that would effectively stop a lot of things that just, say, are important with kids in general, but especially anybody with executive functioning, frontal lobe problems. So less structure, less routine, all those sorts of things.” Tr. at 997. When that approach began to be deployed in 2023, the Student’s attendance dropped from an average of 87% to 61%, down to a low of 1% last year. Tr. at 997. He testified:

And that outcome is what I would anticipate if we have somebody who has cognitive impairment who is a child, but who also has frontal dysfunction, if we kind of pull the rug out from underneath them and let them make decisions, we don’t give them structure, we don’t expect routine, those sorts of things, expect the wheels to fall off. In my – in my observations, I think that’s what happened.

Tr. at 998.

332. Dr. Ernst discussed ABA with the Student’s IEP Team, and ABA is “focused on how behavior works and how it’s influenced by environment. So the intervention is to introduce learning principles that can alter behaviors” by controlling the consequences or antecedents of behavior to “effectively alter behavior.” Tr. at 998-999. Dr. Ernst testified that ABA therapy would be particularly appropriate for the Student regardless of whether ^[Student] has Autism Spectrum Disorder to help facilitate “this learning behavioral modification.” Tr. at 1000. Opposition to the use of ABA therapy with the Student on the basis that it could be harmful is “terribly uninformed” because it is widely endorsed as “a safe and effective

way, the best way to improve adaptive ability and function of autism.” Tr. at 1001. “[I]n some ways it’s the most helpful intervention.” Tr. at 1002. Dr. Ernst attributed the opposition to ABA to “the PDA” group of Petitioner’s advisors. Tr. at 1002.

I am afraid, in my opinion, I think [Petitioner] has been misled and taken down a path to where – the school in particular, [the Student] was attending before the talk of PDA and the low-demand intervention. Things have gotten worse in that regard. But I think that she has adhered to it because, talking about behavioral principles, there has been a lot of behavioral reinforcement going on with this low-demand approach since it was instituted. So I think that – records show that [Petitioner] and [the Student] have struggled in a relationship a long way back. And I think that it took the pressure off when the low-demand approach was instituted so she didn’t have to – she felt a conviction to not force things on ^[them] and as a result the relationship got better. And so as I was just saying, like, you know, we train each other all the time and don’t realize it. So this would be form of like [the Student] using positive punishment on ^[their] mom. Right. She would ask ^[them] to do something, let’s go to school or whatever, ^[Student] would throw a fit, so ^[Student] is introducing a negative stimulus. And [Petitioner] didn’t like it. Right. Parents don’t like that when their kids act out that way. So one way to avoid that punishment is not asking anymore.

Tr. at 1003-1004. So, when Petitioner was instructed not to force the Student, there was less yelling and conflict, and she thought it was working. Tr. at 1004. And the Student also was reinforced when, by refusing to do something, ^[Student] “gained access to staying in bed, gained access to playing video games, gained access to snacks all day at home, just being able to stay home.” *Id.* “[T]he situations were right for ^[them] to learn quickly, if I just say no, I get all this stuff that I want.” *Id.*

333. Dr. Ernst testified that Petitioner should not be expected to know better, “but I think what was recommended as a therapeutic approach was reinforcing to her and for [the Student]. The downside of that – it’s

great to get a better relationship, that's great, but the downside of that in particular importance to why we are here today, is school attendance has fallen apart. Gone from an average of somewhere around 86 percent or so to less than 1 percent." Tr. at 1005.

334. Dr. Ernst testified that the truancy proceedings likely placed significant stress on Petitioner and the Student, and that the prospect of removal from ^[their] home could explain the increase in the Student's absences. Tr. at 1024-1025.

335. Dr. Ernst testified that he offered to assist Respondent to establish an effective behavior support plan for the Student. Tr. at 1710-1711. Dr. Ernst also testified that he could have offered skills and interventions to Respondent to support the Student. Tr. at 1720. Dr. Ernst also testified that Petitioner seemed open to his presence and his input. Tr. at 1729. He confirmed that Respondent never asked him to provide any services to it or to Petitioner. Tr. at 1720. Dr. Ernst testified that the best way forward was to retain a provider to observe the Student in the school and in the home. Tr. at 1740-1741. Dr. Ernst testified that "for any behavioral plan to be effective everybody has to be on board and working together." Tr. at 1746. "There has to be clear communication, and it has to be conducted consistently." Tr. at 1746.

336. Dr. Ernst could not identify any specific reasons why the Student refuses to attend school, and testified "the reason for that is that sometimes ^[Student] doesn't want to go to school, the reasons in totality are unknown, but then ^[Student] – there aren't any consequences for ^[them] not going." Tr. at 1037.

[F]or ^[them] it's okay, you know, ^[Student] doesn't – ^[Student] doesn't have any guilt or much guilt for not going or doesn't feel like ^[Student] is missing out on much. But then also too, there aren't maybe the environmental factors that should be there that we would institute in a behavioral program, which sometimes is just a showering of reinforcement and praise, I'm so proud of you for going to school today. And maybe that's happening or maybe not. I'm just saying that I think that all the environmental factors that could reinforce ^[their] school attendance are not there. And I say that because I have not seen any sort of plan that I would look at and, yeah,

this is good, this is comprehensive, this is really, really reinforcing^[them] to go and to want^[them] to avoid not going.

Tr. at 1038.

337. Dr. Ernst recommended using anything the Student finds meaningful as reinforcement to avoid missing school by enriching the school environment and making access to reinforcers at home contingent on going to school. Tr. at 1039. He testified that “[Student] wants to do well, wants to be there, [Student] enjoys the interaction. The reinforcers are just things to help that motivation that ultimately you want a person to do well, to want to do the right thing.” *Id.*

338. Dr. Ernst could not identify any additional supports or services that Respondent could offer that it has not yet offered. Tr. at 1040. “But the school environment is only part of it. The other part is the home environment and I’m not – I’m not placing blame. I’m just saying factually that most certainly the home environment is a big part of this and the school has no control. I guess, to my understanding, there has been some extension of effort to try for school personnel to be able to work with [the Student] and [Petitioner] in their home, but that has not been acceptable to [Petitioner].” *Id.*

339. Dr. Ernst recommended designing “a behavioral plan that makes sense, you know, that’s comprehensive, that is addressing – addressing the function of the behavior. So again, understanding why is specifically avoiding school, create a plan around that that’s individualized.” Tr. at 1041. He testified that he did not see a specific behavioral plan “that’s been instituted and carried out in the home with any consistency” and attributed that to the Student’s private providers being “proponents of the low-demand approach, which is kind of the opposite of a structure[ed] behavioral plan.” Tr. at 1042.

340. Dr. Ernst could not identify the existence of a behavior improvement plan from Respondent to address contingency control in the Student’s home, and that “it’s essential that somebody who understands behavioral modification, that they observe what is going on there.” Tr. at 1045.

341. Ms. Hawkinson testified that she was mostly concerned that Mother needed some training, not that Mother was being neglectful. Tr. pp. 1868-1869. Ms. Hawkinson was aware that Dr. Ernst offered his assistance in helping her develop a behavior support plan. Tr. p. 1879. But she never made the connection with Dr. Ernst to get his input. Tr. p. 1880. Ms. Hawkinson admitted that if Dr. Ernst had opinions about intellectual disability that that would have been useful information for the IEP Team. Tr. p. 1885.

342. Respondent issued a PWN dated December 13, 2024, denying Petitioner's request for an IEP Team meeting to discuss her November objections and responded to some of the objections, noting the Student had received eight unexcused absences since implementation of the hybrid plan. Ex. R-15.

343. On January 7, 2025, Respondent issued a PWN to disenroll the Student due to absences from school of ten or more consecutive days on the basis that no medical documentation supported homebound instruction or a determination that ^[their] absences were disability-related. Ex. R-16.

344. Respondent's data reflect the Student's attendance. Ex. P-55. From August 20 through September 16, 2024, before Petitioner implemented the no-pressure, low-demand approach, the Student attended seven of fifteen possible school days (47%) and accessed 2,061 of 3,222 possible instructional minutes (64%). Ex. P-55 at 607.

345. From September 16 through November 26, 2024, after Petitioner implemented the no-pressure, low-demand approach, the Student attended five of forty possible school days (13%) and accessed 527 of 18,400 possible instructional minutes (3%). *Id.*

346. From December 2, 2024 through February 13, 2025, while the hybrid program was in place and Petitioner continued the no-pressure, low-demand approach, the Student attended four of thirty-eight possible school days (11%) and accessed 877 of 17,480 possible instructional minutes (5%). *Id.* at 608.

347. From November 2024 through February 2025, the Student accessed the Acellus platform for a total of two hours and three minutes

while at home and two hours and fifty-six minutes while at school. Ex. R-30.

348. On January 23, 2025, the Crook County Attorney initiated juvenile court educational neglect proceedings against Petitioner based on Respondent's referral for prosecution, based on the Student's absences from school from August 20, 2024 through January 23, 2025. Ex. P-105; Tr. at 1434:17-1436:24.

349. In early February, at the initial hearing, the juvenile court ordered the Student's IEP Team to meet, revise ^[their] IEP, and comply with the IEP. Tr. at 1435-38.

350. In accordance with that order, the IEP Team convened on February 18, 2025. Tr. at 1437:8–1438:5.

351. At the February 2025 IEP meeting, the Team discussed the potential use of ABA therapy, and Petitioner's private providers, including Dr. Wallis and Dr. Mullins, expressed opposition to the use of ABA with the Student. Ex. R-17; Tr. at 155:21–24, and 2039:13–2042:14.

352. Dr. Wallis specifically stated that he categorically recommended against the use of ABA therapy with Student. Ex. R-17; Tr. at 2040:3–8.

353. In light of the opposition from Petitioner's private providers in attendance at the IEP Team meeting to ABA therapy, ABA services were never proposed to be provided to the Student by Respondent.

354. At the time of the February 18, 2025 IEP meeting, the Student had attended nineteen out of ninety-three possible school days (20%), only two of which were full days. Ex. P-55 at 607. Of the 42,780 possible instructional minutes, the Student attended 3,565 minutes (8%). *Id.*

355. On February 18, 2025, the IEP Team, along with Drs. Mullins, Wallis, and Ernst, Mr. Morris, representatives from the county attorney's office and guardian ad litem, and counsel for the parties met for over seven hours and agreed to a Scaffolded Reintroduction Plan (SRP), including that the Student's adaptive PE teacher, whom ^[Student] trusted, would greet ^[them] each day upon arrival. Ex. R-17; Tr. at 1443:10–16.

356. The scaffolded reintroduction plan allowed the Student to arrive at the high school at any point during the school day, with attendance credited if ^[Student] remained for fifteen minutes. Ex. P-55 at 616. After the Student demonstrated mastery by attending for four consecutive days, the attendance benchmark increased in thirty-minute increments. *Id.*

357. Respondent issued a PWN on February 24, 2025, outlining the changes made to Student's IEP at the February 2025 meeting, including specialized instruction and related services, removing parent counseling and training on school avoidance but proposing training in executive functioning and the Safe and Sound program, including a counseling goal to focus on emotional regulation and coping strategies, changing the Student's placement to the high school, removing after school instruction, removing the school avoidance intervention plan, removing the hybrid program, removing the use of an Oura ring, proposing coordination consultations between Petitioner, Respondent and the Student's private providers, rejecting a residential placement, concluding that a behavior intervention plan was not necessary, and proposing implementation of the SRP. Ex. P-56.

358. The PWN explained that although the IEP Team discussed assigning a specific preferred adult to greet the Student upon arrival, the Team could not reliably identify a single individual, the flexible arrival schedule made such assignment infeasible, and the Team agreed the Student needed opportunities to build trust with multiple staff members. *Id.* at 645.

359. Instead, the accompanying IEP provided that upon arrival, the Student could identify a preferred adult, and Respondent would facilitate ^[their] check-in with that individual. Exs. P-55 and P-56.

360. Petitioner testified that the PWN information was different than what was agreed on by the IEP Team, which was that a designated staff person would meet the Student upon ^[their] arrival at school. Tr. at 485.

361. Between March 17 and May 20, 2025, upon the Student's arrival at school, ^[Student] would walk in without a greeting, check in with front desk personnel, make ^[their] way to ^[their] locker, then meet Ms. Hawkinson or Ms. Vicki Schommer, the same paraprofessional who physically restrained Student multiple times in the first grade and who pulled ^[their] desk away on

August 20, 2025 when ^[Student] fell asleep; this data was not discussed by the IEP Team on May 22, 2025. Exs. R-23 and 24; Tr. at 880-884.

362. On implementation of the SRP, between March 3 and May 22, 2025, the Student attended school on 20 out of 47 days, or roughly 42% of the time, representing a significant increase of more than double the rate of prior attendance for the year (20%). Exs. P-55 at 607, P-57, and R-23-24.

363. Respondent maintained a daily log documenting implementation of the SRP and tracking the Student's alertness and tolerance within the school environment. Ex. R-24.

364. The Student successfully progressed from the fifteen-minute attendance benchmark to the forty-five-minute benchmark but did not progress beyond the forty-five-minute benchmark. *Id.*; Tr. at 1445:6–14.

365. On March 18, 2025, the Student progressed from the fifteen-minute attendance benchmark to the forty-five-minute benchmark. Ex. R-24; Tr. at 1445:6–11.

366. The Student remained at the forty-five-minute benchmark through the next IEP Team meeting on May 22, 2025. *Id.*

367. On April 4, 2025, Petitioner filed a second education complaint with WDE alleging that Respondent improperly disclosed the Student's confidential special education records to the County Attorney's office without her consent or a valid court order, and WDE agreed this violated FERPA and the IDEA in a Decision dated June 3, 2025. Ex. P-88.

368. On April 18, 2025, following a bench trial and testimony from Petitioner, Ms. Hawkinson, and Principal Wiegel, the juvenile court adjudicated Petitioner as "neglectful due to not getting her son to school as needed." Ex. P-105.

369. On or about April 24, 2025, Petitioner requested that Respondent provide the Student a student mentor to help ^[them] feel safe going to school but Respondent refused her request. Ex. R-18.

370. On or about May 8, 2025, Petitioner requested that Respondent provide the Student asynchronous, in-community learning but Respondent refused her request. Ex. P-19.

371. In April 2025, the juvenile court entered an order requiring compliance with an IEP or an order issued by a Hearing Officer. Ex. P-106; Tr. at 1963:1–7.

372. The IEP Team convened again on May 22, 2025, and Petitioner attended the meeting. Tr. at 1985:7–12.

373. Respondent's data indicate that, from February 2025 through May 2025, the Student accessed the Acellus platform for a total of seventeen minutes while at home and one hundred thirty-nine minutes while at school. Ex. R-30.

374. From March 3, 2025, the start of the SRP, through May 20, 2025, the Student attended school on twenty of forty-seven possible school days (43%) and was present for 912 of 20,774 possible instructional minutes (4%). Ex. P-57 at 660.

375. For the 2024–2025 school year through the May 22, 2025 IEP meeting, the Student attended school on thirty-nine of one hundred forty possible school days (28%) and was present for 4,477 of 63,554 possible instructional minutes (7%). Ex. P-57 at 660.

376. During the 2024–2025 school year through the May 22, 2025 IEP meeting, the Student attended one full school day, compared to twenty-seven full school days during the 2023–2024 school year. Ex. P-57 at 660.

377. Respondent invited representatives from three different residential programs to the May 2025 IEP Team meeting to present information regarding their programs and to provide the Team an opportunity for questions and input. Tr. at 1454:25–1455:16.

378. At the May 2025 IEP Team meeting, the Team did not discuss ABA therapy or GATEway as a service provider, and no alternative education plan developed by Ms. Waldie and Mr. Morris was presented for consideration. Tr. at 1458:6–9.

379. At the May 2025 IEP Team meeting, Respondent recommended residential placement to address Student's educational and attendance needs. Tr. at 1458:24–1459:2.

380. Other than the May 22, 2025, IEP Team meeting where representatives of three residential programs provided “a little bit of information about their facility,” no IEP Team discussions regarding NFA or its ability to meet the Student's unique needs that cannot be met in ^[their] own community occurred, and Petitioner testified that ^[their] IEP Team did not discuss the potentially negative effects on the Student from such a placement. Ex. P. 105; Tr. at 95:13-23, 97:5-14, and 451:18-20.

381. In support of the residential placement recommendation, Dr. Ernst testified, “because this has gone on for so long, we are at the point where a significant change needs to happen, and residential placement is probably the only way to bring about that degree of change if Student is to have access to an adequate education.” Tr. at 1752:10–15.

382. Dr. Ernst testified that legal proceedings to place the Student in residential treatment could have an emotional impact on ^[them] Tr. at 1033. “But it seems to be the last resort to do what is best for [the Student] not just for getting adequate education, but for access to peers, for normal social development, and being able to function in society, being able to – at some point in ^[their] life ^[Student] has to be able to follow instructions and do things that are necessary.” *Id.* Dr. Ernst testified that, considering the risks and costs of negative emotional impacts on the Student, residential placement is “the lesser of the evils, so to speak, and it's necessary to get ^[them] moving forward in the right direction again.” *Id.*

383. At the May 2025 IEP Team meeting, Petitioner requested community tutoring, attendance at the high school for preferred activities, and wrap-around support to get the Student to school. Ex. P-58 at 691. Respondent rejected those options “because the data and history do not support the utility of these supports and placements in meeting [the Student]'s needs,” because Petitioner “repeatedly expressed her hostility to allowing any outsiders into her home, articulating concern that having someone other than herself and [the Student] in the home, would render the home no longer a ‘safe space’ for [the Student],” and on the basis that

such a placement would not provide the least restrictive environment for the Student. *Id.*

384. Respondent issued a PWN on May 28, 2025, proposing to change the Student's placement to a therapeutic residential program in order to "provide consistent support and access to services," "access to peers and experience appropriate socialization," develop strategies and methods for addressing ^[their] attendance barriers," and "assist [the Student] in building the necessary skill set to attend school regularly." Ex. P-58. The PWN indicated that implementation was scheduled to begin on August 4, 2025. *Id.* at 691.

385. The PWN reported that Petitioner was "prosecuted for truancy and was found responsible for educational neglect under the Child Protection Act on April 18, 2025." *Id.*

386. The accompanying proposed IEP reflected that it was developed in an IEP Team meeting on February 18, 2025, but contained some updated information from May. Ex. P-57. Notably, none of the goals or services changed significantly despite the change of placement to an unidentified "residential program," including no increase or change to parent counseling and training (proposed the same content as before with one session every 34 weeks), or any increase or change to individual or group counseling services for the Student (proposed the same content as before with thirty minutes of each per week). This maintenance of the same goals and supports is inconsistent with the intensity of those services typically available in residential treatment programs that could have provided some justification for such a placement. *Id.* at 674; and P-55 at 626.

387. The Amended February 18, 2025, IEP indicates that "the IEP team determined" that the Student will suffer more harm by remaining in ^[their] home, community, and school district than any potential harm associated with a residential school placement. Ex. P-57 at 682. This is inconsistent with the undisputed evidence that Petitioner disagreed with that conclusion, when she is a required member of the Student's IEP Team.

388. On July 22, 2025, Special Education Director Gill told the juvenile court multidisciplinary team that it was Respondent that chose NFA for the Student's placement. Ex. P-103

389. In June 2025, the Student attended Extended School Year when those services were offered at the high school as opposed to field trips, on seven of eleven possible days, at a rate of 64% attendance. Ex. P-79 at 824; Tr. at 313-15, 536, and 717-18.

390. On June 24, 2025, the Student had a “rough day” and was refusing to put ^[their] backpack and belongings in ^[their] locker. Ex. P-90; Tr. at 721. ^[Student] walked to the classroom and shut the door, slamming it open and closed when ^[their] teacher was watching but stopping once she left the area. Tr. at 721. The Student then laid on the floor on ^[their] stomach and engaged in conversations with ^[their] teacher and Ms. Gill who entered the classroom. *Id.* Ms. Gill told the Student she was going to the table and she would visit with ^[them] more if ^[Student] came to the table, and she and the teacher ignored ^[them] when ^[Student] did not move. Ex. P-90. The Student then began hitting the wall heater and yelling, and Ms. Gill raised her voice. *Id.*, Tr. at 722. Ms. Gill then took the Student’s backpack from ^[them] and put it on the table, and the Student got up, approached Ms. Gill and kicked her in the shin. *Id.* The teacher told the Student to stop but ^[Student] continued to kick and hit both the teacher and Ms. Gill. *Id.*

391. The Student then walked away and to the corner of the room, standing there for ten minutes, saying that they did not understand. Ex. P-90; Tr. at 723-724. Ms. Gill then sat with ^[them] and discussed what happened, and the Student said ^[Student] could not stop himself from trying to hit and kick, and said ^[Student] didn’t feel like ^[Student] was in the real world when ^[Student] was doing that. *Id.* When Ms. Gill said that we cannot hurt people, the Student said ^[Student] knew, and ^[Student] didn’t know why ^[Student] did it. *Id.*

392. The Student then said ^[Student] would like to get ^[their] computer and do work on Acellus, went and got a computer, sat at the table and did about twenty minutes of reading and twenty minutes of math work. Ex. P-90; Tr. at 723-724.

393. On July 28, 2025, Respondent emailed Petitioner to confirm that the Student’s residential placement would be at New Focus Academy (NFA), would begin on August 4, 2025, and outlined available transportation options. Ex. P-60.

394. NFA is located in Park City, Utah. Tr. at 787:4–9.

395. Ms. Hawkinson has personally visited the NFA program. Tr. at 784:12–19.

396. Ms. Hawkinson testified that NFA has “such a strong family component that addresses how a parent should work with each child, what that environment should like, and those kinds of things.” Tr. at 789:17–21.

397. Ms. Waldie communicated to Petitioner that NFA was highly regarded. Tr. at 1946:9–15.

398. Dr. Mullins communicated to Petitioner that NFA appeared to be an appropriate and effective option. Tr. at 1952:16–22.

399. NFA includes a specific programmatic focus on electronics use and on assisting students in developing healthier relationships with technology. Ex. P-108; Tr. at 2162:22–2164:10.

400. Mr. Morris and Ms. Waldie developed a document described as a “curriculum” that Petitioner asserted should be used to educate the Student. Ex. P-69.

401. Petitioner testified that this proposed curriculum should serve as an alternative to residential placement. Tr. at 683:8–14.

402. The proposed curriculum was developed in late July and early August 2025. Tr. at 667:4–7.

403. The proposed curriculum contained no baseline data, present levels of performance, measurable goals, progress-monitoring metrics or method for evaluating the plan’s effectiveness. Ex. P-69; Tr. at 222:12–226:7.

404. Petitioner did not present the proposed curriculum to Respondent or the Student’s IEP Team for review or consideration. Tr. at 664:18–20.

405. The Student’s fifth-grade teacher reviewed the proposed curriculum and testified that it did not reflect appropriate academic expectations for ^[them] stating that it did not “hold ^[them] to the expectation that

I know ^[Student] can do” and resembled activities more appropriate for informal settings than a school program. Tr. at 1162:23–1163:1.

406. Petitioner testified that she would not allow any person associated with the school to enter her home, stating that doing so would violate what she considered the Student’s “safe place.” Tr. at 77:25–78:4.

407. Petitioner further testified that she attempted to remove privileges when the Student did not attend school but discontinued doing so because she did not want to make the home environment “less desirable.” Tr. at 703:22–704:11.

408. Petitioner is opposed to the Student’s removal from ^[their] home and placement in a residential facility because of the trauma to the Student, damage to her relationship with ^[them] and the progress that had been made in revisions to ^[their] IEP. Tr. at 98:4-8, and 450. Petitioner testified that the Student has made progress with attending school. Tr. at 451. She testified that she was not a part of the decision to place the Student at New Focus Academy. Tr. at 451. Petitioner does not agree that placement in a residential program to address truancy is appropriate, especially since the Student has struggled to attend school consistently since kindergarten. Tr. at 454. When the Student had a trusted relationship with a teacher, ^[Student] wanted to go to school more often, and did so with fewer absences. Tr. at 454-455.

409. Petitioner testified that if the Student is ordered to go to a residential placement that ^[Student] would not go willingly and instead have to be forced to go, and that would detrimentally affect both the Student and their parent-child relationship. Tr. at 705-706.

410. Petitioner testified that she feared a residential placement would “make ^[them] worse and essentially ruin ^[them] for the rest of ^[their] life,” and “it will ruin my relationship with my son . . .” Tr. at 468. Petitioner testified that she wants the Student to go to school where she grew up and where she and her family went to school. Tr. at 469.

411. Petitioner testified that she wants the Student “to be happy and I want ^[them] to enjoy learning because ^[Student] truly does.” Tr. at 470. She testified that ^[Student] has told her for years that “the school doesn’t understand

me.” Tr. at 471. Petitioner testified that “I just want ^[them] to be understood and I want ^[them] to understand about himself too.” *Id.*

412. Dr. Lerew testified that she has a lot of background working with residential placements, was concerned that placement of the Student in a residential program was a “big jump” from “being at home to being in a residential[.]” Tr. at 410-411. Dr. Lerew testified that the Student “wouldn’t understand, especially if you add in that low cognitive piece, what is happening.” Tr. at 412. She testified that other children with autism whom she has worked have been traumatized even by short-term hospitalization, where they “come out and they are extremely traumatized, they don’t understand what happened, they think they did something wrong and they don’t understand what the purpose was.” Tr. at 412. Dr. Lerew testified that, with ^[their] low cognitive ability, the Student was not going to understand a change to a residential placement. Tr. at 412. Dr. Lerew testified that people often don’t think about the difficulty in transitioning back from long-term residential placements with extremely restrictive environments and trying to return to a traditional school setting. Tr. at 412-413. Dr. Lerew recommended a less restrictive placement closer to the Student’s home. Tr. at 414. Dr. Lerew also recommended that Respondent “try some more things between what they have tried and the residential, in between to see if there are more we can do before ^[Student] gets that one just because I feel like it is extreme.” Tr. at 415.

413. Dr. Wallis testified that a residential placement for the Student would only be appropriate after a lot of effort with other services and supports, including wraparound services like respite services, robust in-school supports, individual therapy, group therapy, social skills training, parent training, and safety protocols “because this is a young man in distress and ^[Student] doesn’t know how to manage ^[their] distress except in – by pursuing some of ^[their] restricted interests. So really, really robust wraparound supports that are flexible and provided by expert practitioners.” Tr. at 136-137:14-5, and Tr. at 139:14-19. Dr. Wallis recommended parent training to address parenting skills “having someone work with [Petitioner] on how to handle refusal behaviors, how to communicate, how to set boundaries.” Tr. at 152:18-22. Dr. Wallis testified that the Student needs “support in the home as well as transitioning out of the home to school and back home from school to home.” Tr. at 147:10-12. And Dr. Wallis recommended providing the Student with a peer ally . . . [to] stay connected to ^[their] peers . . .” as well as twenty hours of behavioral support a week

despite his “cautious thoughts on ABA”. Tr. at 137:13-16, 137:19-24, and 138:2-7.

414. Dr. Wallis testified that Student has a “low processing speed,” so it is not that ^[Student] is incapable of many things, but ^[Student] will struggle with multitasking, and hit saturation when demands are too high, or come too quickly compared to a neurotypical child. Tr. at 163-164.

415. Dr. Mullins opposed a residential placement for the Student and testified about her concern that Respondent made an expedited decision. Tr. at 317. On July 18, 2025, Dr. Mullins wrote a letter regarding her disagreement with Respondent’s proposal to place the Student in a residential program. Ex. P-79.

416. Dr. Mullins recommended that another, less restrictive option should be tried first. Tr. at 318. Dr. Mullins was also concerned that residential placement was being considered even though the Student did not exhibit aggression either in school or at home that would rise to the level to require residential placement. Tr. at 321-322.

417. Mr. Morris was also opposed to placing the Student in a residential program. Ex. P-68 at 718-720; Tr. pp. 194-195.

418. Ms. Waldie was also opposed to placing the Student in a residential program, testifying that the recommendation was based on a need for “consistency” rather than what she has seen to justify residential placement only when there was violence, aggression or a “disability so severe that even disability-related services can’t assist them.” Tr. at 644.

419. Petitioner testified that, on or around July 17, 2025, she called NFA and was told they were not expecting the Student, that they had not begun new client process, they had no communication from Respondent about ^[their] enrollment except they were provided with the Student’s IEP. Tr. at 481. New Focus Academy is an autism support center located in Heber City, Utah, roughly 800 miles’ drive from Sundance, Wyoming. *Id.*

420. Through the summer of 2025, the Department of Family Services referred Petitioner to a variety of resources to help the family, including GATEway Autism therapies, that provides ABA therapy and interventions to help autistic children. Ex, P-105 at 1134.

421. In a letter dated July 21, 2025, Dr. Mullins referred the Student for ABA services with GATEway Autism Therapies and Education in Gillette, WY. Ex. P-70. Dr. Mullins testified that she referred Student to GATEway because it would be helpful to the Student. Tr. at 324-325, and 370-371. She testified that “ABA therapy is regarded as a real . . . go to treatment for autism for several different reasons. It’s really efficacious in helping to build skills and to decrease problematic behavior.” Tr. at 324. Dr. Mullins testified that in-home ABA support would be appropriate before a residential placement for the Student.” Tr. at 325-326.

422. Petitioner initiated the intake process at GATEWAY through her insurance, and an evaluation was completed on July 31, 2025. Ex. P-71.

423. On August 6, 2025, after this proceeding was initiated, the juvenile court held a review hearing in the truancy matter and entered an order requiring compliance with the Student’s IEP or any order from a hearing officer. Ex. P-106.

424. Erica Harvey, BCBA, completed the initial evaluation including an FBA, and testified that the Student would “perseverate on preferred topic” and had “no reciprocal social communication.” Tr. at 567.

425. Ms. Harvey determined that the Student qualified for ABA therapy. Tr. at 567. She testified that GATEway was able to provide services in the home, school, and community to help with the Student’s behaviors, including developing a behavior intervention plan to help increase^[their] engagement with education. *Id.* She testified that GATEway would develop a plan to “teach a replacement behavior in order to decrease those avoidance or escape behaviors” if a child was resistant to participating in services. Tr. at 573-574.

426. GATEway services developed an initial treatment plan for the Student that included parent involvement and training. Ex. P-71 at 763; Tr. at 569-570. Goals for parents require implementation of all treatment goals, keeping scheduled therapy appointments, collecting behavior data, and effectively communicating any client or parent training needs to the BCBA. Tr. at 570. For the Student, part of the transition planning requires training for Petitioner. Ex. P-71 at 764; Tr. at 570. GATEway does not provide educational or academic services through a commercial insurance

plan. Tr. at 570-571. GATEway's model is to bill through insurance, and a clinical diagnosis is required. Tr. at 571.

427. The GATEway plan recommended parent training, coordination of care with school and other providers, and direct therapy to the Student from a Registered Behavior Technician under the supervision of a BCBA for twenty hours per week of in-clinic²⁹ ABA services. Ex. 71.

428. GATEway does not provide general or special education services. Tr. at 489:10–490:3.

429. Dr. Tonia Ryan, the founder and owner of GATEway, testified that they offer medical ABA therapy, as well as ABA as a related service on an IEP. Tr. at 586. She testified that the program could accommodate the Student's need to address a history of chronic and persistent school refusal. Tr. at 599. When a student does not go to school, program staff go to the home to work with the child. Tr. at 596, and 599. Dr. Ryan testified that program length may last two and half years. Tr. at 598. Dr. Ryan testified that the program's services would be very beneficial to the Student, and if they could work with ^[them] for two to three years, ^[Student] could meet goals and criteria before ^[Student] exited the school district. Tr. at 598 and 601. Dr. Ryan was confident the GATEway program could work well with the Student on chronic school refusal. Tr. at 599-600.

430. No staff or administration of Respondent ever identified to Petitioner the existence of GATEway services, and no information or referral was made, even after its expert, Dr. Ernst, recommended ABA therapy for the Student. Ex. P-177; Tr. at 1666-1676.

431. Dr. Mullins testified that if the Student received ABA services at the level recommended by GATEway, she would expect ^[them] to demonstrate measurable progress within three to four weeks. Tr. at 326:3–9.

432. GATEway did not provide any services to the Student from the date of its July 31, 2025 report through the conclusion of the first week of hearing. Tr. at 490:15–17, and 587:10–25.

²⁹ GATEway later changed its clinic age policy, resulting in the Student no longer being eligible to receive in-clinic services. Tr. at 583:21–25.

433. Petitioner testified that GATEway services did not begin because GATEway had been subpoenaed in the due process matter. Tr. at 490:18-21.

434. GATEway CEO Dr. Tonia Ryan testified that services did not begin due to concerns regarding continuity of care. Tr. at 587:11–20.

435. GATEway BCBA Erica Harvey testified that services did not begin due to a lack of private insurance authorization. Tr. at 576:10–12.

436. On September 26, 2025, the final day of in-person testimony, the parties agreed to an immediate interim change in the Student's program to include twenty hours per week of in-home ABA services and forty-five minutes of home-based, in-person academic instruction pending issuance of the final decision in order to avoid the need for residential placement. Tr. at 1231:12–23.

437. On September 28, 2025, the Hearing Officer ordered implementation of the parties' stipulated interim change in the Student's placement, including that the parties cooperate to share information, and ordered that the cost of the GATEway component of the program would be covered by Petitioner's insurance so long as there was no cost to her, but that Respondent would cover the cost of the program if insurance was unavailable.

438. GATEway conducted its first session with the Student on October 6, 2025. Ex. R-48; Tr. at 2101:3–4.

439. GATEway services were delivered by a registered behavior technician, with BCBA consultative support provided via telehealth. Tr. at 2183:15–2184:3.

440. Respondent's personnel did not enter the Student's home to provide forty-five minutes of academic instruction due to^[their] resistance to their entry until November 3, 2025. Ex. R-50 at 22; Tr. vol. VIII, 2117:20–2122:19.

441. Petitioner testified that she believed she needed to protect the Student during a period when ^[Student] did not want anyone entering the home. Tr. at 2119:5–7.

442. GATEway CEO Dr. Tonia Ryan testified that the Student made “very minimal” progress with GATEway services and that the home setting was not “the right fit” for the Student. Tr. at 2149:9-25.

443. GATEway data showed that the Student successfully requested a break twenty percent of the time, requested help twenty-three percent of the time, identified ^[their] birthday nine percent of the time, transitioned from preferred to non-preferred activities twelve percent of the time and responded with ^[their] address zero percent of the time. Ex. R-51.

444. Dr. Ryan testified that for the Student to be successful, all reinforcement through technology and gaming systems would need to be removed but that Petitioner had not been told to do so or supported to do so. Tr. at 2149:18–2150:6.

445. Respondent assumed responsibility for payment of GATEway services beginning on December 8, 2025. Tr. at 2201:12–21.

446. Respondent’s Special Education Director, Shelby Gill, attended all in-home GATEway sessions until the criminal background check required of all public school contractors by Wyoming law could be completed for the registered behavior technician who was serving the Student in ^[their] home. Tr. at 2201:22–2202:5.

447. Ms. Gill documented her observations during the in-home GATEway sessions. Ex. R-49.

448. Ms. Gill’s observations during five days of in-home ABA services showed that the Student spent seventy-two minutes conversing, two hundred thirty-nine minutes playing video games or using a phone, seventy-four minutes playing with toys or Legos, three hundred nineteen minutes in the bathroom, four hundred thirty-seven minutes watching YouTube or television and ninety-four minutes sleeping. Ex. R-52. Director Gill testified that when the Student went to the bathroom, ^[Student] often took ^[their] phone with ^[them] Tr. at 2239:4–14.

449. Respondent's Principal James O'Connor, worked to provide the Student with forty-five minutes of academic instruction during the interim program. Ex. R-50.

450. Mr. O'Connor testified that the Student was frequently distracted by electronics and other items within the home environment during ^[their] visits. Tr. at 2276:24–2277:13.

451. Mr. O'Connor testified that ^[Student] thinks the Student requires a placement that limits distractions and that residential placement could provide such an environment. Tr. at 2279:22–2280:3.

452. Respondent's Principal, Robert Wiegel, also provided academic services to the Student during the interim program. Ex. R-50; Tr. at 1818:11–18.

453. Mr. Wiegel began assisting with services in order to replace a female teacher who was previously assigned, in response to the Student appearing unclothed at home during academic service time. Tr. at 1824:11–1825:12.

454. Adaptive physical education teacher Haylee Tetrault also provided academic services to the Student during the interim program. Ex. R-50; Tr. at 2282:9–12.

455. Ms. Tetrault testified that based on her experience providing interim services, she supported residential placement for the Student and believed the interim program was not providing ^[them] with a free appropriate public education. Tr. at 2288:24–2289:25.

456. Ms. Tetrault testified that “[Student] has a lot of strengths and can pull from a lot of things and I just think ^[Student] deserves more than that. I think ^[Student] deserves to be in a place with peers and where ^[Student] can receive all the services we have identified on ^[their] IEP.” Tr. at 2289:18–25.

457. Any fact in the conclusions and analysis below that is material and not reflected in the findings of fact above is hereby adopted as a finding of fact.

CONCLUSIONS OF LAW AND ANALYSIS

1. The Wyoming Department of Education through its appointed Hearing Officer has jurisdiction over the parties and the subject matter disputing the provision of a free appropriate public education (FAPE) to the Student under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. § 1415(f)(1)(A).

2. All claims at issue were brought within the IDEA's statute of limitations as agreed by the parties. 20 U.S.C. §§ 1415(b)(6)(B) and (f)(3)(C).

3. The Hearing Officer Decision must be made on substantive grounds based on a determination of whether the child received a FAPE, including procedural inadequacies. 20 U.S.C. § 1415(f)(3)(E).

4. The burden of proof at hearing was on Petitioner, the party seeking relief. *Schaefer v. Weast*, 546 U.S. 49, 62 (2005)

5. The core of the IDEA is the cooperative process that it establishes between parents and schools. *Id.*, 546 U.S. at 53.

Issue 1 – Did the School District Improperly Fail to Identify Autism?

6. The IDEA requires reevaluations of students with disabilities if the school district determines that the “educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation,” or at parent or teacher request. 20 U.S.C. § 1414(a)(2)(A).

7. The IDEA requires that reevaluations ensure the child is assessed in all areas of suspected disability. 20 U.S.C. § 1414(b)(3)(B).

8. Respondent's March 24, 2023, reevaluation of the Student failed to assess^[them] for eligibility under the ASD category despite several indicators that should have led it to suspect ASD.

9. The Evaluation Report from Dr. Mullins date September 1, 2023, provided additional information to suspect ASD and warranted a re-evaluation that Respondent failed to provide.

10. Those failures led to the March 11, 2024 Complaint Decision from WDE that the Respondent failed to conduct a comprehensive evaluation of the Student and an order for corrective action to provide an autism assessment, among other actions.

11. Respondent's autism assessment, completed April 25, 2024, did not find the Student eligible under the ASD category, essentially on the basis that ^[Student] does not demonstrate significant impairments in communication, social skills or behaviors – the primary indicators of ASD – at school.

12. Eligibility for services is based on two prongs: the student must meet one or more of the disability categories, and the disability must adversely affect the student's performance. 20 U.S.C. § 1401(3)(A).

13. Federal regulations implementing the IDEA define the disability categories and provide, at 34 C.F.R. § 300.8(c)(1)(i).

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

14. The IDEA requires that evaluations "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent" to determine eligibility and needs. 20 U.S.C. § 1414(b)(2)(A).

15. Medical or clinical diagnoses provided by parents are only one factor to consider in making eligibility determinations. Here, there were two conflicting clinical evaluations of the Student at that time, one concluding

that ^[Student] did not have autism, and another concluding that ^[Student] did have autism.

16. The most prominent adverse effect of the Student's disabilities on ^[their] educational performance – whatever the diagnosis or eligibility category assigned - was ^[their] lack of consistent school attendance over ^[their] educational career that declined precipitously after Respondent's March 24, 2023 re-evaluation.

17. The most important consideration regarding classification of students with disabilities is the impact of classification on the provision of a FAPE to determine whether misclassification caused educational harm. An error in classification that does not include identification of an undisputed condition can result in an IEP that does not consider the student's full range of needs. *S.P. ex rel. Palcios v. East Whittier City Sch. Dist.*, 735 Fed. Appx. 320, 322 (9th Cir. 2018); and the failure to include a proper disability diagnosis does not automatically invalidate an IEP, especially if the student is provided a FAPE. *Fort Osage R-1 Sch. Dist. v. Sims*, 641 F.3d 996, 1004 (8th Cir. 2011). The IDEA "charges a school with the responsibility of developing an appropriate education, not coming up with a proper label." *Heather S. v. Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997).

18. The Student's complex neurological conditions caused communication, social, and behavioral symptoms in all environments, but it is understandable that Respondent did not identify them as resulting from autism. This is true despite a clinical diagnosis from Dr. Mullins of autism that did not identify the impact of autism, as opposed to ^[their] other disabilities separately or in combination, on ^[their] educational performance, with the exception of ^[their] resistance to attend school regularly.

19. Since October 16, 2023, there was yet another clinical evaluation assigning diagnoses of autism from Dr. Wallis. That evaluation also did not identify the impact of autism, as opposed to ^[their] other disabilities separately or in combination, on ^[their] on educational performance other than school attendance. That additional diagnosis added more evidence that the Student has autism, but did not establish that ^[their] educational classification should be changed.

20. The significant effects from the Student's multiple areas of impaired abilities on ^[their] educational performance were clearly identified in

the record. However, Petitioner failed to prove that Respondent should have determined the Student had autism. Here there was no consensus on that diagnosis among ^[their] treating medical and mental health providers, and no evidence of the impact of autism on ^[their] educational performance when ^[Student] was at school.

21. Petitioner failed to prove that Respondent improperly failed to identify autism as an eligibility category under which the Student should be identified.

Issue 2 – Did the School District Provide the Student a FAPE after 10/16/23?

22. School districts provide a FAPE to students with disabilities when the procedural and substantive requirements of the IDEA are met. *Rowley v. Bd. of Educ.*, 458 U.S. 176, 207 (1982). “The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the method most suitable to the child’s needs, was left by the Act to state and local educational agencies *in cooperation with the parents or guardian of the child.*” *Id.* (emphasis added).

23. A “failure to meet [either] one of these considerations may result in court ordered relief.” *Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 520 F.3d 1116, 1125 (10th Cir. 2008).

24. The IDEA guarantees a substantively adequate program of education to all eligible children, and the FAPE obligation is satisfied if the IEP is “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 207.

25. Here, there were both procedural and substantive violations of the IDEA’s requirements.

26. A FAPE is defined in the IDEA to include both “special education” or “specially designed instruction,” and “related services,” or support services required to assist a child to benefit from that instruction. *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist.*, 580 U.S. 386, 390 (2017); 20 U.S.C. § 1401(9), (26), and (29).

27. The IDEA defines related services as “transportation, and such developmental, corrective, and other supportive services (including . . . psychological services . . . social work services . . . [and] counseling services . . . as may be required to assist a child with a disability to benefit from special education. . . .” 20 U.S.C. § 1401(26)(A). The scope of the IDEA’s definition of “related services” “is relatively broad.” *Jefferson County Sch. Dist. R-1 v. Elizabeth E.*, 702 F.3d 1227, 1236 (10th Cir. 2012).

28. The IDEA requires the provision of related services so that children can benefit from specialized instruction, up to and including continuous one-on-one nursing services if needed for the student to remain in school. *Cedar Rapids Comm’y Sch. Dist. v. Garret F.*, 526 U.S. 66, 79 (1999). Despite the financial burden to a school to provide supportive services needed by a student to stay in school, the IDEA contains no undue burden exemption based on the cost of the requested services. *Id.* at 77. The related services provision of the IDEA assures meaningful access to and integration into the public schools for students with disabilities. *Id.* at 79.

29. This record leaves no doubt that the Student here requires related services of expert behavioral support to have meaningful access to and re-integration into the public schools, as well as access to effective specialized instruction. The provision of ABA therapy to the Student is a necessary related service because without it ^[Student] has been unable to benefit from ^[their] special education.

30. To meet its substantive obligations under the IDEA, a school must offer an IEP “tailored to the unique needs” of a particular child. *Andrew F.*, 580 U.S. at 391, quoting *Rowley*, *supra* at 181.

31. The IEP must describe “how the child’s disability affects the child’s involvement and progress in the general education curriculum.” *Andrew F.*, 580 U.S. at 391, quoting 20 U.S.C. §§ 1414(d)(1)(A)(i).

32. Without a sufficient understanding of the Student’s disabilities and how they impact ^[their] involvement and progress at school, ^[their] IEPs failed to provide this foundational requirement.

33. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress

appropriate in light of the child's circumstances." *Endrew F.*, 580 U.S. at 399. "The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.*

34. "An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* at 400.

35. If progressing smoothly through the regular curriculum is not a reasonable prospect for a child, "then ^[their] IEP need not aim for grade-level advancement. But ^[their] educational program must be appropriately ambitious in light of ^[their] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* at 402. The Student's IEPs have missed this mark.

36. "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." *Id.* at 402-403. Sadly, that is the state of the Student's education on this record.

37. The Student here has not been provided an ambitious educational program or the chance to meet challenging objectives. This is because the Respondent's evaluation of ^[their] disabilities and educational needs failed to uncover how the constellation of significant disabilities impacts ^[their] education. Without that understanding ^[their] IEP Team could not and did not develop an effective IEP to keep ^[them] engaged in ^[their] education. The record reflects that ^[Student] has failed to make any kind of measurable or meaningful progress over the past two years and ^[their] skills have regressed. This record presents a clear picture of a child who has been denied a FAPE.

38. *Endrew F.* was a student with autism whose academic and functional progress in school had stalled primarily due to ^[their] behavior, who was removed by ^[their] parents to a private school for students with autism. *Endrew F.*, 580 U.S. at 395. At ^[their] new school he did better because "the school developed a 'behavioral intervention plan' that identified *Endrew's* most problematic behaviors and set out particular strategies for addressing

them.” *Id.* at 395-396. “Within months, Andrew’s behavior improved significantly, permitting him to make a degree of academic progress that had eluded him in public school.” *Id.* at 396. This outcome must be attained for the Student so that ^[Student] can begin to receive a FAPE.

39. Here, the development of a behavior intervention plan that identifies the Student’s most problematic behavior – refusing to attend school - and that sets out particular strategies for addressing them is precisely what ^[Student] desperately needs most and what ^[Student] has needed over the past two years.

40. On and after October 16, 2023, the Student needed improvement in academic and functional performance because ^[their] school attendance consistently decreased over the next two calendar years to the point where ^[Student] was essentially not attending school at all. When the Student has not attended school with increasing frequency, ^[their] academic and functional performance naturally and unavoidably stalled and regressed.

41. The evidence in the record demonstrates that the Student has learned almost nothing over the last two years except how to stay at home.

42. Respondent should have but did not offer to reevaluate the Student when conditions warranted reevaluation.

43. When Petitioner requested the provision of an independent educational evaluation after expressing disagreement with Respondent’s April 25, 2024, Evaluation Report, rather than cooperate to provide one, Respondent initiated a due process hearing to defend the disputed evaluation. This was a missed opportunity to realign the parties towards a shared objective through an independent source. Most important, this was an important but foregone chance to determine a course of action to help the Student re-engage in education. Providing an IEE at public expense would have presented a real opportunity to finally understand the function of the Student’s school refusal behavior from a source other than the Student’s own limited conception and the incomplete FBA performed by Respondent.

44. Petitioner has not lost the right to complain about the appropriateness of Respondent’s April 25, 2024 Evaluation on the basis

that it was raised and then withdrawn in a prior due process hearing as Respondent asserts. Prior *litigation* forecloses successive litigation on the same claim under the theory of claim preclusion, and a prior judgment on an issue of fact or law “actually litigated and resolved in a valid court determination” forecloses successive litigation under the theory of issue preclusion. *Theodore v. Dist. of Columbia*, 772 F.Supp.2d 287, 293 (D.D.C. 2011)(citing *Hobby v. Hodges*, 215 F.2d 754, 759 (10th Cir. 1954).

45. Despite the directive from WDE on October 25, 2025, to determine whether the Student’s absences were disability related, Respondent never proposed to conduct an evaluation to make that determination, never provided an opportunity to get to the bottom of this most fundamental question, and it was a consistent source of discord between the parties.

46. A proper determination of the relationship between the Student’s disabilities and absences could have derailed the train toward a coercive and adversarial juvenile court truancy proceeding that drove the parties further apart while compounding the Student’s loss of access to and benefits from ^[their] education. School boards may exempt any child from compulsory attendance if it would be detrimental to the mental or physical health of the child and may designate a “medical doctor” to “guide it and support it in its decisions.” Wyo. Stat. § 21-4-102(a)(1).

47. The overwhelming evidence in the record supports the definite conclusion that the Student’s inconsistent school attendance was caused by or had a direct and substantial relationship to the broad array of significant disabilities, when considered in their totality, that impair ^[their] academic performance, executive functioning, social skills, emotional and behavioral regulation, adaptive functioning, and communication.³⁰

48. Had Respondent reevaluated the Student as ^[their] attendance continued to deteriorate, it would have had an additional opportunity to “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining . . . the content of the child’s

³⁰ This is the “manifestation determination” standard in the IDEA that requires a conclusion regarding the relationship between the behaviors of a student with disabilities and ^[their] violation of school rules, in order to respond with services that address unmet needs, rather than deploy disciplinary exclusion. 20 U.S.C. § 1415(k)(E)(1)(i).

individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum . . .” 20 U.S.C. § 1414(b)(2)(A)(ii).

49. The Respondent missed valuable opportunities over the past two years to “use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.” 20 U.S.C. § 1414(b)(2)(C).

50. Instead, Respondent insisted that the only reason the Student was not coming to school was that Petitioner could not deliver ^[them] Respondent refused to figure out why ^[Student] was not coming to school, refused to understand the multi-faceted influences on ^[their] school refusal, and fortified its efforts to have Petitioner prosecuted for educational neglect. That strategy drove the parties further apart, hampered any chance that they could actually collaborate to figure out the problem and the solution, and bred significant mistrust.

51. It is not surprising that Petitioner was less than cooperative in the effort to further evaluate the conditions in her home once Respondent came to the firm conclusion that her parenting failures were the cause of the Student’s school refusal and actively pursued a course of action to punish her for its own failures.

52. That natural reaction to the threat of neglect prosecution was compounded by the unfortunate urgings of her educational advocates to implement and try to convince Respondent to apply a no-pressure, low-demand approach from the land of PDA. PDA is, at most, a theoretical and untested construct. Schools are not required to adopt a parent’s preferred methodology where the evidence shows it is ineffective or inconsistent with the student’s needs. *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011).

53. The dynamic created between the parties has eclipsed the cooperative problem-solving process that could have, and should have, arrested the developing pattern of the Student’s non-attendance before it fell off entirely. Those developments took the IEP Team process entirely off course in a manner that is antithetical to the spirit and structure of the IDEA. The Student and ^[their] needs have been lost while each party has tried unsuccessfully to convince the other party they are wrong.

54. This is not a case where Respondent failed to implement an effective IEP, even considering Petitioner's reluctance to cooperate after truancy proceedings ramped up, because in this case there was not a substantively adequate or effective IEP developed for the Student. *Cf., L.J. by N.N.J. v. Sch. Bd. of Broward County*, 927 F.3d 1203, 1219 (11th Cir. 2013). "We emphasize that a child's absence from school neither relieves the school of its duties under the IDEA in context of alleged failure to implement an individualized education program (IEP) nor absolves the school from liability when it fails to satisfy those duties." *Id.* The Student's absences from school clearly explain ^[their] lack of progress. *See also, Platte Cnty. Sch. Dist.*, 123 LRP 29749 (SEA WY 2023)(lack of implementation of a substantively adequate IEP did not deny a FAPE when absences from school are undisputedly the reason for a student's lack of progress).

55. Respondent missed many more opportunities to salvage the Student's education and its relationship with Petitioner. Two of its experts, Joan Hawkinson and Dr. Ernst, as well as one of Petitioner's experts, Dr. Mullins, recommended ABA therapy as a related service to address ^[their] school refusal behaviors. Respondent ignored its own experts, and never proposed ABA therapy as a part of ^[their] IEP until the fifth day of hearing. No PWN reflects an offer from Respondent to provide ABA therapy to the Student.

56. Dr. Ernst recommended to Respondent that ^[Student] be retained to develop an effective behavior intervention plan and advised that Petitioner seemed willing to work with him. Again, Respondent ignored its own expert advice and did not even share or discuss that recommendation with Petitioner or the IEP Team.

57. Respondent also never proposed home-based instruction to maintain the Student's learning while ^[Student] was not coming to school, again until the fifth day of hearing. No PWN reflects an offer from Respondent to provide home-based instruction to the Student.

58. While there may have been some IEP Team discussion about ABA therapy and home-based instruction, the IDEA requires that parents are provided formal written notice prior to any change or refusal to change a student's IEP so they can give serious consideration to these serious matters. 20 U.S.C. § 1415(b)(3). Respondent never formally proposed to

include either ABA services or home-based instruction to the Student and Petitioner was not afforded a fair opportunity to seriously consider the important advantages they would have provided.

59. Procedural violations that cause the denial of a FAPE are remediable with compensatory education services. *Garcia, supra*, 520 F.3d at 1126.

60. Respondent's procedural violations – failing to reevaluate the Student when conditions warranted, and failing to propose to provide ABA services and home-based instruction to the Student, caused a denial of FAPE to the Student whose access to critical services was delayed, resulting in the lack of progress in improving ^[their] skills in all areas.

61. The Interim IEP to which the parties agreed on day five of the hearing that includes both ABA services and home-based instruction holds the best prospect to salvage the Student's education. It will likely also assist to realign the parties toward their shared objective to return the Student to school. With the development and evolution of a properly formulated FBA and behavior intervention plan, efforts can be focused on a shared understanding of the functions of ^[their] school refusal behaviors. Such a program, if implemented consistently and with open and transparent collaboration and information-sharing, is most likely to provide the Student a FAPE. While the Interim IEP has not yet shown significant progress, the Student's behaviors have become seriously entrenched over a long period of time and ^[Student] will require intensive efforts to continue and expand that program with modest expectations for progress to reverse ^[their] entrenched behaviors.

62. Respondent concedes in its closing Brief that "Student's primary educational barrier . . . has been ^[their] inconsistent and increasingly limited attendance." Brief at 13. And Respondent is not wrong to point to the many attempts it made to change up the Student's program. The problem is that those attempts were shots in the dark when the function of ^[their] most pressing problems were never adequately understood.

63. The IDEA requires placement in the least restrictive environment, with access to peers without disabilities, "to the maximum extent appropriate [to the child's needs]." 20 U.S.C. § 1412(a)(5)(A). The Tenth Circuit Court of Appeals has adopted the two-part *Daniel R.R.* test to

determine violations of the IDEA's LRE requirement. *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 977 (10th Cir. 2004), citing *Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989). That test requires that a court: "(1) determines whether education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if not, determines if the school district has mainstreamed the child to the maximum extent appropriate." *L.B.*, 379 F.3d at 976.

64. The IDEA defines the term "supplementary aids and services" as meaning "aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title." 20 U.S.C. § 1401(33).

65. Provision of an aide in a mainstream classroom and provision of an intensive at-home ABA program, can produce success for a student without removal to a more restrictive environment. *L.B., supra*, 379 F.3d at 978. Had Respondent offered and provided those services to the Student long ago when recommended by its own experts as well as ^[their] treating psychologist, ^[Student] would likely have been successful in attending school and learning. Had this occurred, the Student would likely have avoided ^[their] retreat into isolation at home and the loss of learning alongside ^[their] nondisabled peers.

66. The IDEA identifies "social work services" as among the "developmental, corrective and other supportive" related services to be provided "as may be required to assist a child with a disability to benefit from special education . . ." 20 U.S.C. §1401(26)(A). Federal regulations define "social work services in school" as including:

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) *Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;*
- (iv) *Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and*
- (v) *Assisting in developing positive behavioral intervention strategies.*

34 C.F.R. § 300.34(b)(14)(emphasis added). Respondent did not provide these necessary services to Petitioner, and she was left to her own devices to discover and obtain community supports.

67. NFA is a residential treatment program for students with autism, but the Student's peers are in ^[their] own community, not eight hundred miles away in another state. The IDEA requires Respondent to provide a continuum of alternative placements, including home instruction. 34 C.F.R. § 300.115.

68. In addition to receiving no educational benefits, the Student's disabilities caused or had a direct and substantial relationship to ^[their] school refusal behavior in ways that were not adequately explained by Respondent's evaluation. That failure has limited almost entirely ^[their] access to peers. Today ^[Student] is isolated at home for the most part. ^[their] program moving forward must evolve to include learning activities with peers as soon as possible.

69. The Student's present status does not compel the conclusion that removal from ^[their] surviving parent's custody and placement eight hundred miles away in a residential treatment program for children with autism is necessary in order to provide a FAPE. This is particularly true because there is very little information in the record regarding the capacity of NFA or any other residential program to meet ^[their] complex needs without causing trauma to ^[them]. Only if a residential placement is *necessary* does it represent an appropriate special education placement. 34 C.F.R. § 300.104. And, only if it is the least restrictive placement is it appropriate. 20 U.S.C. § 1412(a)(5)(A).

70. The Student's placement in a residential program at NFA is neither necessary nor the least restrictive placement.

71. Petitioner has demonstrated that neither conclusion is borne out by this record and Respondent's contrary positions are undermined by WDE Guidance on Out of District Placements, Ex. P-92 at 975, that provides:

Residential placement cannot be justified based solely on personal issues, such as student's problems with

[their] or her family and other relationships, . . . or violation of social norms. *Standing alone, truancy does not provide a basis for residential placement.*

72. WDE Guidance advises that a number of considerations are needed before an IEP Team placement in a residential program. These include 1) a comparison of likely benefits in a local placement “to the educational benefits the child will receive in the more segregated setting of a residential placement”; 2) a determination “if the child was experiencing physical or emotional conditions which fundamentally interfered with the child’s ability to learn in a local placement”; and 3) consideration of “whether any health or educational professionals working with the child concluded that the child need residential placement for educational purposes.” *Id.* Respondent failed to include these considerations in IEP Team discussions.

73. WDE Guidance instructs, as to the question “around which educational environment is truly more restrictive – homebound instruction or placement in a residential treatment facility. The answer is: *It depends.*” “If attending school where the child lives is more critical [than interaction with nondisabled peers] homebound instruction is considered less restrictive than placement in a residential treatment facility.” *Id.*

74. The IDEA’s regulations require educational placements as close as possible to the child’s home, and unless the IEP requires some other arrangement, that children are placed as close as possible to their home. 34 C.F.R. §§ 300.552(a)(3) and .552(c).

A natural and logical reading of these two regulations is that a disabled child should be educated in the school he or she would attend if not disabled (i.e., the neighborhood school), *unless* the child’s IEP requires placement elsewhere. If the IEP requires placement elsewhere, then, in deciding where the appropriate placement is, geographical proximity to home is relevant, and the child should be placed as close to home as possible.

Murray v. Montrose County Sch. Dist. RE-1J, 51 F.3d 921, 929 (10th Cir. 1995).

75. Maintaining the Student's educational placement close to home by continuing and expanding the Interim IEP holds the greatest prospect to provide the Student *both* interaction with^[their] nondisabled peers and the opportunity to attend school where^[Student] lives.

76. WDE Guidance also instructs that Respondent should have taken a number of important preliminary steps to propose a residential placement that have not been done. Respondent failed to "[c]ollaborate with residential treatment facility staff to develop a proposed IEP, ensuring that the IEP is reasonably calculated to enable the student to make adequate progress, in light of^[their] or her unique circumstances." *Id.*

Before the school district places a child with a disability in a residential treatment facility, the school district or public agency must initiate and conduct a meeting to develop a proposed IEP for the child. The district must ensure that a representative of the facility attends the meeting and has input into the development of the proposed IEP.

* * *

Based upon the proposed IEP and the private facility's ability to implement the proposed IEP, a placement decision should then be made that will deliver FAPE to the student in the least restrictive environment.

Id. Petitioner has established that the IEP for the Student to move^[them] to a residential program was never properly developed for^[their] placement in NFA by^[their] IEP Team and NFA.

77. Petitioner has established that it is necessary to avoid the drastic leap to a residential placement for the Student who is vulnerable and multiply-impaired and that there is available a reasonable alternative. The record does not support a conclusion that placement of the Student at NFA will assist Petitioner to learn more effective contingency management skills while^[Student] is out of her care for the next year or two in another state, as Respondent has argued is the crux of the problem. Rather, the Student is entitled to a continued and expanded placement that provides intensive ABA therapy designed to teach the Student better behavior skills while simultaneously providing training and support to Petitioner in real time with

the Student in her care, without disrupting ^[their] opportunity to stay in ^[their] community to recover and reconnect.

78. This is a particularly critical time for the Student to reconnect with the education, peers and opportunities available in ^[their] community as ^[Student] is approaching transition age and planning for post-high school endeavors including post-secondary education and career training.

79. Petitioner has established that Respondent denied the Student a FAPE since October 16, 2023 and the educational harm the Student has suffered is obvious. ^[Student] has essentially lost two valuable years of education when ^[Student] needs it most, and is entitled to compensatory education services to make up for that loss.

80. Petitioner has also established that Respondent's proposed placement at NFA was improperly designed outside of the IEP Team process, and is not necessary in order to provide the Student with a FAPE.

81. Courts, and by extension, Hearing Officers, have broad discretion to order equitable remedies that are appropriate in light of the purposes of the IDEA. 20 U.S.C. § 1415(i)(2)(C)(iii); *School Committee of the Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359-369 (1985); and *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 16 (1993).

82. Delegation of a student's placement to her current IEP Team violates the review scheme of IDEA. *M.S. v. Utah Schools for the Deaf and Blind*, 822 F.3d 1128, 1135 (10th Cir. 2016).

83. Compensatory education services are available as relief under the IDEA when a student is denied a FAPE "and compensates for a past deprivation of educational opportunity . . ." *Garcia, supra*, 520 F.3d at 1125. Procedural violations that deny a student a FAPE may cause a substantive deprivation of a FAPE. *Id.* at 1126.

Issue 3 – Did the District Afford the Parent Meaningful Participation in the IEP Process on and after 5/22/25?

84. Parents are guaranteed procedural protections throughout the IDEA. One of the hallmark protections includes ensuring the opportunity to participate in the IEP Team process.

85. The IDEA requires Respondent to afford Petitioner meaningful participation in decisions regarding the Student’s special education as a required member of ^[their] IEP Team. 20 U.S.C. § 1414(d)(1)(B)(i).

86. Parent participation is more than simply attending meetings and being permitted to speak. Meaningful parent participation involves transparent communication and a true give and take of information necessary to understand the student, as well as serious consideration to their input and the input of other professionals who treat the student’s disabilities.

87. Each student’s IEP Team, including parents, is tasked with cooperatively developing the child’s IEP and regularly reviewing and revising the IEP as needed. 20 U.S.C. §§ 1414(d)(3) and (4).

88. The IDEA emphasizes that placement determinations must be made by IEP Teams that include parents. “Each [school district] shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.” 20 U.S.C. § 1415(e).

89. Respondent’s obligation to provide opportunities for meaningful parental participation in the IEP process must include considerations of parents’ suggestions, and, to the extent appropriate, incorporating them into the IEP. *Deal v. Hamilton County Bd. of Educ.*, 49 IDELR 123 (6th Cir. 2008). School districts must come to IEP Team meetings with an open mind, “receptive and responsive” to the parents’ position. *R.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014).

90. During the timeframe included in this claim the Student’s IEP Team convened once, on May 22, 2025. During that meeting Petitioner requested tutoring and “wraparound services” that Respondent rejected, in

part because Petitioner was reluctant to bring Respondent's providers into her home given the ongoing juvenile court neglect proceedings.

91. The May 22, 2025 IEP Team meeting failed to provide sufficient information about NFA or other residential programs for Petitioner to make an informed decision about whether any one of them could meet the Student's needs. At that meeting Respondent also failed to discuss with any level of particularity how ^[their] needs could be met at any one of those facilities, failed to identify the impact of removal to a residential program on the Student, and failed to develop an IEP for the Student appropriate for a residential placement, including the program it ultimately chose.

92. Instead, after the meeting Respondent unilaterally decided that placement at NFA was appropriate, announced ^[their] change of placement, and developed an IEP for that new placement outside of the IEP Team process.

93. Respondent's proposed IEP provided May 28, 2025 did not materially alter the content of the Student's educational program, despite the very significant change of placement it asserted was required in order to improve ^[their] disability-related school attendance problems or Petitioner's capacity to do so. This is inconsistent with its position that the Student needs significantly increased services and supports in order to learn that can only be provided with 24-7 support.

94. On and after May 22, 2025, Respondent failed to ensure meaningful parental participation in its decision to change the Student's placement to a residential program, in choosing the specific program, and in developing an IEP that would meet the Student's needs. Consequently, the Student has continued to be deprived of an effective IEP and the opportunity to make meaningful educational progress.

95. These procedural inadequacies also denied the Student a FAPE by impeding the provision to ^[them] of a FAPE, significantly impeding Petitioner's opportunity to participate in the decision-making process, and caused an additional deprivation of educational benefits to the Student. 20 U.S.C. § 1415(f)(3)(E)(ii).

Based upon the foregoing and for the reasons explained, the Hearing Officer makes the following:

ORDER

1. Respondent shall continue to provide the Student with the program and placement to which the parties agreed on an interim basis that were ordered to be implemented by the Hearing Officer's Order for Interim Placement dated September 25, 2025, including:
 - a) Twenty hours per week of Applied Behavior Analysis supports and services in ^[their] home, community including at school as appropriate, and/or virtually, as a related service, in order to restore ^[their] access to education without the need for an out-of-home residential placement;
 - b) Academic instruction for at least forty-five minutes daily, to be provided through in-person education by a teacher, either in ^[their] home, in the community, or at a school location, as can be mutually arranged between the parties; and
 - c) Opportunities for the Student to also attend school for any part of any day school is in session with continued encouragement and supports to attend.
2. That program represents the minimum services required to be provided to the Student, and must also include meaningful and accessible parent training on implementation of an effective behavior intervention plan;
3. Respondent shall reconvene the Student's IEP Team monthly until ^[Student] returns to full-time attendance status, and shall invite Dr. Ernst to participate, in order to review data on the Student's progress and evolving needs with a view towards increasing ^[their] access to peers and expanding ^[their] school attendance as soon as possible;
4. Both parties shall continue to work collaboratively with one another and with the ABA service provider through full access to and fully transparent sharing of information in order to maximize the effectiveness of services;
5. Respondent shall enlist the services of a qualified neutral expert, agreeable to Petitioner, to guide the Student's IEP Team to design

a comprehensive and individualized behavioral plan to address the function of ^[their] school refusal behavior as recommended by Dr. Ernst; and

6. Respondent shall provide the Student with compensatory education services in addition to the current program, in order to make-up for the lack of progress produced by its IEPs from October 16, 2023 until October 1, 2025, to restore ^[them] to the level of skills ^[Student] would have attained had ^[Student] been provided a FAPE during that period, and to compensate for the significant missed instructional benefits during that period.

Dated: January 23, 2026.

/s/ Amy J. Goetz
Amy J. Goetz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

I certify that on January 23, 2026, I caused a true and exact copy of the foregoing to be delivered by electronic and U.S. mail to:

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