

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 EDC 01132
24 EDC 02019

█ by parent or guardian █ and █ Petitioner, v. Washington Montessori Public Charter School Respondent.	FINAL DECISION
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THIS MATTER was heard before the undersigned Honorable Samuel K. Morris, Administrative Law Judge presiding, on the following dates: September 9-11, 2024; October 7-11, 21-25, 28 2024, in Washington, North Carolina, and virtually via WebEx on November 1.¹

APPEARANCES

For Petitioners:

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For Respondent:

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¹ The Tribunal heard Petitioner's stay put motion on August 12, 2024, in Washington, North Carolina, and virtually via WebEx on August 15, 2024.

ISSUES

In the September 6, 2025, Final Order on Prehearing Conference, the Parties identified four Issues for hearing. Prior to the evidentiary portion of the hearing, WMPCS moved for dismissal of the third issue.² During oral argument, █████ voluntarily dismissed without prejudice that claim as it related to the October 4, 2023, IEP team meeting and the claim that her Parents had been denied parental participation rights by the filing of truancy proceedings. That left the third issue to be whether WMPCS denied █████s Parents an opportunity to meaningfully participate in the IEP team meeting on February 8, 2024, by banning her parents from campus. *See generally* T vol 3 38-52. In addition, the claims in No. 24-EDC-02019 under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act were dismissed for lack of subject matter jurisdiction. Similar claims in No. 24-EDC-01132 were dismissed on May 2, 2024.

At the close of Petitioner's case-in-chief, Respondent orally moved for a dismissal of specific claims. After careful consideration of the sworn testimony of the witnesses and the exhibits offered and admitted into evidence, and after hearing arguments on the motion from counsel for the Parties, the Undersigned granted the motion in part ³ and dismissed the following claims:

- a. Claims relating to the November 2023 IEP;
- b. Claims relating to failure to address the impact of alleged bullying;
- c. Claims relating to the provision of transportation as a related service and the related reimbursement claims;

² Oral rulings were made on the record during the hearing itself, and written rulings are part of the record. They are summarized here for reference, but do not replace or alter the rulings themselves.

³ On January 8, 2025, the Tribunal issued its written rulings on these issues.

- d. Claims relating to an alleged denial of parental participation at the IEP team meeting on February 8, 2024; and
- e. Claims relating to the provision of ABA services.

As a result, the remaining issues for determination in this Final Decision include only the following issues:

Issue 1: Substantive Appropriateness of IEPs (“Appropriateness Issue”)

- 1. Whether the Respondent denied [REDACTED] a free appropriate public education by failing to appropriately develop IEPs during the 2023-24 school year, namely the October 2023 IEP and the February 8, 2024 IEP as alleged in the petition.

Issue 2: Implementation of IEPs (“Implementation Issue”)

- 2. Whether the Respondent denied [REDACTED] a free appropriate public education by failing to provide counseling services during the period of October 9, 2023, through March 9, 2024, and for failure to implement the February IEP after March 29, 2024 through May 28, 2024.

Issue 3: Procedural Violation:

- 3. Whether the Respondent denied Petitioner’s parents an opportunity to meaningfully participate in the IEP meetings on October 4, 2023, and February 8, 2024, by banning Petitioner’s parents from campus, and by filing truancy charges against them on April 29, 2024.”⁴

Issue 4: Independent Educational Evaluation Issue

- 4. Whether Respondent denied Petitioners the opportunity to receive independent educational evaluations by utilizing criteria that precluded [REDACTED] from being able to receive independent education evaluations during March 29, 2024, through the end of the 2023-2024 school year.

⁴ Although the Tribunal’s oral ruling and January 8, 2025, Order disposed of the remaining portion of Issue 3, it is included within this Final Decision for purposes of maintaining clarity in the record with respect to the numerical referencing of issues.

WITNESSES

For Petitioner:

██████ Father of ██████
Bobbie Grammer—Special Education Expert
Jennifer Holmes—Board Certified Behavior Analyst
and Special Education Expert
Rachel Kininger—Psychologist
Jenna Meehan—Occupational Therapist Expert
Jeniffer Minelli—Speech Language Expert
Megan Neary—Occupational Therapist
Lindsey Ohler—Child Psychology Expert

For Respondent:

Austin Andrews—Regular Education Expert
Kathy Carico—Head of School WMPCS
Emily Gyba—Speech Language Pathology Expert
Amanda Holton—Special Education Expert
Dr. Eleanor Paige Temple—Psychology and Child
Psychology Expert
Arlene Whiteside-- Clinical Social and School Social
Work Expert
Caroline Zissette—Occupational Therapy Expert

EXHIBITS AND TRANSCRIPTS

The following exhibits were received into evidence during the hearing:

Stipulated Exhibits (“Stip. Ex.”): Respondent’s Exhibits 14, 16, 17, 44, 45, 52,
53

Petitioner’s Exhibits (“Pet’r Ex.”)⁵: 1, 2, 3, 4, 5, 7 (excluding the Recommendations section), 9, 12⁶, 14, 16, 18, 20, 23, 24, 25, 26, 30, 64, 65, 79, 88, 89, 94, 95, 97, 99, 100, 101, 102 (pages 859-860, 863 only), 121, 122, 125, 126, 128, 135, 141, 143, 144, 145, 148, 149, 151, 152, 153, 154, 155, 156, 157, 158, 160.

⁵ Consistent with the Tribunal’s September 5, 2024, Order Denying in Part and Granting in Part Respondent’s Motion *in limine*, the Tribunal received Petitioner’s Exhibits 7, 9, 16, and 148 conditionally and subject to the redactions of any references to Ms. Ashleigh Woolard or her work, given Petitioners did not produce records of Ms. Woolard in discovery.

⁶ Pet’r Ex. 12 was introduced by WMPCS in its case in chief.

Respondent's Exhibits: ("Resp't Ex.") 1, 3, 4, 5, 7, 11, 18, 27, 28, 31, 35, 36, 38, 46, 58, 59, 60, 61, 62, 64, 66

Transcripts: Volumes one through seventeen, totaling 3,458 pages, were received into evidence and are referenced as T vol # [page: line] (ex. T vol 1 35:1-22). For purposes of citation and ease, this Order will provide the volumes based on the date listed at the beginning of the transcript.

Date on Transcript	Volume
8-12-24	1
8-15-24 (WEBEX)	2
9-9-24	3
9-10-24	4
9-11-24	5
10-7-24	6
10-8-24	7
10-9-24	8
10-10-24	9
10-11-24	10
10-21-24	11

10-22-24	12
10-23-24	13
10-24-24	14
10-24-24	15
10-28-24	16
11-1-24 (WEBEX)	17

STIPULATIONS

The Parties proposed a Final Order on Prehearing Conference, which was approved and filed in the Office of Administrative Hearings on September 6, 2024, which included legal and factual stipulations. These Stipulations are referenced as “Stip. 1,” “Stip. 2,” “Stip. 3,” etc. To the extent that Stipulations are not specifically stated herein, the Stipulations of Fact in the Final Order on Prehearing Conference, are incorporated fully herein by reference.

PRIOR ORDERS

Unless specifically contradicted herein, this Final Decision incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation.

BURDEN OF PROOF

Petitioners in special education cases bear the burden of proof in North Carolina, and the Petitioners in this case stipulated that the burden of proof in this action lies with them. Stip. 3. The standard of proof is by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); N.C. Gen. Stat. § 150B-34(a).

Educators are given “deference . . . based on the application of expertise and the exercise of judgement by school authorities.” *Endrew F. ex rel. Joseph F. v. Douglas*

Cnty. Sch. Dist. RE-1, 580 U.S. 386, 404, 137 S. Ct. 988, 1001 (2017). “By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement,” and a “reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of [the child’s] circumstances.” *Id.*

Likewise, the North Carolina Administrative Procedure Act (“APA”) requires deference be given “to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.” N.C. Gen. Stat. § 150B-34(a). Deference was afforded WMPCS’ educators where applicable.

Finally, as indicated within this decision, the opinions of expert witnesses, which were based on sufficient facts, were the product of reliable principles and methods and the reliable application of reliable principles and methods, were given significant weight. *See* N.C. Gen. Stat. § 8C-1, Rule 702.

RELEVANT PROCEDURAL HISTORY

1. Petitioner filed her first Contested Case Due Process Petition (“First Petition”), case file number 24 EDC 01132 on March 26, 2024. That Petition contained various claims including the denial of a Free Appropriate Public Education (“FAPE”), claims arising under Section 504 and the Americans with Disabilities Act, as well as a claim Petitioners titled “Scheduled Manifestation Determination Review During Time Petitioners were not Available” (“Manifestation claim”).

2. The Tribunal issued a Notice of Hearing and Prehearing Order on Petitioner’s Manifestation claim on April 5, 2024, setting the hearing on the manifestation issue for May 1, 2024.

3. On April 8, 2024, Respondent filed a Motion to Dismiss for failure to comply with the notice pleading requirement per N.C. R. Civ. P. 8, and, alternatively, for lack of subject matter jurisdiction under Rules 12(b)(1) and/or failure to state a

claim under 12(b)(6) of the North Carolina Rules of Civil Procedure. On May 2, 2024, the Tribunal partially granted Respondent's motion, dismissing any claims relating to the appropriateness of any IEP's in place before October 2023, and Petitioner's Section 504 and ADA claims were dismissed without prejudice.

4. A Notice of Hearing and Prehearing Order with respect to Petitioner's non-MDR claims was issued on April 9, 2024, scheduling the Contested Case Hearing for May 13, 2024. The Parties waived the resolution meeting to attend mediation on April 22, 2024, which was unsuccessful.

5. On April 15, 2024, Respondent filed a Motion for Summary Judgment as to Petitioners' manifestation determination review claim. On April 15, 2024, the Tribunal issued a Request for Expedited Response to the Motion. On April 17, 2024, Petitioners voluntarily dismissed their manifestation determination review claims. Accordingly, the Tribunal issued an Order Vacating the Expedited Hearing on Manifestation Determination Review on April 18, 2024.

6. On April 22, 2024, Petitioner moved for a continuance of the hearing. For good cause shown and upon request of Petitioners, the hearing was continued on April 23, 2024.

7. Petitioners filed a second Contested Case Due Process Petition ("Second Petition"), case file number 24 EDC 02019 on May 28, 2024. On the same day, Petitioners moved to consolidate both Petitions. Based on the Undersigned's recommendation, the Chief Administrative Law Judge held that an Order of Consolidation was not the correct procedural posture for this IDEA case because Petitioners had not sought leave to amend their Petition in case file 24 EDC 01132. Therefore, Petitioners' Motion to Consolidate was denied on June 17, 2024.

8. On May 28, 2024, Petitioner also filed a Motion to Enforce Stay Put, and a Motion to Continue in 24 EDC 01132, which the Tribunal granted.

9. Since the Parties had conducted the requisite mediation, a Settlement Conference was held on August 1, 2024, with the Honorable Administrative Law Judge Karlene S. Turrentine and the Parties. That Conference was unsuccessful.

10. The hearing on Petitioners' Amended Motion to Enforce Stay Put was then held, and the Tribunal Granted Petitioner's Amended Motion to Enforce Stay Put on August 23, 2024.

11. On August 28, 2024, Respondent filed a motion in *limine*, with respect to Jenna Meehan and Lindsay Ohler and the materials upon which they relied because of Petitioners' failure to seasonably comply with discovery requests. Respondent also sought to exclude any evidence relating to any services performed by Ashleigh Woodard because Petitioner refused to provide records of her work in response to Respondent's discovery requests. On September 5, 2024, the Tribunal denied Respondent's Motion with respect to Jenna Meehan and Lindsay Ohler but granted Respondent's Motion with respect to Ashleigh Woodard.

12. On August 29, 2024, Petitioners filed a motion in *limine*, seeking to exclude all ten of Respondent's expert witnesses. On September 5, 2024, the Tribunal denied Petitioners' Motion with respect to Respondent's expert witnesses but granted the motion with respect to any emails Respondent may have failed to disclose before August 30, 2024.

13. Prior to the evidentiary portion of the hearing, WMPCS moved for dismissal of the third issue. During oral argument, [REDACTED] voluntarily dismissed without prejudice that claim as it related to the October 4, 2023, IEP team meeting and the claim that her Parents had been denied parental participation rights by the filing of truancy proceedings. That left the third issue to be whether WMPCS denied [REDACTED]'s Parents an opportunity to meaningfully participate in the IEP team meeting on February 8, 2024, by banning her Parents from campus. *See generally* T vol 3 38-52.

14. Prior to the evidentiary portion of the hearing, the claims in No. 24-EDC-02019 under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act were dismissed for lack of subject matter jurisdiction. Similar claims in No. 24-EDC-01132 were dismissed on May 2, 2024.

15. On October 22, 2024, at the close of Petitioner's evidence, pursuant to N.C. R. Civ. P. 41(b), Respondent WMPCS orally moved for a dismissal of specific

claims. The Undersigned granted the motion in part and dismissed the following claims: (1) claims relating to the November 2023 IEP; (2) claims relating to failure to address the impact of alleged bullying; (3) claims relating to the provision of transportation as a related service and the related reimbursement claims; (4) claims relating to an alleged denial of parental participation at the IEP team meeting on February 8, 2024.; and (5) claims relating to the provision of ABA services. The Undersigned memorialized the decision in written form following the receipt of the transcripts on January 8, 2025.

16. Pursuant to the Post-Hearing Order entered on November 1, 2024, and Order Extending Time to file exhibits entered on November 8, 2024, the Parties filed their respective exhibits, and the Transcripts were received on December 31, 2024.

17. Proposed final decisions were filed on February 28, 2025.

18. On April 10, 2025, the Final Decision was timely issued and served.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the fifteen (15) witnesses appearing at the hearing, exhibits, audio/video recordings received and admitted into evidence, the seventeen (17) volumes of transcripts, the entire record in this proceeding, the Proposed Final Decisions, and post hearing filings, the undersigned Administrative Law Judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility including, but not limited to, the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case such as adverse party admissions documented in the record and all other competent and admissible evidence.

Based upon the Stipulations of Fact and the preponderance of the admissible, credible, evidence, the Undersigned finds as follows:

RELEVANT TIME PERIOD AND ISSUES

1. The relevant time period in this case is the 2023-2024 school year. Within that time frame, Petitioners identified four issues in this contested case.

2. Two issues, that relate to the Individualized Education Plans (“IEPs”), are the Appropriateness Issue and Implementation Issue of two IEP’s. The IEPs relevant to the Appropriateness Issue are the October 2023 IEP and the February 8, 2024, IEP. Based upon the Final Prehearing Order, the Implementation Issue is limited to whether Respondent denied [REDACTED] a free appropriate public education by failing to provide counseling services during the period of October 9, 2023, through March 9, 2024, and for failure to implement the February IEP after March 29, 2024, through May 28, 2024. Respondent stipulates that it did not provide educational services to [REDACTED] after March 29, 2024.

3. Petitioners also raised a Procedural Violation alleging that the Respondent denied Petitioner’s Parents an opportunity to meaningfully participate in the IEP meetings on October 4, 2023, and February 8, 2024, by (1) banning Petitioner’s Parents from campus, and (2) by filing truancy charges against them on April 29, 2024.⁷

4. The fourth and final issue is the Independent Educational Evaluation Issue. Here, the Parents contend that they were denied “the opportunity to receive independent educational evaluations by utilizing criteria that precluded [REDACTED] from being able to receive independent education

⁷ As noted above, the Tribunal’s oral ruling and January 8, 2025, Order disposed of this remaining portion of Issue 3. It is included within this Final Decision for purposes of maintaining clarity in the record with respect to the numerical referencing of issues.

evaluations during March 29, 2024, through the end of the 2023-24 school year.”

5. With the issues and timelines for the FAPE violations delineated, an accounting of the Parties and witnesses is proper.

The Parties

Petitioners

Minor Student

6. Petitioner [REDACTED]'s date of birth is [REDACTED]. Stip. 9. [REDACTED] was eleven (11) years old at the time of the filing of both Petitions for Contested Case hearing. The Parties stipulated that [REDACTED] is a "child with a disability," as that phrase is defined in IDEA. Stip. 12. During the relevant school year, 2023-2024, [REDACTED] was attending the Washington Montessori Public Charter School (WMPCS"). Stip. 11, 13. The first day of the 2023-2024 school year for [REDACTED] was August 28, 2023. [REDACTED] and her Parents reside at [REDACTED]. Stip. 15.

7. [REDACTED] did not testify at the hearing.

Parents

8. [REDACTED]'s parents, [REDACTED] and [REDACTED] ("Parents") are residents of the State of North Carolina. [REDACTED] and [REDACTED] reside at [REDACTED].
Stip. 14. [REDACTED] her Parents, [REDACTED] and [REDACTED] are collectively referred to as "Petitioners."

■ (“Mother”)

9. [REDACTED]'s mother is [REDACTED] [REDACTED] ("[REDACTED]." or "Mother"). [REDACTED] did not testify at the hearing even though [REDACTED] attended the October 4, 2023 IEP meeting, had testified at the prior hearing on Petitioner's Stay Put motion, and was the Parent who scheduled most of [REDACTED]'s appointments relevant to this proceeding and communicated with [REDACTED]'s experts. T vol 10 81:6-11.

█████ (“Father”)

10. █████s father is ██████████ (“█████ of “Father”). █████ testified at the hearing. █████ attended the IEP meeting on October 4, 2023, but did not observe █████ in the school setting during the 2023-2024 school year.

Respondent, Washington Montessori Public Charter School (“Respondent,” the “WMPCS”)

11. Respondent, Washington Montessori Public Charter School (“Respondent,” the “Board,” or “Respondent”), is a local educational agency (“LEA”) receiving monies pursuant to the IDEA and is responsible for providing █████ a free and appropriate public education (“FAPE”).

WITNESSES

Credibility of Witnesses

12. Although an ALJ “need not ‘explain in detail [his] reasons for accepting the testimony of one witness over that of another,’ ” the Tribunal includes the following explicit findings and explanation as to the credibility of witnesses. *Bouabid v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 62 F.4th 851, 859, (4th Cir. 2023) (noting that ALJ in an IDEA case need not “explain in detail its reasons for accepting the testimony of one witness over that of another”).

13. Unless otherwise stated in this Final Decision, the Undersigned found all witnesses credible (in that they believed what they said), however the persuasiveness and weight given their testimonies varied depending on whether their testimonies were based on personal knowledge about specific matters; on sufficient information about the education records and █████s special education needs; or conflicted with reliable documentary or testimonial evidence.

14. Even though this Final Decision may incorporate language from the Parties’ respective Proposed Final Decisions, credibility determinations were made independently from any proposals submitted by the Parties.

Petitioner's Witnesses

15. Petitioners called three fact witnesses: [REDACTED] Megan Neary, and Rachel Kininger, and five expert witnesses: Bobbie Grammer, Jennifer Holmes, Jenna Meehan, Jennifer Minnelli, and Lindsey Ohler.

[REDACTED] Father (T vol 8 188-231; vol 9 6-188; vol 10 7-135)

16. As [REDACTED]'s Father, [REDACTED] is understandably concerned about [REDACTED]'s well-being. However, the Tribunal finds aspects of [REDACTED]'s testimony problematic.

17. First, the Tribunal notes that as of the start of the 2023-2024 school year, neither [REDACTED] nor [REDACTED] had been inside a WMPCS building for over a year. Notably, [REDACTED] provided no testimony based on firsthand knowledge regarding [REDACTED]'s academic performance. He did not present any work samples, progress monitoring notes, grades, or other routine information typically available to parents.

18. Similarly, regarding [REDACTED]'s school attendance, in February 2024, [REDACTED] annotated an attendance report provided by WMPCS to explain the reasons for [REDACTED]'s absences, tardies, and early checkouts. This document was admitted in redacted form as Pet'r Ex. 148. T vol 9 63:2-64:22; 78:2-79:11; 90:3-91:24. However, [REDACTED] made no notation on Pet'r Ex. 148 suggesting that school refusal was a factor in [REDACTED]'s attendance issues. Instead, for early checkouts during the 2023-2024 school year, [REDACTED] testified that the reasons were doctor's appointments, OT appointments, or illness. T vol 9 72:18-23. Of the 24 early checkouts listed in Pet'r Ex. 148, only one included a notation from [REDACTED] indicating [REDACTED] was sick.

19. Additionally, there is a history of animosity between [REDACTED] and WMPCS which suggests a potential bias against the school. Since being banned from campus (except for carpool purposes) in August 2022 (see Pet'r Ex. 121), [REDACTED]'s parents have pursued multiple unsuccessful complaints against WMPCS, including: claims filed with the United States Office of Civil Rights ("OCR"), T vol 10 36:16-40:23; several due process petitions, T vol 10 42:8-12; a complaint against WMPCS employee Arlene Whiteside with the North Carolina Social Work Certification and Licensure Board, T

vol 10 49:12-50:7; and at least three complaints with the North Carolina Department of Public Instruction, T vol 10 50:8-59:12.

20. Moreover, [REDACTED]'s testimony was, at times, non-responsive, evasive, sarcastic, or marked by agitation. For instance, when asked whether he could enter the school building, he replied:

“No, of course not. I’m not allowed to get out of my car. I cannot support my child at this school. That man right there [gesturing toward Respondent’s attorney] has been trying to get rid of me for three years”

T vol 9 24:7-9.

21. Another example occurred during [REDACTED]'s testimony regarding transportation as a related service. [REDACTED] proceeded to question the definition of a “regular” car, *see e.g.*, T vol 9 50:8-13, which he continued when cross-examined about whether [REDACTED] had ridden to school in a “normal passenger vehicle,” such as a car, SUV, or pickup truck. T vol 10 76:9-78:14. Likewise, when asked whether it was merely a “stroke of luck” that Petitioners ended up with an evaluator who had testified multiple times on behalf of Mr. Howard’s clients, [REDACTED] responded:

That’s correct. She could have – you know, it could have been a rainbow, and I said, there’s Ms. Minnelli’s name. I don’t know how that name was suggested.

T vol 10 80:9-11.

22. In September 2024, [REDACTED] recorded a video of herself speaking with [REDACTED] about her school day (Resp’t Ex. 66). In the background, [REDACTED] can be heard making inappropriate remarks about WMPCS staff in [REDACTED]'s presence. When questioned, he offered no explanation other than stating that he was unaware his wife was recording at the time.

23. Furthermore, [REDACTED] and [REDACTED] claimed they had sent multiple emails requesting a change in [REDACTED]'s counseling schedule to accommodate private OT therapy on Thursday afternoons. However, no such emails were entered into evidence. WMPCS witnesses testified that they never received such requests. Given

■■■■s apparent bias and the lack of supporting emails—despite ■■■■s Parents being prolific emailers—this conflict is resolved in favor of WMPCS.

24. Based on the above, ■■■■s testimony was given less weight.

Megan Neary (T vol 3 67-133)

25. Megan Neary testified as a fact witness for ■■■■. She evaluated ■■■■ in November 2023 (Pet'r Ex. 14) and provided private occupational therapy services to her until late May 2024. T vol 3 69:1-4; 77:6-8.

26. Ms. Neary had no experience in providing school-based occupational therapy ("OT") or conducting evaluations to assess eligibility for such services. T vol 3 103:2-7. She clarified that she was not offering an opinion on whether ■■■■ required school-based OT services or what should be included in a school-based OT plan. T vol 3 105:13-23. Additionally, Ms. Neary never worked with or observed ■■■■ in a school setting.

27. Ms. Neary testified that Caroline Zissette, her team lead, provided both private and school-based OT services, unlike Ms. Neary. T vol 3 108:2-8. According to Ms. Neary, six months of private OT is the default period at Carolina Therapy ("Carolina Therapy"). T vol 3 104:21-105:2.

28. Ms. Neary acknowledged that most of the diagnostic codes in the November 2023 evaluation (Pet'r Ex. 14) were based on Parent's reports rather than evaluative measures. T vol 3 79:10-23; 131:6-9.

29. Ms. Neary saw clients beginning at 8:00 am to 6:00 pm each day T vol 3 70:1-13; 109:22-110:21, with appointments scheduled in one-hour slots. T vol 3 110:14-21.

30. Ms. Neary was not involved in assigning appointment slots; this was managed by the administration at Carolina Therapy and the Parents. T vol 3 70:4-6. ■■■■'s Parents scheduled her appointments for 3:00 pm on Thursdays, which required pulling her from school during the time she would have been receiving school-based counseling services. *Id.* at 110:25-111:15.

31. [REDACTED] presented no evidence indicating that, before or after scheduling her private OT appointments on Thursday afternoons, her Parents consulted with WMPCS to avoid a conflict with her school-based counseling services.

Rachel Kininger (T vol 3 135-190)

32. Dr. Rachel Kininger was called by [REDACTED] as a fact witness. In November and December 2021, at the request of [REDACTED]'s Parents, she conducted an evaluation to determine if [REDACTED] was autistic. Her report, dated January 22, 2022, was partially admitted as Pet'r Ex. 7. However, as she was called solely as a fact-witness, the undersigned ruled that the recommendation section of her report would not be admitted or considered. T vol 3 166:8-10.

33. Dr. Kininger first saw [REDACTED] on November 18, 2021, T vol 3 175:6-12, after [REDACTED] had filed her first due process petition against WMPCS and while that action was still pending.

34. Based upon a 40-minute meeting with [REDACTED] on November 18, 2021, (T vol 3 175:6-12) and on another day when she conducted the evaluations listed in her report, Dr. Kininger noted *possible* sensory seeking behaviors and complex hand mechanisms. T vol 3 139:20-140:6.

35. In her report, Dr. Kininger relayed the Parents' statements but did not attempt to validate or comment on their accuracy. T vol 3 176:20-177:4.

36. There was no evidence that Dr. Kininger observed or evaluated [REDACTED] in the home or school setting.

37. Dr. Kininger administered the Wechsler Intelligence Scales for Children, 5th edition ("WISC-V") and reported [REDACTED]'s full-scale intelligent quotient ("FSIQ") at 109, which is in the average range. Pet'r Ex. 7 at 6.

38. She did not evaluate [REDACTED]'s school performance through any achievement testing.

39. Dr. Kininger asked [REDACTED]'s mother and her fourth-grade teacher at WMPCS to fill out the Autism Spectrum Rating Scales ("ASRS"). Regarding the results, Dr. Kininger stated in her report: "[b]ased on Mother's ratings, [REDACTED]'s

behaviors suggest clinically [*sic*] impairment that aligns with Autism Spectrum Disorder. Teacher's ratings indicated that [REDACTED] does not show clinically significant impairment related to behaviors that align with Autism Spectrum Disorder at school." Pet'r Ex. 7 at 8.

40. Dr. Kininger administered the Autism Diagnostic Observation Schedule, Second Edition, Module 3 ("ADOS-2") and concluded in her report that "[REDACTED]'s Total Score of 9 on the ADOS-2 fell at the autism cutoff of 9 and was consistent with an ADOS-2 classification of Autism." *Id.* at 10.

41. She noted, however, that "some of [REDACTED]'s social skills difficulties could be attributed to ADHD (e.g., difficulty with eye contact could be related to inattention)." Pet'r Ex. 7 at 12.

42. Given that [REDACTED] was evaluated by Dr. Paige Temple in January 2024 and Dr. Lindsey Ohler in July 2024, Dr. Kininger's report is outdated, so the undersigned gives it and her testimony less weight.

Petitioner's Expert Witnesses

43. While each of [REDACTED]'s expert witnesses were knowledgeable in their respective fields, certain factors suggest that their work and opinions should be received with caution.

44. First, [REDACTED]'s counsel listed these expert witnesses in interrogatory responses provided in mid-May 2024 (except for experts Jenna Meehan and Dr. Lindsey Ohler) and shared their opinions. [REDACTED] and [REDACTED] verified these responses. However, at the time these responses were provided, Petitioners had not yet contacted the experts, and none of them had prepared their expert opinions. Despite this, each expert testified exactly in accordance with the May disclosure.

45. Moreover, except for Jenna Meehan and Dr. Lindsey Ohler, none of Petitioners expert witnesses had met with, observed, or evaluated [REDACTED] during the relevant time period, and did not participate in any of the October or February IEP team meetings.

46. Additionally, none have worked with [REDACTED] in a school setting. Jennifer Holmes and Bobbie Grammer never met [REDACTED] in person.

Bobbie Grammer (T vol 1 27-99; 4 45-127; 10:137-138; 11 4-238)

47. Bobbie Grammer was qualified as an expert in the areas of special education, IEP development, implementation, and compliance. T vol 4 64:6-12.

48. In preparation for her testimony, Ms. Grammer reviewed records provided to her by [REDACTED] T vol 4 71:15-25. These “records” were the proposed exhibits exchanged by the Parties in accordance with IDEA’s five-day disclosure deadline. T vol 11 148:19-151:6. She received them just before the September hearing, but the proposed exhibits lacked all of [REDACTED]’s educational records.

Involvement and Interaction with [REDACTED]

49. Ms. Grammer admitted that she was first contacted about becoming involved in this matter three months *after* Petitioners listed her as an expert witness and disclosed the content of her expert opinion. As an explanation, Ms. Grammer stated, “I mean, that’s – I have done a lot of work before with [REDACTED]’s lead counsel,” T vol 11 157:22-24, and “he assumed that I would be willing to testify.” *Id.* at 158. Ms. Grammer has testified for [REDACTED]’s counsel multiple times over the years, T Vol 11 161:15-21) and has worked with him for at least three to four years. T vol 11 209:4-5.

50. Ms. Grammer met virtually with [REDACTED]’s Parents and with [REDACTED] once. During the Zoom session, she spoke with [REDACTED] for approximately 20 minutes, T Vol 11 162:1-14, with [REDACTED] present throughout the conversation. T Vol 11 164:7-21.

51. [REDACTED]’s Parents sent Ms. Grammer material electronically that was not shared with WMPCS. Ms. Grammer asserted that she did not review the material.

52. Ms. Grammer did not communicate with any WMPCS staff members or others who had worked directly with [REDACTED]

53. Ms. Grammer never met [REDACTED] in person, nor did she observe [REDACTED] in the home or school settings. Furthermore, she did not conduct any evaluations of [REDACTED]

Review of Records and Evidence

54. Ms. Grammer acknowledged that WMPCS records showed school staff continually worked with [REDACTED] to initiate and follow through on tasks. T vol 11 36.

55. Ms. Grammer admitted that the only “evidence” of school refusal came from the Parents’ reports not her personal observations. T vol 4 117:2-4.

56. Ms. Grammer conceded that she had not assessed [REDACTED]'s skills, including her ability to advocate for herself. T vol 11 198:10-18.

57. Ms. Grammer testified that WMPCS should have held a conference with [REDACTED]'s Parents to address [REDACTED]'s attendance issues, but she saw no evidence of that happening. T vol 11 at 128:20-129:14. This was because Ms. Grammer had not received or reviewed [REDACTED]'s full educational record. Had Ms. Grammer accessed [REDACTED]'s full education record, she would have seen evidence of an attendance meeting in February 2024 that [REDACTED] attended and for which he had annotated the attendance report. The report contained no mention of school refusal issues. Pet'r Ex. 148.

Testimonial Consistency and Potential Bias

58. During direct examination, Ms. Grammer testified that a school cannot require an independent education evaluation to be done in the school setting. However, during cross-examination, she conceded that the applicable NCDPI Policy provides that "[t]he criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation." T vol 11 204:24-205:25; North Carolina Department of Public Instruction, *Policies Governing Services for Children With Disabilities* at 83-84 (§ 1504-1.3); 34 CFR 300.502(e).

59. WMPCS's questioned Ms. Grammer regarding [REDACTED]'s delay in raising the stay-put issue with this Tribunal, noting a 69-day gap after [REDACTED]'s exclusion. Despite being accepted as an expert in special education compliance, Ms. Grammer claimed to be unaware whether a student with a stay-put issue could seek assistance from the Tribunal. Instead of providing clarity on whether [REDACTED] and her Parents should have pursued the stay-put issue sooner or enrolled [REDACTED] elsewhere during that time, Ms. Grammer evaded the question. T vol 11 209:10-211:23.

60. An expert witness should not shy away from contradicting their client's position when necessary. If Ms. Grammer, as an expert in special education compliance, believed that [REDACTED]'s Parents acted inappropriately by (a) not immediately

pursuing the stay-put issue and/or (b) failing to enroll [REDACTED] elsewhere in the interim, she was free to express that opinion. Her failure to do so—and her attempts to avoid WMPCS’s questions—suggest that she could not defend the Parent’s action. Instead, she appeared unwilling to acknowledge that they should have acted with reasonable swiftness regarding the stay-put issue.

61. Ms. Grammer’s reluctance in testifying to the stay-put issue is especially concerning given that she had previously testified on behalf of [REDACTED] in the stay-put motion earlier in the case. *See* T vol 1 27-99.

Jennifer Holmes (T vol 5 5-33; 6 4-251)

62. Jennifer Holmes was accepted by the Tribunal as an expert in special education. Her resume was received into evidence as Pet’r Ex. 3.

Evaluation of [REDACTED]

63. Ms. Holmes conducted interviews with [REDACTED] for “several hours” and met with [REDACTED] via Zoom for 2-3 hours. T vol 5 at 24:4-8. Her initial Zoom meeting with the family occurred on August 31, 2024, T vol 6 167:15-17, and she clarified on cross-examination that she met with [REDACTED] for 45 to 60 minutes on September 2, 2024, and for approximately 90 minutes on September 5, 2024. T vol 6 170:19-23. These were her only interactions with [REDACTED] T vol 6 172:17-21.

64. Like with Ms. Grammer, the records provided to Ms. Holmes for review consisted of the proposed exhibits, not [REDACTED]’s full educational records. Ms. Holmes did not begin reviewing these records until the 2024 Labor Day weekend, well past the expert witness disclosure deadline and the five-day exhibit disclosure deadline. T vol 6 183:18-185:24.

65. Ms. Holmes did not meet [REDACTED] in person, observe her in the school setting, and did not speak with any staff members from WMPCS regarding [REDACTED]’s performance in any domain. T vol 6 221:12-222:23.

66. Ms. Holmes did not conduct an evaluation of [REDACTED] and did not produce a report for this case. T vol 6 221:21-24.

67. Instead, Ms. Holmes based much of her testimony on Rachel Kinninger’s January 2022 report, which was obtained by the Parents during ██████’s first due process case.

Testimony and Inconsistencies

68. Ms. Holmes testified that ██████’s attendance problems established a deficit in “withdrawal.” T vol 6 28:23-29:16. This contradicted ██████’s evidence, which included notations on ██████’s attendance record that make no reference to school refusal.

69. When questioned about ██████’s attention difficulties during the 2023-2024 school year, Ms. Holmes did not address the significant change in ██████’s attention documented by school staff after ██████ stopped her medication. T vol 6 29:23-30:5. Ms. Holmes later stated that she did not consider changes in medication to be relevant in a school setting and, therefore, did not inquire about any medication changes that might have impacted ██████’s behavior at school. T vol 6 216:1-217:23.

70. Ms. Holmes testified that ██████’s removal from the general education environment was due to a “discipline referral,” which she interpreted as evidence of deficits in “adaptability.” T vol 6 31:21-32:4. However, ██████’s setting was changed at the February 2024 IEP team meeting due to a significant change in ██████’s attentional abilities after stopping ADHD medication. This change had no relation to disciplinary issues, as ██████ had no disciplinary referrals for the 2023-2024 school year at that time.

71. Ms. Holmes did not mention the dramatic shift in ██████’s attention and focus levels that occurred when she stopped taking ADHD medication in November 2023. While WMPCS cannot require ⁸ ██████ to take medication, its efficacy or omission is relevant to her educational programming.

⁸ 20 U.S.C. § 1412

Request for Evaluations and Testimonial Bias Concerns

72. After ██████'s exclusion from WMPCS, ██████ contacted Ms. Holmes and requested that she perform a functional behavioral assessment ("FBA") as part of an independent educational evaluation ("IEE"), offering to pay for it since ██████ was no longer enrolled in school. T vol 6 177:14-179:11. Based on ██████'s representations, Ms. Holmes concluded that this would not be an independent evaluation at public expense and thus sent ██████ a contract to conduct the FBA. Ms. Holmes never conducted the independent FBA.

73. Ms. Holmes's first Zoom interaction with the family took place on August 31, 2024. T vol 6 167:15-17. However, in May 2024, ██████ and ██████ verified under oath and ██████'s lead counsel signed discovery responses that stated that Jennifer Holmes will testify that ██████ was denied a free appropriate public education during the 2023-24 school year.

74. Equally problematic to her limited review of documents and interaction with ██████ by mid-May 2024, Petitioners had not contacted Ms. Holmes to provide expert testimony, though they had verified discovery response identifying her and the substance of her opinion. Ms. Holmes testified that she first heard from ██████'s counsel about testifying in "early to mid-August," well after the discovery responses were signed. T vol 6 181:15-18. As a result, the statements made in the May 2024 verified discovery responses were factually inaccurate.

75. Ms. Holmes admitted that due to her frequent testimony for clients of ██████'s lead counsel, he might have anticipated her testimony. See T vol 6 240-241. Over the past four years, Ms. Holmes testified in eight special education cases on behalf of parents represented by ██████'s lead counsel. T vol 6 238-239.

76. Given the facts of this case, Ms. Holmes's frequent role as an expert for Petitioners' counsel's clients raises concerns about potential testimonial bias. Although repeated use of the same expert is not an issue if the record shows independent analysis and a strong foundation, that was lacking here.

Leading Questions and Lack of Foundation for Opinions

77. Moreover, the questions posed to Ms. Holmes, which were often leading, sought opinions with minimal clarification regarding her independent analysis. For example, when asked whether [REDACTED] had deficits in social/emotional reciprocity during the 2023-2024 school year, she answered affirmatively. T vol. 6 48:10-12, 21-22. However, there was little, if any, evidence presented to establish how these deficits impacted [REDACTED]'s day-to-day educational experience. Petitioners failed to explain the tangible effects of these deficits on [REDACTED]'s education, assuming that the mere existence of a deficit warranted an IEP goal

78. As the Tribunal sustained WMPCS's objection to this line of questioning, Petitioners failed to lay a suitable foundation that any such deficits were significantly impacting [REDACTED] at school. T vol 6 52:1-13.

79. Petitioners also failed to lay proper foundation for many of Ms. Holmes' opinions. For example, when asked by leading question, if [REDACTED] exhibited school refusal behaviors in the 2023-2024 school year, she simply answered "yes." T vol 6 117:2-118:1. No explanation was provided regarding how she reached this conclusion, or what signs [REDACTED] exhibited of school refusal, or what evidence in [REDACTED]'s records supported it. This lack of detail and failure to support her conclusions undermines the credibility of her testimony.

80. Ms. Holmes asserted that there was no evidence in the records she reviewed of collaboration with an occupational therapist regarding appropriate tools for [REDACTED] T vol 6 122:21-24. However, WMPCS presented several exhibits demonstrating that, by October 2023, [REDACTED] had successfully mastered the use of sensory tools in the school setting through collaboration with teachers and occupational therapists. Resp't Ex. 3-5, 7, and 11.

81. Ms. Holmes alluded to [REDACTED] having anxiety at school, but [REDACTED] provided no factual evidence that she experienced on-going anxiety issues at school such that WMPCS should have taken actions other than the ones it did. As noted above, [REDACTED]'s

failure to introduce what could be characterized as “underlying facts” about her school performance on various issues undercuts the testimony of her experts about things that happened during the school day.

82. Ms. Holmes’s recommendation of 920 hours of compensatory services (about 5.1 hours per school day) was extreme and unsupported by her or any other witness’s testimony.

83. Based upon the above, Ms. Holme’s testimony was given less weight than Respondent’s experts who had personal knowledge of [REDACTED] in the school setting on a day-to-day basis.

Jenna Meehan (T vol 4 130-272)

84. Jennifer Meehan is a licensed occupational therapist and was qualified as an expert in that field. Her evaluation report was admitted (with redactions) into evidence as Pet’r Ex. 16.

Evaluation of [REDACTED]

85. Ms. Meehan evaluated [REDACTED] on Saturday, August 24, 2024, in her office setting in Durham, N.C. Her evaluation took place after this Tribunal had ordered that [REDACTED] be allowed to return to WMPCS beginning on August 29, 2024. Neither Ms. Meehan nor [REDACTED]’s Parents contacted WMPCS to perform this evaluation in the school setting, nor did Ms. Meehan obtain input from WMPCS staff as to [REDACTED]’s performance in a school setting. As such, Ms. Meehan never observed [REDACTED] in a school setting nor sought school input. T vol 4 250:13-252:4.

86. Ms. Meehan spent “just a little over two hours” with [REDACTED] and interviewed her mother, [REDACTED] T vol 4 228:8-11. [REDACTED] was present during Ms. Meehan’s conversations with [REDACTED] T vol 4 227:14-16, and provided input during [REDACTED]’s responses including those on the Adolescent Sensory Profile. T vol 4 235:4-236:2.

Observations and Findings

87. Ms. Meehan did not address the issue of [REDACTED]’s ADHD medication, as she did not consider it relevant to her evaluation. T vol 4 241:14-24.

88. According to Ms. Meehan, [REDACTED] exhibited signs of “low registration.” Ms. Meehan described “low registration” as that a person needs more sensory input than others might so that she can process those inputs. T vol 4 148:14-23.

89. Although she testified that low registration can be addressed by an IEP team (see T vol 4 149-151), she did not offer testimony that [REDACTED] needed specific goals as of October 2023 or February 2024 to address any deficits in low registration.

90. [REDACTED] filled out a Behavior Rating Inventory of Executive Function, Second Edition (“BRIEF2”) for Ms. Meehan.

91. The BRIEF2, according to Ms. Meehan, “is a rating scale completed by parents and teachers of school-age children (5-18 years) and by adolescents aged 11-18 years that assess everyday behaviors associated with executive functions in the home and school environment.” Pet’r Ex. 16 at 7.

92. Although the BRIEF2 has a teacher component, Ms. Meehan chose not to seek such data. The BRIEF2 has a student component appropriate for [REDACTED] to complete, however Ms. Meehan also chose not to have [REDACTED] complete that rating scale. T vol 4 255:22-25.

93. According to Ms. Meehan’s evaluation, [REDACTED] “experiences sensory sensitivity or a higher intensity more than most people.” T vol 4 153:5-6. However, she did not provide relevant, specific information about the significance of this sensitivity in [REDACTED]’s school setting.

94. Ms. Meehan testified that [REDACTED] did have access to headphones at school to help manage her sensory sensitivity. T vol 4 153:25-154:4. However, she did not present any evidence suggesting that [REDACTED] did not know how to use the headphones or request them when needed.

General vs. Specific Testimony

95. Much of Ms. Meehan’s testimony could be classified as general—rather than “[REDACTED] specific”—in nature. For example, Ms. Meehan was asked “In what ways can a school IEP team address sensory sensitivity deficits?” T vol 4 153:16-17. That provided no guidance in determining whether [REDACTED]’s IEP goals at the relevant times were sufficient. In another example, Ms. Meehan was asked, “And based on what

you – your review of records, your interview with [REDACTED] and her mom, in what ways can these deficits – deficits impact her in a school environment?” T vol 4 160:18-20.

96. The problem with this phrasing – in what ways *can* these deficits impact her in a school environment– is that such questions elicit hypothetical—rather than [REDACTED] specific—answers. That a deficit *might* impact a student to a significant degree does not necessarily mean that it *does*.

97. By way of example, Ms. Meehan testified that she thought that [REDACTED] might be completely exhausting herself to perform tasks. T vol 4 161:6-9. However, Ms. Meehan had never observed this first-hand. On the contrary, all of the witnesses who had significant first-hand experience with [REDACTED] at WMPCS testified that [REDACTED] had learned to appropriately compensate for her sensory issues with the support of aids and accommodations.

Observations vs. Evidence

98. During direct examination, Ms. Meehan was led through J.D.’s input on a questionnaire. Ms. Meehan then was asked “how can a school district address these areas of need in an IEP?” T vol 4 167:17-18. Again, the question was too general, as her testimony did little to establish that [REDACTED] did, indeed, display these deficits during the school day.

99. Moreover, having not been inside a WMPCS building since at least August 2022, [REDACTED] did not have first-hand knowledge of [REDACTED]’s performance during the school day. Ms. Meehan’s expert testimony, based on insufficient data and unreliable methods, could not determine whether the IEP met [REDACTED]’s needs.

100. Likewise, Ms. Meehan testified about problem-solving with [REDACTED] on tasks such as unpacking her backpack and using highlighters in class, things which Ms. Meehan had never observed. T vol 4 168:8-22. However, no evidence showed that [REDACTED] had issues unpacking her backpack, and the uncontroverted evidence confirmed she used highlighters in class.

Recommendations and Conclusions

101. Without knowing what IEP accommodations were already being accessed, T vol 4 259:1-3, Ms. Meehan recommended the following accommodations to be used at school:

- Have access to noise-canceling headphones/earbuds in all environments
- Have access to fidgets (slime/slime-like material in all environments)
- Visual schedule for day and week subjects
- Access to a quiet, low-stim private space
- Access to breaks without contingency (mutually agreed upon system – i.e. putting a highlighter on desk to indicate a need for a break)
- Use of highlighters/brightly colored paper or materials
- Access to water or food throughout the day
- Alternate independent activities for P.E. (walking around track)
- Access to trusted adults while at school

Pet'r Ex. 16 at 13.

102. However, each of her recommendations for accommodations (or a functional equivalent) were already in place for █████ at WMPCS during the 2023-2024 school year.

103. Ms. Meehan also recommended that █████ receive private OT services 1x/week for 60 minutes and that her IEP team “*consider* direct occupational therapy at school 2x/week for 30 minutes.” Pet'r Ex. 16 at 12 (emphasis supplied).

104. Though Ms. Meehan suggested that OT goals address self-regulation; self-advocacy; written communication; and grooming and hygiene, her report did not designate which goals were home/community versus school-based.

105. While Ms. Meehan opined that █████ needed OT support at school to assist with self-regulation, T vol 4 197:17-23, she provided no firsthand evidence indicating that █████ was experiencing significant difficulties at school that necessitated such support.

106. Ms. Meehan also did not address the impact of [REDACTED] discontinuing ADHD medication in November 2023. Instead, she stated that her focus was [REDACTED]s current abilities, T vol 4 :15-24.

School Refusal

107. Ms. Meehan could not explain why [REDACTED] arrived at school by 7:30 a.m. without issue after returning on August 29, 2024. T vol 4 270:6-9.

Jennifer Minnelli (T vol 7 5-204, 8 149-186)

108. The Tribunal accepted Jennifer Minnelli as an expert witness in the following areas: communication, executive functioning, behavior related to communication, and special education related to communication. T vol 7 24:18-22.

Evaluation of [REDACTED]

109. On May 8, 2024, Ms. Minnelli conducted various evaluations of [REDACTED] in her Chapel Hill office. She spent no more than 3.5 hours with [REDACTED] and her Parents, which was her only interaction with [REDACTED] T vol 7 134:14-16; 128:2-4. When she wrote her May 8, 2024, she had reviewed only the school records provided by [REDACTED]s Parents. Ms. Minnelli conceded that she did not verify whether the documents she received represented all [REDACTED]s then-current evaluations. T vol 7 203:4-10. Like the other expert evaluations, [REDACTED]s Parents were present for Ms. Minnelli's evaluation. T vol 7 170:19-171:8.

110. Ms. Minnelli's May 8, 2024, report was received into evidence as Pet'r Ex. 23. T vol 7 34:20-21.

Issues with Evaluation Process

111. Although Ms. Minnelli obtained rating scales from [REDACTED]s Parents, such as the CEFL-5, she did not seek similar rating scales from [REDACTED]s teachers at WMPCS, despite providing the opportunity to educators to provide rating scales being her ordinary practice. T vol 7 145:2-146:9, 150:8-151:2.

112. Ms. Minnelli concluded that [REDACTED] had deficits in the areas of pragmatic language, narrative language, and written expression, T vol 7 33:13-15, and she recommended three hours per week of school-based specially designed instruction.

Pet'r Ex. 23 at 18. However, in forming her expert opinion, she did not consult ██████'s teachers or the speech-language pathologist who had conducted a recent school-based evaluation.

113. Ms. Minnelli agreed that it would be important for an IEP team to consider a student's day-to-day performance in the school setting. T vol 7 166:12-19.

114. While Ms. Minelli mentioned the possibility of ██████ being defiant at school, she was not familiar with ██████'s disciplinary record. T vol 7 173:21-174:17.

115. During Ms. Minnelli's testimony, it was revealed that ██████'s Parents had provided Ms. Minelli with a folder of documents in May 2024 that had not been disclosed to WMPCS in discovery. Ms. Minnelli destroyed those documents in late May.

Tribunal's Ruling on Discovery Violations

116. By Order dated October 17, 2024, this Tribunal granted in part and denied in part WMPCS's Motion to Strike. The relevant decretal paragraphs of that Order stated:

- a. The Motion is DENIED in that the testimony of Jennifer Minnelli WILL NOT BE STRICKEN from the record.
- b. However, alternative sanctions are GRANTED regarding Ms. Minnelli's testimony. The credibility and weight of Ms. Minnelli's testimony, along with her report, are diminished due to the discovery violations discussed herein.

117. As noted in the Tribunal's Order, WMPCS is entitled to an adverse inference that the materials provided to Ms. Minnelli by ██████'s Parents, along with Ms. Minnelli's draft report, would have been favorable to WMPCS.

Ms. Minnelli's Testimony and Opinions

118. Likewise, the Tribunal notes that despite her extensive experience testifying in special education cases, Ms. Minelli exhibited heightened defensiveness from the start of *voir dire* by WMPCS's counsel. T vol 7 19:17-20:4.

119. Ms. Minnelli's conclusion that [REDACTED] has deficits in language is inconsistent with other evidence presented in this case. First, evaluations conducted over multiple years reflected that [REDACTED]'s pragmatic language skills were and still are age appropriate. Second, according to the educators at WMPCS, [REDACTED]'s language skills were within the appropriate range. Finally, the video of [REDACTED] conversing with her mother on September 8, 2024, Resp't Ex. 66, shows that at twelve years old, [REDACTED] could self-advocate, engage in reciprocal conversation, and even challenge a statement by [REDACTED] that she found illogical.

120. Ms. Minnelli's conclusion that [REDACTED] needed pragmatic language instruction due to self-regulation and coping issues, T vol 7 62:10-16, is unsupported by reliable evidence. [REDACTED] did not present with such issues or problems at school. While issues raised by the evaluations may warrant IEP team concern, Petitioners must establish their relevance to [REDACTED]'s daily school performance. Moreover, Ms. Minnelli's opinion was speculative with no direct evidence of such difficulties.

121. Similarly, the Tribunal discounts Ms. Minnelli's statements regarding [REDACTED] *potentially* misunderstanding power differentials between her and her teachers because of a disability, see T vol 7 58:22-59:13, as unsubstantiated. Her comments were general and did not address [REDACTED]'s specific needs or experiences. Hypothetical statements about how a child with a suspected disability might behave is not evidence of how [REDACTED] behaves in those situations. Ms. Minnelli pointed to no factual support that would have made her comments specific to [REDACTED] in a school setting.

122. Although Ms. Minnelli testified that "I don't think [REDACTED] advocates very well for herself," T vol 7 65:13, and therefore required specially designed instruction in that area, there was little support for that statement. Petitioners offered little, if any, evidence to suggest that [REDACTED] had difficulty advocating herself during her school day. In contrast, WMPCS's educators, who worked with [REDACTED] daily, each testified that [REDACTED] had no issues with self-advocacy. Additionally, [REDACTED] demonstrated age-appropriate self-advocacy skills in the video recorded by [REDACTED] Resp't Ex. 66.

123. Though Ms. Minnelli found [REDACTED] "weak in conversational reciprocity," T vol 7 69:6-9, none of the evaluators who assessed [REDACTED] in a school setting or her

educators noted any deficiencies in her ability to engage in reciprocal communication. Only those who had brief interactions with [REDACTED] with her Parents present noted issues with reciprocal communication. In contrast, WMPCS’s documentation of [REDACTED]’s consistent school experience is a more reliable indicator of her true communication skills than testing conducted for litigation purposes.

124. The first-hand evidence produced by WMPCS is significantly more probative regarding [REDACTED]’s communication issues. Each of WMPCS’s witnesses—even the independent professionals who evaluated [REDACTED] had experience working with her in the school setting, which shaped their opinions. Neither Ms. Minelli nor any other of Petitioners’ experts observed her in the school environment or sought information regarding her performance there.

Social Communication Skills

125. As examples of [REDACTED]’s purported social communication deficits, Ms. Minelli cited “the ELA curriculum” and “problems on the playground at recess.” T vol 7 60:11-18. However, Petitioners presented no evidence that she experienced social communication deficits in either of these settings while at school. In contrast, WMPCS provided reliable evidence that [REDACTED] did not have social communication issues during recess. Kathy Carico conducted an observation of [REDACTED] on the playground on January 8, 2024, Resp’t Ex. 38, and concluded that [REDACTED] demonstrated social communication skills comparable to her typically developing peers. T vol 12 167:20-25. Additionally, as noted below, other WMPCS educators, who worked with [REDACTED] for multiple years, consistently testified that [REDACTED] had no social communication, pragmatic communication, reciprocal communication, or other communication difficulties at school

126. The consistent testimony from [REDACTED]’s WMPCS teachers and the September 8, 2024 video (Resp’t Ex. 66) are more probative and persuasive than Ms. Minelli’s conclusions, which lacked direct factual support.

Problem Solving and Sequencing

127. Finally, Ms. Minnelli opined that problem solving and sequencing would be “very difficult” for [REDACTED] T vol 7 61:1-9. If true, Petitioners should have proffered schoolwork, grades, or other evidence of this claim, but they did not.

Lindsey Ohler (T vol 3 193-257; vol 4 6-40; vol 8 4-147)

128. Lindsey Ohler, D. Psy., was accepted as an expert witness in Child Psychology. She testified about [REDACTED]’s academic, mental health, anxiety, autism spectrum disorder, behavior, school refusal, attendance, school-based therapy, counseling needs, and needs for compensatory services. T vol 3 219:23-220:1.

129. Dr. Ohler had previously qualified as an expert witness in only one other special education case. T vol 3 216:14-16.

Evaluation of [REDACTED]

130. Dr. Oher was to evaluate [REDACTED] at her office on July 10-22, 2024. However, due to illness, she personally met with [REDACTED] only on July 11, 2024. Pet’r Ex. 9.

131. The second day of the evaluation typically lasts three to four hours, but [REDACTED]’s session concluded earlier than expected. T vol 8 74:1-75:12.

132. Dr. Ohler spent less than four hours with [REDACTED] in her office setting on July 11, 2024. T vol 8 141:13-142:5. During the evaluation on July 11, 2024, Dr. Ohler wore a face mask, which hindered [REDACTED]’s ability to interpret Dr. Ohler’s facial expressions. Dr. Ohler’s report of the evaluation was accepted, with redactions, as Pet’r Ex. No. 9.

133. Dr. Ohler described the “takeaways” of her report as follows: “[REDACTED] continued to show some social deficits that were observed by me in the office. Her Parents reported a history of developmental delays and sensory concerns. Her psychological testing also reflected a very negative self – sense of self and self-esteem. And that her academic functioning was within the average range as well as her cognitive functioning. There were executive functioning deficits as reported by Parents and [REDACTED] T vol 3 221:5-13.

134. In Dr. Ohler's interactions, [REDACTED] did not respond to social bids, T vol 3 224:4-18, or initiate conversation, T vol 3 225:5-15.

135. Although Dr. Ohler noted that [REDACTED] had stopped taking medication for ADHD in November 2023 and that the school had noted a significant change as a result, Dr. Ohler did not address the significance of the medication stoppage during the November 2023-March 2024 period. *See* T vol 3 229:14-23.

136. Dr. Ohler conducted her evaluation in her office, without input from [REDACTED]'s teachers, despite using tools that measured performance across various domains and included educator components. There was no evidence that she observed or evaluated [REDACTED] at home or school.

Observations and Deficits

137. Dr. Ohler admitted that a child/adolescent "can keep it together all through their school day and are doing the best they can to maintain their emotional functioning, and then when they are home and feel safe and comfortable, that's when they tend to loosen up, become more of themselves, and that's when you can have more emotional dysregulation." T vol 3 239:7-12.

138. Despite her observations, Dr. Ohler acknowledged that [REDACTED] maintained appropriate eye contact when discussing topics of interest, such as her recent trip to Bush Gardens. T vol 8 89:2-8. Based on her interactions, Dr. Ohler declined "to conclude anything about her control of these symptoms." T vol 3 239:24-25.

139. Although Dr. Ohler opined that [REDACTED] had difficulty with peer relationships, she offered no first-hand observations to support this conclusion.

140. Dr. Ohler testified that, in her professional opinion, [REDACTED] had deficits in the following areas prior to the October 2023 IEP team meeting:

- reciprocal communication
- social bids
- inconsistent eye contact
- developing and maintaining peer relationships
- initiating conversation
- maintaining conversation
- emotional regulation
- coping skills

- rigid thinking patterns
- hypersensitivity
- inattention
- hyperactivity
- inhibitory control
- self-monitoring
- sustained and working memory
- initiating tasks
- planning tasks
- organizing tasks
- completing tasks – and --
- monitoring and problem solving.

T vol 4 34-40. Her opinion lacked first-hand knowledge about [REDACTED] prior to October 2023.

141. In subsequent testimony, Dr. Ohler stated that [REDACTED] exhibited these deficits at the time of her evaluation in early July 2024. T vol 8 5:12-10:2. Dr. Ohler, however, did not establish that any of these deficits were significant enough in a school-based setting to necessitate an IEP goal.

Medication Discontinuation

142. Also, Dr. Ohler did not address how [REDACTED]'s medication discontinuation in November 2023 affected her school performance or the extent to which medication managed her attentional and hyperactivity issues during her July 2024 evaluation. Furthermore, in her critique of [REDACTED]'s IEP goals, Dr. Ohler was not asked to distinguish between periods when [REDACTED]'s ADHD symptoms were controlled and when they escalated.

Lack of School and Teacher Input

143. Like Petitioners' other experts, Dr. Ohler did not contact WMPCS to obtain any information for her evaluation. T vol 8 68:23-25.

144. [REDACTED]'s Parents did not inform Dr. Ohler that [REDACTED] had stopped taking ADHD medication in the fall of 2023. T vol 8 97:1-12. Dr. Ohler acknowledged that the rating scales completed by [REDACTED]'s Parents reflected only the home environment. She acknowledged that complementary forms exist for educators to assess school

performance, but she did not obtain them for [REDACTED]'s evaluation. T vol 8 124:12-125:10.

145. During her evaluation, Dr. Ohler knew that [REDACTED]'s Parents had not been present in the school for some time and would have lacked direct knowledge of [REDACTED]'s school performance. T vol 8 129:1-22.

146. Dr. Ohler could not vouch for the accuracy of the information provided by [REDACTED] and [REDACTED] in her report, but she accepted the Parents' account at face value. T vol 8 92:2-17.

147. Dr. Ohler conceded that, because she did not seek WMPCS's input, the BASC-3 rating scale results only reflected [REDACTED]'s experiences at home. T vol 8 134:4-25.

148. Similarly, although the Social Responsiveness Scale, Second Edition ("SRS-2"), is designed to assess social impairment in natural settings (home and school) with input from both parents and teachers (*see* Pet'r Ex. 9 at 27), Dr. Ohler's conclusions relied solely on information from J.D., [REDACTED]'s mother. T vol 8 135:10-21.

149. The SRS-2 was the only tool used by Dr. Ohler to assess behaviors associated with autism. T vol 8 135:22-25.

Cognitive and Academic Testing

150. [REDACTED]'s intelligence was tested using the Wechsler Intelligence Scale for Children-Fifth Edition ("WISC-V") in Dr. Ohler's office. [REDACTED] received a Full Scale IQ ("FSIQ") score of 102, placing her within the average range. Of the seven subtests comprising the FSIQ, her only low average score was in the subtest of Working Memory. Pet'r Ex. 9 at 13-14.

151. [REDACTED] also completed the Woodcock-Johnson Tests of Achievement-Fourth Edition ("WJ-IV") to assess current academic achievement relative to her same-age peers. Pet'r Ex. 9 at 15-17. Her scores in reading, math, written language (including written expression) all fell within the average range.

Opinion on Educational Environment

152. Dr. Ohler's expert opinion contradicted Petitioners' position in several respects.

153. In her report, Dr. Ohler questioned the appropriateness of the charter school program stating: “Being enrolled in a Montessori School that requires significant independence on the part of the student may not be the appropriate environment for [REDACTED] According to records she needs support to help her remain on task, complete assignments, remain in seat, and needs redirection as she is inattentive and frequently talks with peers. Thus, there is evidence she struggles to maintain her attention and behavior in this type of academic environment. It will be important for [REDACTED] and her parents to consider if Montessori or a more traditional education will fit her learning style and needs.” Pet’r Ex. 9 at 22.

154. Per Dr. Ohler, traditional public schools are inherently more structured than Montessori classrooms. In a traditional public school, teachers provide direct instruction on tasks and schedules, whereas Montessori students have considerable autonomy in selecting their activities. T vol 8 137:17-25. Based on this distinction, Dr. Ohler believed that [REDACTED] might be better served in a traditional school program. She clarified that this was not a critique of WMPCS, but rather a statement that a particular student may be better served by a differing educational pedagogy. T vol 8 138:1-140:4.

School Refusal

155. Although Petitioners raised school refusal as an issue, [REDACTED] denied it to Dr. Ohler. T vol 8 10:1-2.

Respondent WMPCS’s Witnesses

156. WMPCS called seven witnesses, six of whom were tendered and accepted as expert witnesses: Kathy Carico, Emily Gyba, Caroline Zissette, Dr. Paige Temple, Arlene Whiteside, Austin Andrews, and Amanda Holton.

Kathy Carico (T vol 12 130-220)

157. Kathy Carico serves as the Elementary Head of School at WMPCS and has been with WMPCS for eight years. She holds a teaching license, a degree in psychology, and a minor in child development. Additionally, she has personal experience with students with disabilities, as her son is severely autistic. T vol 12 130:17-131:11. Ms. Carico testified as a fact witness.

WMPCS School Structure

158. WMPCS's elementary school encompasses grades 1-6.

159. Following the resignation of one of [REDACTED]'s teachers in November 2023, Ms. Carico stepped into teach [REDACTED]'s class. T vol 112 138:11-14.

160. WMPCS's staff undertake continuous training, including training through North Carolina Department of Public Instruction ("NCDPI"), the Autism Society, and various Montessori organizations. Additionally, staff receive training in mental health and behavioral management training. T vol 12 138-139.

161. At WMPCS, grades are grouped together in accordance with Montessori principles. The fourth through sixth grades are combined, with about ten students from each grade level in a class. T vol 12 142:24-143:24. That was the structure in place during [REDACTED]'s sixth-grade, 2023-2024 school year. T vol 12 142:24-143:24.

162. WMPCS's Montessori curriculum includes a 3.5 "work cycle" during which students receive lessons and then choose tasks to complete. In the upper elementary level, including sixth grade, students participate in two work cycles per day. Students also receive interventions and support in the classroom during these work cycles. T vol 12 145:9-146:12.

163. Each subject is assigned a specific day for instruction. For example, a math lesson may be given on a Monday, and students are expected to complete the assigned work by the following Monday. An important tenet of the Montessori philosophy is student autonomy, allowing them to decide when to complete tasks rather than following a rigid schedule dictated by the teacher. T vol 12 145:9-146:21.

164. Montessori education emphasizes both freedom of choice—allowing students to select their tasks for the day—and freedom of movement. Students are permitted to move about in the classroom without requesting permission, provided their movement is purposeful. T vol 12 149:1-150:24.

[REDACTED]'s Experience at WMPCS

165. During [REDACTED]'s sixth-grade year, there were two teachers, referred to as "guides" in Montessori parlance. After the lead teacher resigned in November 2023,

several staff members rotated through the classroom to provide instruction in various subjects.

166. Ms. Carico first worked with [REDACTED] in the fall of 2021 during [REDACTED]'s 4th grade year, providing reading intervention with [REDACTED] 45 minutes each day through the end of the 2021-2022 school year. T vol 12 156:1-157:24.

167. Ms. Carico described [REDACTED] as a sweet, polite, fun-loving, highly social child, who was well-liked by her peers. While [REDACTED] was inattentive and impulsive at times, she was also shy when meeting new people. T vol 12 158:1-6. However, despite these tendencies, [REDACTED] was easily redirected. T vol 12 159:6-7.

168. During the 2021-2022 school year, [REDACTED]'s lead teacher was Austin Andrews. T vol 12 161. That same year, Ms. Carico assisted [REDACTED] with MAPS testing, a nationally normed testing suite used to track student achievement and growth. T vol 12 162:1-24. At that time, [REDACTED] had a testing accommodation on her IEP, which Ms. Carico was responsible for implementing.

169. In the 2022-2023 school year ([REDACTED]'s fifth grade year), Ms. Carico no longer provided reading interventions but continued to administer [REDACTED]'s testing accommodations. T vol 12 163:15-21.

170. During the 2023-2024 school year, [REDACTED]'s sixth grade year, Ms. Carico served as the Acting Head of the Elementary School. Throughout the year, she periodically visited [REDACTED]'s classroom to observe and support teachers. Following the lead teacher's resignation in November 2023, she also began teaching science one day per week. T vol 12 164:8-19.

171. Carico described [REDACTED] in sixth grade as more social than before and that she appropriately participated in lessons and contributed to discussions. T vol 12 165:8-11. However, she occasionally lost focus, particularly when working on non-preferred tasks. T vol 12 165:12-15.

172. Ms. Carico observed [REDACTED] utilizing various sensory tools in the classroom, including a weighted blanket, a Theraband for foot movement, stress balls, adaptive seating (such as bean bag chairs), headphones, and other sensory aids located in her cubby. T vol 12 166:2-25.

173. During science lessons, █████ demonstrated good eye contact, which Ms. Carico described as “very typical” compared to her peers. According to Ms. Carico, “█████ didn’t hesitate to let us know sort of how she was feeling or what she was thinking.” T vol 12 168:2-3. █████ would self-advocate and was “very polite, but would let you know how she felt.” T vol 12 168:4-6.

174. █████ also maintained a group of friends, mainly girls, across grade levels, that she would hang out with during class and recess. █████’s social interactions with her peers during the school day were just like other sixth-grade students. T vol 12 168:10-24.

Specific Observations of █████ During Recess

175. As part of the evaluation process following the October 2023 IEP team meeting, Ms. Carico conducted a formal observation of █████ during recess on January 25, 2024. Resp’t Ex. 38.

176. She observed █████ socializing with peers in a typical manner, engaging in conversation and playful interaction. Recess is a non-structured outdoor time when the students are free to move about in designated areas. During Ms. Carico’s observation, █████ and two friends from her class met up with two friends from another class, linking arms around each other’s necks and were “just talking and giggling and being like typical, you know, 11-12-year-old girls do[.]” T vol 12 173:16-22.

177. █████’s behavior and communication, according to Ms. Carico, was very typical for children her age. T vol 12 174:1-9.

178. According to Ms. Carico, █████’s behavior and communication skills during the formal observation were consistent with her overall experience with █████. In the two weeks leading up to the observation, Carico had been observing at recess for another purpose, during which she also observed █████ informally. █████’s behavior during these informal observations aligned with what Carico noted during her formal assessment. T vol 12 218:7-15.

█'s Performance After Return to WMPCS

179. After █ returned to WMPCS on August 29, 2024, pursuant to the Tribunal's Order, Ms. Carico observed her participation in special education pull-out sessions. T vol 12 177:9-14. These included 30-minute sessions, three times per week for math, twice per week for reading, and three times per week for academic skills. T vol 12 178:1-15.

180. Upon returning, █ quickly formed friendships, expressed a desire to spend time with them instead of attending pull-out services, and appeared happy. T vol 12 179:14-180:12.

181. Once █ figured out the routine of her new seventh/eighth-grade class, she has "thrived." T vol 12 183:19-25.

Communication and Engagement

182. If █ was uninterested in a task, she would either state, "I don't know" as a work-avoidance effort. However, an educator who has experience with █ can push through that, and once █ understands that she cannot avoid work just by saying "I don't know," she will engage with redirection. T vol 12 184:4-12.

183. When discussing topics of interest, █ was highly engaged and conversational. She can be "very chatty," talk quickly, and engage in back-and-forth conversation. T vol 12 188:7-12. If █ is uninterested in a topic, she will not engage, T vol 12 188:7-12, however, Ms. Carico testified that it is quite common for sixth graders not to engage in non-preferred topics. T vol 12 188:16-23.

184. Ms. Carico disagreed with Dr. Ohler's characterization of █ as having a flat affect, noting that while █ might not engage at times if she does not want to, she did not typically display a flat demeanor. T vol 12 189:15-190:4. Instead, Ms. Carico described █'s communication habits and style as not significantly different from other sixth graders. T vol 12 192:1-3. If █ is interested in the topic, she is very conversational; if she is not, she will still engage but not with the same fervor. T vol 12 191:21-25.

185. When asked about Jennifer Meehan's note that █ frequently said "I don't know" or "I don't remember," Ms. Carico testified that she was able to

successfully engage [REDACTED] by persistently working through the subject. She explained, “Ultimately, you can come to a conclusion of she really does not know this, or she will give you an answer, but you have to be persistent.” T vol 12 192:21-23.

186. Ms. Carico reviewed the 18-minute video of [REDACTED] introduced as Resp’t Ex. 66. She noted that what stood out most was [REDACTED]’s ability to self-advocate, which Ms. Carico described as typical for [REDACTED] T vol 12 195:20-23. [REDACTED]’s communication in the video, including her responses to J.D., were commiserate of how [REDACTED] interacted at school. T vol 12 196:10-14.

187. During [REDACTED]’s sixth-grade year, her hair was typically well groomed. T vol 12 199:22-200:1.

[REDACTED]’s Progress on Social Emotional Goals

188. Based on her observations, Ms. Carico testified that during the stay-put period of the 2024-2025 school year, [REDACTED] had mastered the first social-emotional goal on her February 2024 IEP, as well as the second goal involving pro-social coping skills. T vol 12 199:16-17.

189. Following her return to WMPCS in late August 2024, [REDACTED] “[was] getting almost all of her work done.” T vol 12 202:7-9.

190. Ms. Carico was credible, and her testimony will be given the appropriate weight.

Emily Gyba (T vol 13 6-123)

191. Emily Gyba, a speech-language pathologist with Carolina Therapy Connection, was received as an expert witness in speech-language pathology. See Resp’t Ex. 62 (resume). She holds a CCC-SLP license in North Carolina. T vol 13 17:3-12.

192. The purpose of school-based therapy is to help a student to access his or her educational environment. In contrast, private therapy is often a matter of personal preference. For example, a parent may seek private speech therapy for an issue that does not affect a student’s school performance. T vol 13 17:14-23.

193. WMPCS contracted with Carolina Therapy Connection as part of the evaluation process initiated at the October 2023 IEP team meeting. Ms. Gyba conducted a speech-language evaluation of [REDACTED]. She worked with [REDACTED] in the school setting on multiple days (December 13-14, 2023; January 3, 2024). T vol 13 18:17-19:13.

Evaluation Process

194. As part of her evaluation process, Ms. Gyba received a parent-input document completed by [REDACTED]'s Parents, which did not indicate any speech-related concerns. T vol 13 39:11-40:8.

195. Before working with [REDACTED] Ms. Gyba visited [REDACTED]'s classroom and spoke with her teachers to gather background information. T vol 13 18:17-25. Based on those conversations, Ms. Gyba concluded that [REDACTED]'s teachers had no concerns about her communication skills in the classroom setting. T vol 13 39:6-10.

196. During one observation, Ms. Gyba saw [REDACTED] conversing with a group of friends while they cleaned up at the end of a work cycle. [REDACTED]'s interactions were consistent with those of her sixth-grade peers. T vol 13 23:8-11.

197. In her first conversation with [REDACTED] Ms. Gyba found her to be very respectful and sweet. She described [REDACTED] as outgoing and personable, easily engaging in conversation. T vol 13 19:18-24.

198. Evaluating [REDACTED] in a school setting was important to understanding how she performed in her classroom environment. T vol 13 20:16-25.

199. In preparation for her evaluation, Ms. Gyba reviewed the then-most recent speech language evaluation of [REDACTED] conducted in 2022 by Elizabeth Motteler. Resp't Ex. 1.

200. Ms. Gyba's evaluation assessed articulation, expressive language, receptive language, fluency, voice, and pragmatic language. Resp't Ex. 31; T Vol 13 30:23-31:16.

201. "Articulation" refers to the ability to accurately produce speech sounds. T Vol 13 31:21-32:18. [REDACTED] made no errors on a standardized articulation test, and her articulation was average for her age. T vol 13 37:19-24.

202. Receptive language measures a student's ability to understand language. T vol 13 32:23-33:22.

203. Expressive language assesses a student's ability to communicate through verbal or physical output. T vol 13 33:23-34:11.

204. Fluency measures the student's output of speech, looking for things like "bumps" or repetitions of the same sounds or words. T vol 13 34:13-18.

205. The "voice" component of a speech evaluation assesses a student's ability to adjust their vocal volume based on appropriate context and identifies any vocal anomalies, such as hoarseness. T vol 13 35:1-8.

206. █████ scored 93 for listening comprehension and 107 for oral expression on the standardized test administered by Ms. Gyba, placing her receptive and expressive language abilities within the average range. T vol 13 42:22-43:2.

207. Pragmatic language measures the student's ability to understand and use social communication in various settings. T vol 13 35:9-15. To assess █████s pragmatic language, Ms. Gyba administered the Test of Pragmatic Language, 2d ed. ("TOPL-2"), a standardized assessment of communication in social situations. T vol 13 47:20-49:24. █████ score on the TOPL-2 placed her in the "above average" for pragmatic language. T vol 13 49:16-24; Resp't Ex. 31 at 2.

208. During the testing, █████ requested to sit on an exercise ball and to use a "pop-it" fidget toy. Ms. Gyba considered this an instance of self-advocacy, T vol 13 at 50:19-51:25, noting that █████ recognized how sensory tools could help her perform better. T vol 13 59:1-8; 83:4-21.

209. █████s fluency was determined to be within normal, functional limits for her age. T vol 13 53:15-54:8.

Evaluation Conclusions

210. Based on her evaluation, Ms. Gyba concluded that █████ did not require school-based speech-language services. T vol 13 54:14-19, 56:7-11; Resp't Ex. 31 at 3. The results of Ms. Gyba's evaluation were consistent with those of the January 2022 Motteler evaluation. See Resp't Exs. 1 and 31. T vol 13 57:17-24.

211. At the IEP team meeting on March 7, 2024, Ms. Gyba relayed her opinion that [REDACTED] did not need school-based speech-language services. T vol 13 56:12-57:14.

212. During the 2024-2025 school year, Ms. Gyba encountered [REDACTED] once at WMPCS. [REDACTED] said “hello” to Ms. Gyba, while linking arms with friends, smiling, and “appeared happy and excited to be with her friends outside at recess.” T vol 13 60:2-14.

213. During her three days of separate interactions, Ms. Gyba noted no breakdown in social reciprocity or lack of conversational flow. Instead, [REDACTED] appropriately maintained conversations by answering questions appropriately, asking follow-up questions, and by staying on topic. T vol 13 61:1-12.

214. Jennifer Minnelli’s speech-language evaluation diverged from Ms. Gyba in that Ms. Minnelli used subjective rating scales from the Parents without complimentary teacher assessments. In contrast, Ms. Gyba used a normed standardized test to assess pragmatic language. In addition, unlike Ms. Gyba, Ms. Minnelli did not administer the CELF-5 portion that contained a standardized test for pragmatic language. T vol 13 at 64:1-65:22.

215. Contrary to Ms. Minnelli’s brief interactions with [REDACTED] [REDACTED] made appropriate eye contact during her interactions with Ms. Gyba, T vol 13 66:4-12, and Ms. Gyba found that [REDACTED]’s reactions to social bids and her ability to engage in reciprocal conversation were appropriate for her age and grade level. T vol 13 66:15-67:13.

Review of Resp’t Ex. 66

216. Ms. Gyba watched the same September 2024 video of [REDACTED] Resp’t Ex. 66, but drew a different conclusion from Ms. Minnelli. Ms. Gyba opined that [REDACTED] effectively conveyed her perspective, maintained conversational flow, self-advocated, and demonstrated no language-related disability. T vol 13 68:1-69:3.

217. Based on the thoroughness of Ms. Gyba’s evaluation, including receiving school-based and parent input, observing [REDACTED] in the school setting, and her

interactions with █████ her expert opinion was more persuasive and given more weight than Ms. Minnelli's.

Caroline Zissette (T vol 13 124-264)

218. Caroline Zissette is a licensed occupational therapist who works for Carolina Therapy Connection and was received as an expert in occupational therapy ("OT"). T vol 13 130:2-6; see Resp't Ex. 61 (resume or C.V).

219. School-based OT focuses on facilitating a student's ability to access their educational environment. In contrast, outpatient or private therapy addresses challenges that impact multiple settings beyond school.⁹

Evaluation Process

220. Ms. Zissette completed an occupational therapy evaluation of █████ on January 8, 2024. Resp't Ex. 35. Since the evaluation aimed to determine if █████ qualified for school-based OT services, Ms. Zissette deemed it important to conduct the evaluation in the school setting to assess how █████ functioned in that environment. T vol 13 134:4-9.

221. In addition, Ms. Zissette observed █████ in her classroom, T vol 13 134:10-15, and reviewed the social developmental profile completed by █████s Parents, see Pet'r Ex. 18, █████s IEP, and other related documents.

222. Ms. Zissette's assessment included a review of the consultative OT service notes from October 2022 and October 2023. Based on this review, she concluded that both █████ and her teachers had successfully implemented and utilized sensory strategies. T vol 13 171:3-11.

223. Unlike Petitioners' experts, as part of her evaluation, Ms. Zissette requested input from both █████s teacher and her Parents using a child sensory profile. T vol 13 137:1-12.

Observations

⁹ To illustrate this distinction, Ms. Zissette shared a personal example. As a child, she used improper pencil grip. During her kindergarten evaluation, however, she demonstrated the ability to write legibly, at an appropriate speed, without fatigue and this did not hinder her educational access. Consequently, school-based OT services were unwarranted. T vol 13 130:8-132:10.

224. When Ms. Zisette observed [REDACTED] in the classroom setting, [REDACTED] was engaged in conversation with her friends while completing classwork. T vol 13 137:16-18.

225. [REDACTED] also engaged in reciprocal conversation with Ms. Zisette, who noted no significant differences between [REDACTED]'s communication skills and those of other typically developing 11-year-olds. T vol 13 137:19-138:11. Moreover, although [REDACTED]'s eye contact at first was intermittent, it was not markedly different from her peers. T vol 13 138:12-138:21

226. The primary focus of Ms. Zisette's OT evaluation was to evaluate [REDACTED]'s fine motor skills and to determine whether sensory deficits were interfering with her education.

227. With respect to [REDACTED]'s fine motor skills, Ms. Zisette noted that, although [REDACTED] scored below average on fine motor tasks, her classroom observations of [REDACTED] showed that [REDACTED] performed within age-appropriate functional limits for classroom tasks. Resp't Ex. 35 at 4; T vol 13 144:22-145:24.

228. On the sensory rating scales, [REDACTED]'s Parents rated her as having sensory issues "much more than others" while [REDACTED]'s teachers largely rated her as "just like the majority of others." Resp't Ex. 35 at 4-5.

229. In [REDACTED]'s classroom, Ms. Zisette observed that [REDACTED] had access to various sensory tools including a TheraBand, a Bouncyband, weighted blanket, fidgets, stress balls, a NeeDoh ball, headphones, as well as, access to snacks and mints. T vol 13 159:5-163:2.

230. During her evaluation, [REDACTED] made comments regarding the relative ease or difficulty of tasks, which showed a relative strength of self-awareness which supported her self-advocating ability. T vol 13 163:10-164:8.

231. The evaluation revealed that [REDACTED] experienced difficulty initiating tasks, an aspect of executive functioning. T vol 13 164:15-20. Such difficulty is not uncommon of students, but that it was "a little more difficult" for [REDACTED] T vol 13 164:20-22.

232. A child who had difficulty initiating tasks would likely find a Montessori classroom more challenging than that of a traditional public school where class time is more structured. T vol 13 at 165:14-166:2.

Conclusion of the Evaluation

233. Based upon her evaluation of [REDACTED] including her classroom observations of [REDACTED] and the other inputs, Ms. Zisette concluded that [REDACTED] did not need the support of school-based occupational therapy to access her education. T vol 13 167:2-10; Resp't Ex. 35 at 8.

234. In her report, Ms. Zisette lists strategies that [REDACTED]'s classroom teachers could consider implementing to provide additional support to [REDACTED] for her sensory issues. Resp't Ex. 35 at 8; T vol 13 168:22-169:6. After completing her evaluation, Ms. Zisette reviewed previous OT evaluations and concluded that their findings aligned with Her's supporting her conclusion that [REDACTED] did not need school-based OT services. T vol 13 177-186, 194-201; Resp't Exs. 3-5; 7, 11.

235. During the March 7, 2024 IEP team meeting, Ms. Zisette discussed her evaluation results. However, due to time constraints, the team did not reach any programming decisions. T vol 13 168:8-14.

Disagreement with Petitioners' Evaluators

236. A key difference in Ms. Zisette's evaluation from Ms. Meehan is that Ms. Zisette's evaluation incorporated input from both home and school, whereas Ms. Meehan had only sought input from [REDACTED]'s Parents. Ms. Zisette persuasively emphasized that determining eligibility for school-based services requires assessing the impact on the student's ability to access her education, and that if teacher input is lacking, the result is a one-sided report. T vol 13 173:3-17. Since Ms. Meehan did not gather any school-based data, her report could not adequately address this criterion. T vol 13 173:14-21.

237. Ms. Zisette also persuasively critiqued Ms. Meehan's recommendation that [REDACTED] receive two 30-minutes sessions of school-based OT per week. She cited two primary reasons: first, Ms. Meehan had not evaluated [REDACTED]'s ability to access her educational environment, and second, Ms. Zisette's evaluation of [REDACTED] in that

environment concluded the opposite, that she did not need ongoing direct OT support. T vol 13 175:7-176:9. Since [REDACTED] did not qualify for direct OT services, there is nothing to compensate for, and she is not entitled to compensatory services. T vol 13 176:3-9.

238. Likewise, Ms. Zisette disagreed with Dr. Ohler's conclusion that [REDACTED] did not engage in reciprocal communication or appropriately respond to social bids. Ms. Zisette disagreed and cited an exchange with [REDACTED] following the Christmas break where [REDACTED] responded appropriately about the "super cold" weather in January and engaged in back-and-forth conversation about how they had spent their respective Christmas breaks. Caroline Zisette characterized [REDACTED]'s communication skills as "very similar to typical peers." T vol 13 204:11-25.

239. Ms. Zisette also disagreed with Ms. Minnelli's assertion that [REDACTED] lacked conversational flow. In Ms. Zisette's experience, [REDACTED] kept a consistent conversational flow. T vol 13 207:1-3. [REDACTED] discontinued her ADHD medication in November 2023, but the school was not informed until a later date. Ms. Zisette testified that such a change in medication could account for decreases in [REDACTED]'s evaluative scores between an evaluation conducted in 2021, which she was asked about on cross-examination, and her January 2024 evaluation. T vol 13 at 263-264.

240. As Ms. Zisette's testimony and opinions were based on sufficient facts or data, having incorporated parent and school-based input along with her observations of [REDACTED] in the school setting, and were the result of reliable principles and methods to the facts of the case, her testimony was given significant weight.

Dr. Paige Temple (T vol 15 104-212)

241. Dr. Paige Temple is a licensed psychologist in private practice, providing psychological services to children, adolescents, and families. See Resp't Ex. 64 (curriculum vitae). She was accepted by the Tribunal as an expert in psychology, including child psychology. T vol 15 107:50-10.

242. This proceeding was Dr. Temple's first time testifying in a special education hearing, T vol 15 150:19-21, and her psychological evaluation of [REDACTED] was her first evaluation for WMPCS. T vol 15 150:16-18.

243. Dr. Temple contracts with several charter schools and one traditional public school district to conduct similar evaluations. T vol 15 151:6-23.

Evaluation Process

244. As part of her evaluation, Dr. Temple met with [REDACTED] on three separate occasions at WMPCS. T vol 15 108:20-109:5.

245. The social development history included in Dr. Temple's report was filled out by [REDACTED]'s Parents in December 2023. *See* Pet'r Ex. 18.

246. On January 25, 2024, Dr. Temple observed [REDACTED] in the classroom to assess her interactions with her peers and teachers. T vol 15 110:2-22.

247. In her individual interactions with Dr. Temple, [REDACTED] initially appeared shy but warmed up over time, offering information spontaneously and engaging in conversation. T vol 15 113:20-24.

248. During her classroom observation in January 2024, Dr. Temple noted that [REDACTED] exhibited inattention, fidgeting, and distractibility. T vol 15 114:3-9; Resp't Ex. 46 at 3.

249. Unlike Dr. Ohler's work, Dr. Temple collected rating scales from [REDACTED]'s teachers, her Parents, and [REDACTED] herself.

250. Dr. Temple concluded that her Parent's ratings should be interpreted with caution due to their extreme nature. Resp't Ex. 46 at 4.

251. Based upon teacher reports, Dr. Temple concluded that [REDACTED] did not exhibit inappropriate levels of anxiety in the school environment, Resp't Ex. 46 at 6, though she displayed signs of inattention and hyperactivity.

Standardized Testing

252. Dr. Temple administered the Wechsler Intelligence Scale for Children, Fifth Edition ("WISC-V"), which indicated that [REDACTED]'s scores were within the average range, including her full scale IQ of 99. Resp't Ex. 46 at 8-10. Additionally, she administered the Woodcock-Johnson Tests of Achievement, Fourth Edition. Resp't Ex. 46 at 11-13. [REDACTED]'s scores on this standardized achievement test fell within the

average range, demonstrating that her academic performance was commensurate with her intellectual potential. T vol 15 124:7-10.

253. Dr. Temple did not observe that [REDACTED]'s inattention negatively impacted her test scores. T vol 15 124:14-16.

254. Dr. Temple also assessed [REDACTED] for autism. To assess for autism, Dr. Temple employed both the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), which Jennifer Holmes characterized as the “gold standard” for autism assessments, and the Childhood Autism Rating Scale (CARS-2). T vol 15 124:16-125:25; Resp’t Ex. 46 at 12-13.

255. Dr. Temple concluded that “[REDACTED]’s eye contact was appropriate and well-coordinated with vocalizations, gestures, and facial expressions. She directed a range of facial expressions to the examiner in order to communicate affect The quality of her social overtures was appropriate, however, the frequency of social overtures was reduced compared to her peers. She engaged in reciprocal communication, but this was slightly reduced in amount compared to peers. The overall quality of the rapport was comfortable and appropriate.” Resp’t Ex. 46 at 12-13.

256. Dr. Temple observed that [REDACTED] had no difficulty in responding to social bids. T vol 15 129:5-7.

257. Likewise, on the ADOS-2, [REDACTED] received a score of 1 rather than 0 due to the slightly reduced quantity of her reciprocal communication. T vol 15 129:5-23; Resp’t Ex. 46 at 13. A score of 9 is required to meet the diagnostic threshold for autism on the ADOS-2. *Id.* On the CARS-2 assessment, [REDACTED] obtained a score of 16.5, which on that measurement indicates minimal-to-no-symptoms of autism spectrum disorder. Resp’t Ex. 46 at 13.

Review of Resp’t Ex. 66

258. Dr. Temple reviewed the 18-minute video of [REDACTED] from September 2024 (Resp’t Ex. 66) and stated that [REDACTED]’s manner and communication style in the video were consistent with her observations from January and February 2024.

259. Dr. Temple noted that [REDACTED] effectively communicated her preference to remain in the general classroom with her peers rather than to be pulled out for services. T vol 15 134:23-135:10.

Critique of Dr. Ohler's Assessment

260. Dr. Temple testified that it was inappropriate for Dr. Ohler to assess [REDACTED] for autism while wearing a mask, as it prevented [REDACTED] from observing the examiner's facial expressions. This limitation could have hindered [REDACTED]'s ability to respond to nonverbal communication, which is a key component of autism assessment. T vol 15 136:18-24.

261. Dr. Temple further noted that the Social Responsiveness Scale, Second Edition, as used by Dr. Ohler, only reflected Parent ratings and did not incorporate a face-to-face measure where the psychologist could employ her independent professional judgement to determine whether [REDACTED] had autism. T vol 15 137:17-21.

Recommendations and Goals

262. Dr. Temple recommended in her report that [REDACTED]'s Parents seek psychiatric services for [REDACTED] based on some of her answers on the BASC that indicated some unusual perceptual experiences and that her Parents consider weekly psychotherapy services for [REDACTED] T vol 15 140:6-141:11; Resp't Ex. 46 at 14.

263. Dr. Temple discussed her evaluation of [REDACTED] during an IEP team meeting in early March 2024. However, the meeting ended before the team could address potential changes to [REDACTED]'s existing IEP.

264. The Undersigned agrees with Dr. Temple's professional opinion that student evaluations, including those presented in this hearing, are not relevant to what was happening with [REDACTED] before the time of the evaluation. An evaluation performed in May 2024 cannot provide insight into [REDACTED]'s condition in October 2023. T vol 15 145:18-146:23. Instead, evaluations should be used in a forward-looking fashion. T vol 15 149:9-11; *see also Schaffer ex rel. Schaffer v. Weast*, 554 F.3d 470, 477 (4th Cir. 2009). Generally speaking, test results can only inform the reader about current results. They do not provide retrospective insight to capture how a child performed months before the child was evaluated. T vol 15 149:15-19.

265. In light of this, ██████'s two social-emotional goals in her October 2023 IEP were reasonable. T vol 15 178:1.

266. Before an IEP goal addressing stress and anxiety could be deemed appropriate, the IEP team would first need to determine whether those issues were adversely affecting the student's learning. T vol 15 180:1-21.

267. Merely because ██████ expressed a physical complaint does not necessarily indicate somatization/anxiety or a physical medical issue. T vol 15 196:15-17. A more comprehensive assessment would be required to determine the nature and significance of each instance. Likewise, simply reporting stress on a rating scale does not necessarily mean it is impacting ██████'s academic or social performance in the school setting. T vol 15 203:8-204:2.

268. Given the thoroughness of Dr. Temple's evaluation, including receiving school-based and parent input, observing ██████ in the school setting, and her interactions with ██████ her expert opinion was more persuasive and given significant weight.

Arlene Whiteside (T vol 14 4-190)

269. Arlene Whiteside, a licensed clinical social worker, has been serving at WMPCS for the past two academic years, beginning at the start of the 2022-2023 school year. See Resp't Ex. 60 (curriculum vitae).

270. She is the only school social worker on staff. T vol 14 8:7-17.

271. This Tribunal accepted Ms. Whiteside as an expert in clinical social work and school social work, including working with K-12 students who have special needs and IEPs. T vol 14 14:3-10.

Counseling Services and Goals for ██████

272. Ms. Whiteside began working with ██████ in October 2022, T vol 14 14:12-13, providing 30-minute weekly counseling services pursuant to ██████'s October 2022 IEP. *Id.* at 17. At that time, ██████ was in fifth grade.

273. During the 2022-2023 school year, Ms. Whiteside delivered counseling services to ██████ in both individual sessions and peer social skills groups. ██████ also

participated in general classroom social skills activities led by Ms. Whiteside. T vol 14 17:15-18:5.

274. A peer social skills group is a group of students pulled aside to work on concrete issues that might be impacting them, like taking turns, sharing friends, or how to start a conversation. T vol 14 18:6-14.

275. Ms. Whiteside continued working with [REDACTED] in these various settings through the remainder of the 2022-2023 school year and into the 2023-2024 school year through November 30, 2023.

276. [REDACTED] actively participated in her peer social skills group, demonstrating empathy and assisting peers facing greater social challenges. She asked relevant questions and exhibited difficulties in communication. T vol 14 20:1-18.

277. [REDACTED]'s social/emotional goals in her October 2022 included identifying three trusted adults and learning at least two ways to communicate with them. She also worked with Ms. Whiteside on coping strategies, sensory regulation, and peer interactions. T vol 14 26:3-23.

278. During this period, [REDACTED] was able to describe distressing situations and engage in reciprocal conversations about them. Although she sometimes struggled to identify the upsetting feeling, she could recognize when something was troubling her and reported utilizing sensory tools in the classroom. T vol 14 27:1-8.

279. Beginning with the October 2022 IEP, [REDACTED]'s counseling sessions were scheduled for Thursdays at 1:40 p.m., a schedule that remained unchanged for the 2023-2024 school year. T vol 14 27:19-23.

280. On Friday, September 8, 2023, Ms. Whiteside e-mailed [REDACTED] to inform her that [REDACTED] reported not feeling “emotionally well,” desired to speak with a private provider, and wished to discuss her feelings privately with her mother before speaking with her father. Resp’t Ex. 36.

281. In that same e-mail, Ms. Whiteside informed [REDACTED] that the school’s protocol in such situations was to contact Mobile Crisis unless the family preferred an outside mental health provider to complete a safety assessment. She requested

confirmation by Tuesday, September 12, that an outside provider had conducted the assessment. Resp't Ex. 36.

282. Safety assessments are conducted when a person might be at risk of harm to themselves or others. T vol 14 31:6-9. Ms. Whiteside was concerned that [REDACTED] might be a threat to herself. T vol 14 34:6-9. She was aware that [REDACTED] had previously seen an outside therapist. T vol 14 118:1-4.

October 2023 IEP Team Meeting

283. Ms. Whiteside attended the IEP team meeting on October 4, 2023, and drafted the present level statement for the social/emotional goals, Resp't Ex. 16 at 2, based on her observations from counseling sessions over the last year. Neither [REDACTED]'s Parents' nor their advocates' evidence persuaded Ms. Whiteside to change her present level of performance statement. T vol 14 40:12-17.

284. As of the October 2023 IEP team meeting, [REDACTED] had identified and was accessing her three trusted adults: Ms. Whiteside, Austin Andrews, and Amanda Holton. T vol 14 43:3-8.

285. [REDACTED]'s ability to request a trusted adult and then explain her needs to the trusted adult demonstrated that [REDACTED] could and was advocating for herself. T vol 14 44:5-8. One of the Parent's advocates at the October 4, 2023 IEP meeting also recognized self-advocacy as a strength for [REDACTED]. T vol 14 45:7-10.

286. The present level statement for [REDACTED]'s social/emotional development accurately described [REDACTED] at the time of the October 2023 IEP team meeting. T vol 14 46:2-7.

287. During the October 4, 2023 IEP team meeting, WMPCS provided [REDACTED]'s Parents with an authorization form to exchange information with [REDACTED]'s outside therapist. Resp't Ex. 18. However, her Parents did not authorize WMPCS to speak with that provider. T vol 14 61:16-22.

Social Emotional Goals

288. Ms. Whiteside prepared the social/emotional goals for the October 2023 IEP. The first goal includes strategies on the "ladder of trust" and identifying the qualities of a trusting friend, prompted by an incident where [REDACTED] had identified that

she had disclosed something to a “friend” who then talked about that inappropriately. T vol 14 50:10-14.

289. The second social/emotional goal addressed pro-social coping skills, which are skills that move a problem toward an acceptable resolution. ■■■■ tended to avoid stressful situations, and this goal aimed to help her identify better strategies than mere avoidance. T vol 14 52:13-54:25.

290. These goals were consistent with ■■■■s skill level based on the video of ■■■■ speaking with her mother from September 2024, Resp’t Ex 66, which showed ■■■■ effectively using pro-social skills and the cognitive behavioral therapy triangle. In that video, ■■■■ tells her Mom that she is upset about teachers following her. That is an example of ■■■■ identifying a thought and expressing how it made her feel – two legs of the triangle. Then, ■■■■ goes on to express two potential solutions. First, she says I’m going to hit them if they don’t stop (*not* a pro-social coping response). But then, she says, instead, I am going to speak with them on Monday and ask them to stop – which is an example of a pro-social coping skill. T vol 14 at 55:7-56:3.

291. Based on Ms. Whiteside’s counseling sessions and other exposure to ■■■■ over the prior year, the first social/emotional goal of the October 2023 IEP was appropriate because ■■■■ exhibited heightened reactions to peer interactions in situations where her peers were not necessarily doing anything wrong. Additionally, ■■■■s perceptions and how she felt about such interactions indicated that this goal would help her. T vol 14 57:13-21.

292. The second social/emotional goal of the October 2023 IEP was appropriate because ■■■■ tended to avoid situations causing her perceived stress, and avoidance should not be her only strategy. T vol 14 58:3-11. For instance, if ■■■■ was feeling unwell, this goal would help her recognize and articulate the reasons why, so that she could develop a plan to address the issue. T vol 14 59:4-13.

293. The Undersigned concurs with Ms. Whiteside’s professional opinion that 30 minutes per week was adequate to complete these goals over the course of an academic year considering that ■■■■ was receiving outside services. Too much counseling time could impact ■■■■s self-esteem. T vol 14 60:22-61:15.

Counseling Services During the 2023-2024 School Year

294. In late October 2023, [REDACTED] emailed Ms. Whiteside and others stating that he did not want Ms. Whiteside to serve [REDACTED]. Around this same time, he also filed an ethics complaint against Ms. Whiteside because she allegedly said that [REDACTED] was not autistic. T vol 14 63:16-25.

295. In communications with [REDACTED]'s Parents, the school clarified that the Parents were not seeking to revoke consent for counseling services on her IEP but simply objected to Ms. Whiteside as the provider. The school properly informed the Parents that they could not dictate staffing decisions and that Ms. Whiteside would continue to serve [REDACTED]. The Parents then began withdrawing [REDACTED] on Thursday afternoons, when she would have received counseling services.

296. Despite this, Ms. Whiteside continued to check [REDACTED]'s availability each Thursday. However, [REDACTED]'s Parents consistently removed her from school; her last session with Ms. Whiteside was November 30, 2023. T vol 14 at 71:20-72:10.

297. The North Carolina Social Work and Licensure Board unsubstantiated [REDACTED]'s complaint against Ms. Whiteside. T vol 14 71:17-19.

298. Even after this decision, [REDACTED]'s Parents never requested a change in counseling time. T vol 14 72:7-10.

299. Rescheduling [REDACTED]'s counseling sessions would have unfairly impacted other students. T vol 14 72:11-74:1.

300. After November 30, 2023, Ms. Whiteside continued interacting with [REDACTED] primarily during whole-class social skills time. T vol 14 74:2-76:4.

301. In her last one-on-one session with [REDACTED] in late November 2023, Ms. Whiteside noticed a significant change in [REDACTED]. She observed a decline in [REDACTED]'s ability to maintain focus, increased hyperactivity, and difficulty remaining seated. Before, [REDACTED] was able to remain seated and on-task for at least 30 minutes, however, by late November [REDACTED] could not do so. T vol 14 82:9-83:4.

Assessment of February 2024 IEP and [REDACTED]'s Progress

302. According to Ms. Whiteside, the October 2023 social/emotional goals were year-long goals, and she saw little reason to change them four months later in

February 2024, T vol 14 77:5-18, particularly since [REDACTED] had missed numerous counseling sessions and had not yet worked on those goals. [REDACTED] was still exhibiting a need for those specific goals at the time of the February 2024 IEP team meeting. T vol 14 78:1-11. Thirty minutes per week remained appropriate for the two goals. T vol 14 84:8-16.

Current Observations

303. Since returning to WMPCS in August 2024, [REDACTED] has sought out Ms. Whiteside and engaged in conversations. Ms. Whiteside has observed that [REDACTED] is more social in the current school year, interacting appropriately with peers, joking, and appearing content in the middle school environment. T vol 14 86:4-25. [REDACTED] behaved similar to her peers at the school's fall festival. T vol 14 87:6-16.

Reciprocal Communication, School Refusal, and Counseling Services

304. Ms. Whiteside disagreed with Dr. Lindsey Ohler's conclusion that [REDACTED] failed to engage in back-and-forth conversation. According to Ms. Whiteside, [REDACTED] has no issue with conversational skills. T vol 14 88:12-17.

305. School refusal, according to Ms. Whiteside, is a "persistent, ongoing refusal to attend school and be there on a regular basis over a period – over a period of a long period of time, weeks or months." T vol 14 89:13-16.

306. In Ms. Whiteside's experience, if a child has school refusal, she will come to school only "very rarely." T vol 14 89:21-23.

307. She has never observed any indicators of school refusal in [REDACTED] who appeared content when at school. T vol 14 at 89:24-90:1.

308. Ms. Whiteside also disagreed with Dr. Lindsey Ohler's recommendation that [REDACTED] receive one hour per week of school-based counseling services. Instead, Ms. Whiteside opined that thirty minutes was sufficient given [REDACTED]'s school-based needs and external therapy. T vol 14 93:14-94:2.

309. Moreover, due to the change in [REDACTED]'s ability to focus and the significant increase in her hyperactivity, Ms. Whiteside opined that the February 2024 IEP team appropriately moved [REDACTED]'s special education services out of the general education classroom into a resource room setting. T vol 14 at 129:4-130:9.

310. Ms. Whiteside was credible, and her testimony was given significant weight.

Austin Andrews (T vol 14 191-220; 15 4-103)

311. Austin Andrews serves as the Executive Director of Washington Montessori, a position she has held since July 2024. T vol 14 192:21-93:2. She has been with the institution for 11 years, initially working as a teacher in the fourth through sixth grade classroom until 2022. T vol 14 191:24-193:13. She subsequently became the Elementary Head of School in 2022, assumed the role of Acting Director in January 2023, and was later appointed as the permanent Executive Director. T vol 14 191:24-194:3; Resp't Ex. 58 (curriculum vitae).

312. Ms. Andrews holds a North Carolina teaching license for kindergarten through sixth grade and possesses Montessori certification in grades 1-6. T vol 14 193:13-16. Ms. Andrews was accepted by the Tribunal as an expert in regular education at the K-6 level. T vol 14 194:9.

313. Since working at WMPCS, Ms. Andrews has participated in IEP team meetings. She has experience in working in IEP teams, creating present level of performance statements, setting IEP goals, and developing and implementing IEP accommodations and supports. T vol 14 195:4-18.

314. Given her extensive experience with █████ in the school-setting, her testimony was given significant weight.

Background

315. Ms. Andrews first met █████ in November 2021, when █████ joined her fourth through sixth-grade classroom as a fourth-grade student. T vol 14 196:1-9. In this classroom setting, there were approximately 8-10 students from each grade level. An entering fourth grader stays in the same classroom for three years. Each class was staffed by two teachers. T vol 14 197:3-7.

316. Once █████ joined her class, Ms. Andrews worked with █████ daily throughout the 2021-2022 school year. T vol 14 198:3-17. During this period, █████ exhibited occasional fidgeting and moments of distraction, though inattention was not a significant concern for her during that school year. T vol 14 199:17-25.

317. At the beginning of the 2022-2023 school year, Ms. Andrews transitioned to the role of Elementary Head of School, coinciding with ██████'s entry into fifth grade. Ms. Andrews still frequently visited ██████'s classroom and periodically taught lessons. T vol 14 200:20-201:2.

██████'s Sixth-Grade Year

318. When ██████ entered sixth grade in the 2023-2024 academic year, her classroom was led by two different teachers. Again, Ms. Andrews maintained a regular presence in ██████'s classroom through mid-October 2023. T vol 14 201:3-23.

319. Following the resignation of one of ██████'s sixth-grade teachers shortly after the October 4, 2023, IEP team meeting, Ms. Andrews, along with Kathy Carico and Lisa Barmer (██████'s special education teacher), delivered regular education lessons in the classroom through the end of the school year. As a result, Ms. Andrews worked with ██████ daily during that period. T vol 14 201:19-23.

320. Regarding her interactions with ██████ during the 2023-2024 school year, Ms. Andrews testified: "She's a great kid. She's easy to be around. We had a great relationship. We would take walks together sometimes. Obviously, I was teaching her lessons, and I would help support her in her lessons and just general classroom things. She thinks I'm funny. She likes my jokes." T vol 14 202:16-20.

321. ██████'s October 2022 IEP included a goal for her to identify and work with trusted adults. She selected Ms. Andrews as one of those trusted adults and would seek her out to discuss matters that either bothered her or made her happy. Sometimes she and ██████ would sit in Ms. Andrews's office, walk around the soccer field, or sit near the school's wooded area. T vol 14 203:13-204:13.

322. Despite, ██████'s comradery with school staff, ██████'s Parents frequently expressed dissatisfaction with WMPCS through emails and social media. T vol 14 211:2-14. During IEP meetings, Ms. Andrews described the Parents' attitude as disruptive and disrespectful toward school personnel. T vol 14 at 212:19-213:2.

323. During the 2023-2024 school year, ██████'s Parents called the Washington Police to the school at least three or four times. One time, they called the police to

school (Friday - October 18, 2024) because [REDACTED] had broken a bracket on her braces. T vol 14 214:11-20.; T vol 15 88:18-89:12.

324. Ms. Andrews testified that [REDACTED]s Parents lodged complaints without witnesses or proof, and that when school personnel requested details, such as the name of the witness or the evidence to investigate, the Parents refused to provide any specifics. T vol 14 217:20-219:6.

325. The first time WMPCS was aware of the Parents decision to withdraw [REDACTED] from school on Thursday afternoons was in January 2024. [REDACTED]s counseling session with Ms. Whiteside were scheduled on Thursday afternoons. In that e-mail, [REDACTED]s Parents stated “we don’t want [REDACTED] to see Arlene Whiteside again.” T vol 14 219:13-20. This was during the same time [REDACTED]s complaint against Ms. Whiteside was pending with the North Carolina Social Worker Licensure and Certification Board.

October 4, 2023 IEP Meeting

326. Ms. Andrews participated as the Local Education Agency Representative (“LEA”) at the October 4, 2023, IEP team meeting. Other attendees included Lisa Barmer ([REDACTED]s special education teacher), Leanne Cooke ([REDACTED]s regular education teacher), Amanda Holton, who attended to interpret evaluation results, Arlene Whiteside (school social worker), the Parents, two Parent invited advocates – Amy Trail and Carol Cammack, and WMPCS legal counsel James G. Middlebrooks. T vol 15 5:9-6:25.

327. Lisa Barmer had worked directly with [REDACTED] for over two academic years by the time of the October 2023 IEP team meeting. Ms. Cooke had been [REDACTED]s regular education teacher since the start of the 2023-2024 school year. T vol. 15 6:13-19.

Autism (“AU”) Eligibility

328. During the October IEP team meeting, [REDACTED]s Parents sought to revisit the adverse autism (“AU”) eligibility decision from the October/November 2022 series of IEP team meetings. Despite their insistence, the Parents did not present new evaluative data. School staff maintained their position that [REDACTED] was ineligible under the AU category but did agree to a reevaluation. T vol 15 7:20-8:10.

Present Levels of Performance

329. With respect to ██████'s October 2023 IEP, the statement of ██████'s math present level of performance was based on her math scores, MAPS testing, and her teachers' direct work with her. T vol 15 8:22-10:18.

330. During the October 2023 IEP meeting, Ms. Whiteside presented the draft statement of ██████'s present level of performance for her social/emotional goals. These goals were developed based on Ms. Whiteside's work with ██████ on the October 2022 IEP goals over the preceding 12 months. T vol 15 11:21-13:3.

331. The IEP team likewise considered reports from OT therapists who had worked with ██████ between October 2022 and October 2023, which indicated that ██████ had successfully demonstrated her ability to access, utilize, and appropriately engage with her sensory tools and supports. *See* Resp't Exs. 3-5, 7, and 11. As a result, the IEP team decided that ██████ did not need OT services at the October 2023 IEP team meeting. T vol 15 13:2-14:3.

332. The statement of ██████'s present level of performance statement for reading in her October 2023 IEP accurately reflected her present levels based on the work Ms. Barmer had done with her over the preceding year under the October 2022 IEP. T vol 15 14:8-15:11.

Goals

333. ██████'s math goal in the October 2023 IEP stated: "[w]ith the use of explicit modeling, review of previously learned skills, and self-regulation strategies, ██████ will consistently and independently answer 80% of math problems that involve multi-step problem solving with all four operations relating to geometry and measurement conversions based on data collected every two weeks for at least 3 out of 4 nine week periods." Resp't Ex. 16

334. This goal appropriately addressed ██████'s weaknesses in multi-step problem solving and geometry. T vol 15 at 16:10-17:11. By utilizing self-regulation strategies as one of the inputs, the goal addressed both ██████'s sensory and attentional issues. *Id.* Because of her attentional issues, ██████ would often attempt the first step

of a problem and then move to something else. This math goal emphasized task completion by focusing on multi-step problems. T vol 15 18:1-19:11.

335. [REDACTED]'s first social/emotional goal in the October 2023 IEP stated: “[w]ith modeling and rehearsal, [REDACTED] will identify at least two socially acceptable conflict management strategies when working to solve intrapersonal problems when given real and hypothetical situations in $\frac{3}{4}$ sessions.” Resp’t Ex. 16.

336. Although Ms. Andrews was not frequently involved in conflict management strategies with [REDACTED] she confirmed that this goal was beneficial, especially since [REDACTED] did not have a sibling at home to discuss things with. T vol 15 19:12-20:3.

337. [REDACTED]'s second social/emotional goal in the October 2023 IEP stated: “[w]ith modeling and rehearsal, [REDACTED] will verbally identify at least 3 prosocial coping skills to utilize when she is feeling stressed or overwhelmed over $\frac{3}{4}$ sessions when given real and hypothetical situations.” Resp’t Ex. 16.

338. Based on her nearly three school years of working with [REDACTED] Ms. Andrews persuasively opined that this goal was appropriate, as [REDACTED] still needed support in recognizing when she was becoming overwhelmed and needed to seek assistance. T vol 15 20:4-15.

339. The October 2023 IEP included one reading goal for [REDACTED] that was, “[w]ith use of self-regulation tools, visual aids including reading tools for text organization [REDACTED] will independently read sixth grade level fiction and nonfiction text and answer both literal and inferential questions about the text with 80% accuracy in 3 out of 4 reporting periods.” Resp’t Ex. 16.

340. Ms. Andrews had worked with [REDACTED] daily on reading, testified that during [REDACTED]'s fourth-grade year during which time she received 45 minutes per day from Kathy Carico and 45 minutes per day from Austin Andrews. Based on her hands-on experience with [REDACTED] Ms. Andrews persuasively opined that the October 2023 reading goal was appropriate. T vol 15 21:1-18.

Placement and Accommodations

341. In the months leading up to the IEP meeting, ■■■ demonstrated a preference for and the ability to perform appropriately in the general education classroom setting. T vol 15 at 22. Consequently, the IEP team modified her instructional setting in the October 2023 IEP from a pull-out model to a push-in model. Resp't Ex. 16 at 6-7.

342. The Supplemental Aids/ Services/ Accommodations/ Modifications section of the October 2023 IEP (Resp't Ex. 16 at 7-11) appropriately addressed both ■■■'s sensory and attentional needs as they presented at that time. This section provided movement breaks and accommodations to ensure that her attentional issues did not hinder her from accessing her academic skills. T vol 15 23:7-25:25.

Changes in November/December 2023 Before February 2024 IEP

343. In early November 2023, Leanne Cooke resigned her teaching job at WMPCS after ■■■ posted a video of her on multiple social media outlets. T vol 15 at 26:24-27:18. As a result, Ms. Andrews taught almost every day in ■■■'s class from that point forward.

344. In the latter half of November 2023, ■■■'s teachers observed a noticeable shift in her attentiveness during class. Initially, it appeared as an increase in socialization. ■■■ began leaving her seat more frequently to interact with peers, which led to a decline in her work completion and disruptions to other students. T vol 15 28:9-20.

345. Between Thanksgiving and Winter Break 2023, ■■■'s ability to maintain attention and focus had significantly diminished compared to her prior level of engagement before mid-November. At that point, frequent redirection was necessary. T vol 15 29.

346. In response to these changes, WMPCS scheduled an IEP team meeting for January, which was rescheduled at least twice. The meeting was ultimately held on February 8, 2024. T vol 15 29:13-24.

February 2024 IEP

347. The primary adjustment made during the February IEP team meeting was the relocation of [REDACTED]'s specially designed instruction from the general education setting to the special education setting. T vol 15 30:9-10; Resp't Ex. 45 at 8. Additionally, the IEP team added an organizational goal to assist [REDACTED] with task management.

348. Given [REDACTED]'s significant difficulties with attention in the general education classroom setting, the smaller, more structured environment of the school's resource room was appropriate. T vol 15 30:14-22.

349. The February 2024 IEP added an organizational goal: "[w]ith support of sensory tools, and self-regulation strategies [REDACTED] will complete an [] average of 3 works per day over two consecutive reporting periods." Resp't Ex. 45 at 7.

350. This goal appropriately addressed [REDACTED]'s task completion needs at that time.

351. The February 2024 IEP team opted not to make additional changes because [REDACTED]'s reevaluation process was nearing completion. They anticipated reconvening to review the results, which could potentially lead to revised goals. The team properly delayed modification of the IEP in early February until after the new evaluations were completed to avoid potential confusion for [REDACTED]

March 2024 IEP Meeting

352. The IEP team reconvened on March 7, 2024, to review the completed evaluations. The IEP team began but did not complete reviewing the evaluation results that day and, accordingly, did not reach the question of how [REDACTED]'s IEP should change if at all. Before the meeting could be rescheduled, [REDACTED]'s Parents filed their first due process petition in this case. T vol 15 33:3-22.

353. Based on her daily experience with [REDACTED] Ms. Andrews concurred with Emily Gyba's conclusion that [REDACTED] did not require direct speech language services. T vol 15 34:12-18; Resp't Ex. 31 at 3.

354. Ms. Andrews disagreed, however, with Dr. Lindsey Ohler's opinion that [REDACTED] did not maintain "conversational flow." In Ms. Andrews's experience, the

opposite was true—[REDACTED] engaged in frequent conversations, typically at least once per week, and was able to sustain conversations without issue. Ms. Andrews’s was based on multiple discussions with [REDACTED] covering various topics, including hairstyles (such as highlights in [REDACTED]’s hair), weekend plans, the video game *Roblox*, and food. In these conversations, [REDACTED] was “very comfortable.” T vol 15 35:5-37:17.

355. Ms. Andrews also disagreed with Dr. Ohler’s observation that [REDACTED]’s affect was flat. In Ms. Andrews’s experience, [REDACTED] was expressive with both her hands and with her eyes. T vol 15 37:4-8.

356. Ms. Andrews’s observations were contrary to Ms. Minnelli’s assertion that [REDACTED] displays “a lack of reciprocal social curiosity and a lack of conversational flow.” In conversations about mutual interests with Ms. Andrews, [REDACTED] exhibited no difficulty maintaining engagement. If the topic did not interest [REDACTED] she did not engage as much but that was no different than any other 11–12-year-old. T vol 15 37:8-38:7.

357. Since [REDACTED] returned to WMPCS under this Tribunal’s stay-put order on August 29, 2024, [REDACTED]’s conversational abilities are the same as they were before, *i.e.*, those of a typical developing adolescent. T vol 15 38:1-6.

358. After viewing the video of [REDACTED] and her Mother (Resp’t Ex. 66), Ms. Andrews characterized [REDACTED]’s part of that conversation as what she experienced in terms of back-and-forth reciprocal conversation as well as self-advocacy. Ms. Andrews’s opinion along with Petitioners’ own video demonstrated that [REDACTED]’s reciprocal communications were comparable to that of any other student her age. T vol 15 39:14-40:12.

359. While [REDACTED]’s communication skills were normal, Ms. Andrews testified that the Parents’ disparaging remarks about school staff in front of [REDACTED] were highly inappropriate. T vol 15 40:13-41:17.

360. Following the February 2024 IEP team meeting, during which [REDACTED]’s instructional setting was changed from a push-in model in the general classroom to a pull-out model, Ms. Andrews and Lisa Barmer explained to [REDACTED] that she would begin receiving pull-out services the following week. [REDACTED] initially acknowledged and

indicated her understanding. However, when the new schedule commenced, █████ told staff “[m]y parents told me—or my mom told me not go with you.” T vol 15 42:4-10.

Stay-Put and School Anxiety

361. Following █████’s exclusion in late March, █████’s Parents began sending daily emails asserting that WMPCS was obligated to allow █████ to attend school due to their pending due process petition. WMPCS responded each day, stating its disagreement while advising that █████’s Parents could seek relief from the Tribunal, given that they had legal representation, and the case was already ongoing. T vol 15 44:2-23.

362. Since █████’s return to WMPCS following the Tribunal’s order on August 29, 2024, she had been tardy only once as of October 25, 2024, and checked out early on only two occasions. █████ has benefited from being at school all day. T vol 15 at 48:14-50:2.

363. During cross-examination, Ms. Andrews was asked a series of questions phrased as follows: Could her anxiety have manifested itself [in this way or at this time]? T vol 15 at 51:15-52:4. The issue with “could have” questions is that they offer little substantive value beyond speculation. More effective questions would have been: *Did her anxiety manifest itself on this date or at this time? What did that look like? How did school staff respond? How did █████ react to the assistance?*

364. However, Petitioners did not pursue those fact-based inquiries. Instead, the questioning primarily focused on whether certain scenarios were *possible*, rather than whether they actually *occurred*.

365. During re-direct, WMPCS highlighted the inherent issue with speculative “could have” questions by posing a series of hypothetical inquiries such as “Could [unrelated factor] have caused █████ to be late to school?”—none of which were relevant to the case. T vol 15 90:25-91:17. As noted, “could have” questions generally provide little value to decision-makers, and they were similarly unhelpful in this context.

366. During the 2023-2024 school year, Ms. Andrews observed no evidence indicating that anxiety caused [REDACTED] to be late for school. T vol 15 91:14-17.

367. The Undersigned agrees with Ms. Andrews's professional opinion that it would have been unreasonable to require other students to alter their counseling schedules solely because [REDACTED]'s parent's decided to withdraw her from counseling services on Thursday afternoons for private OT services. T vol 15 70:18-71:2.

368. Inexplicably, [REDACTED]'s Parents delayed requesting a hearing on the stay-put issue until May 28, 2024. At that time, WMPCS had already started end-of-year testing. T vol 15 96:21-24; Pet'r Ex. 145.

369. Ms. Andrews was present for [REDACTED]'s testimony, during which he testified that he was able to get [REDACTED] out of the house by approximately 7:30 am for school each day. This account differed from prior complaints made by [REDACTED]'s Parents. According to Ms. Andrews, this was not the first instance when [REDACTED]'s Parents made claims that later proved inaccurate. T vol 15 99:9-100:9.

370. [REDACTED]'s Parents provided their Parent concerns for the February 2024 IEP in a multi-page single-spaced document that was appended to the IEP. Resp't Ex. 45 at 16-18. Notably, their concerns did not include any mention of [REDACTED] missing her counseling sessions.

Amanda Holton (T vol 16 7-267)

371. Amanda Holton serves as the Assistant Director of WMPCS and has been employed at the school for 11 years. See Resp't Ex. 59 (curriculum vitae).

372. Ms. Holton also serves as the Exceptional Children's Coordinator for the school, where she teaches students with special needs. She is currently licensed in North Carolina in K-6 elementary education and in special education general curriculum.

373. This Tribunal accepted Ms. Holton as an expert in special education, including the area of compliance. T vol 16 14:25.

374. While Ms. Holton was previously acquainted with [REDACTED] as a student, she first began working directly with [REDACTED] in the fall of 2020, [REDACTED]'s third-grade year at WMPCS. T vol 16 15:4-15.

375. Ms. Holton conducted observations of [REDACTED] throughout the 2020-2021 and 2021-2022 school year and participated in developing [REDACTED]'s initial IEP in the fall of 2021. When [REDACTED]'s primary special education teacher, Lisa Barmer, was not present, Ms. Holton would provide the services. T vol 16 17:12-25.

376. During the 2023-2024 school year, Ms. Holton was present in [REDACTED]'s classroom for 30-90 minutes daily on most days. Starting in February 2024, she observed almost every pull-out session for [REDACTED] T vol 16 18:5-9.

377. Upon [REDACTED]'s return to school in August 2024, Ms. Holton observed [REDACTED] in the regular education classroom and has been delivering her special education services. T vol 16 19:3-16.

October 2023 IEP Meeting

378. [REDACTED]'s October 2022 IEP specified that most of her special education services were to be delivered in the general education classroom. T vol 16 20:8-17

379. In January 2022, Elizabeth Motteler conducted a speech-language evaluation of [REDACTED] and determined that [REDACTED] did not need school-based speech services. Resp't Ex. 1.

380. Additionally, an occupational therapy evaluation was conducted January 2022 by Jenna Roth and Cindy Taylor of Carolina Therapy Connection. They concluded that [REDACTED] did not need school-based OT services. Pet'r Ex. 12.

Progress and Present Levels of Performance

381. Ms. Holton testified that at the time of the October 4, 2023, IEP team meeting, [REDACTED] was making appropriate progress on the goals outlined in her October 2022 IEP. T vol 16 30:7-22.

382. When [REDACTED]'s October 2023 was created, [REDACTED] had shown no difficulties at school in any of the following areas: initiating conversation; maintaining conversation; rigid thinking patterns; or hypersensitivity. T vol 16 237:7-238:22.

383. Between October 2022 and October 2023, [REDACTED] used her sensory tools to manage her attentional issues. Although she had ADHD, she was navigating it appropriately. T vol 16 31. By October 2024, Ms. Holton characterized [REDACTED]'s ADHD symptoms as being regulated and only a limited concern. T vol 16 32:1-22.

384. As of October 2023, [REDACTED] had made progress initiating tasks on her own. Accordingly, the specially designed instruction piece was stopped at that time and an accommodation was added for the classroom teacher to check with her twice per day to plan out time and make decisions. T vol 16 240:21-25.

385. Ms. Holton prepared the present-level statement in math for the October 2023 IEP, utilizing [REDACTED]'s educational records, IEP progress monitoring, and teacher input from the past year. T vol 16 32:22-35:10.

386. During the October 2023 IEP team meeting, team members discussed each present level statement, revising some based on their discussions. T vol 16 36:1-14.

387. A few weeks before the October 2023 IEP team meeting, [REDACTED] spoke with Ms. Holton and Ms. Whiteside together. [REDACTED] wanted to ask her Parents about resuming outside counseling but was scared to discuss this with them. She feared her Mother would cry and that her Father would yell (though not out of being mad, but out of being worried). Ultimately, it was decided that Ms. Whiteside would e-mail J.D., which resulted in the September 8, 2023 e-mail. Resp't Ex. 36; T vol 16 38:1-21.

School Based OT Services

388. During the October 2023 IEP team meeting, team members reviewed the notes from the OT consultation services and concluded that direct OT services or continued support were unnecessary since [REDACTED] effectively utilized her sensory tools. T vol 16 41:3-42:7.

Goals

389. Ms. Holton testified that to determine whether a student needs a particular kind of goal on an IEP, the team looks at whether the claimed deficit *is* significantly impacting the student in the educational setting, rather than hypothetically *could*. T vol 16 236:7-13. By way of example, on cross examination, when asked about concern(s) noted on a rating scale, Ms. Holton clarified that a concern noted on a rating scale, such as the BASC, represents a concern to be considered—a potential issue—rather than a definitive deficit. In other words, it

indicates an area where the student may be at risk rather than confirming an existing deficiency. T vol 16 174:18-21.

390. Given ██████'s demonstrated ability to regulate her attention, Ms. Holton supported the team's decision not to include organizational goals in the October 2023 IEP. ██████ was demonstrating success with support from her general education teacher. T vol 16 45:2-12.

391. The October 2023 math goal was appropriate because it was based on data and firsthand experience with ██████. This goal aligned with ██████'s then present level and was designed to facilitate progress in the future. T vol 16 46:11-48:25.

392. The October 2023 social/emotional goals were appropriate for ██████ at the time because ██████ was demonstrating some difficulty interpreting and responding to peer interactions. The second goal was appropriate because ██████ tended to internalize feelings and needed help recognizing and then working through them in a constructive fashion. T vol 16 49:1-51:20.

393. The reading goal in the October 2023 IEP was appropriate because ██████'s biggest obstacle was maintaining attention through longer texts. The visual aids and organizational tools and strategies were key to helping her organize the text so that she could comprehend it appropriately. T vol 16 51:21-55:25.

Placement

394. The October 2023 IEP team decided to transition all special education services, except counseling, into the regular education classroom. Ms. Holton testified that at this time, ██████ successfully managed her attention needs with tools, so the October 2023 IEP was being delivered in the least restrictive environment for ██████ at the time. T vol 16 56:1-21. This was appropriate based on ██████'s progress to date. *Id.*

Autism ("AU") Eligibility

395. Previously at the October 2022 IEP team meeting, the IEP team determined that while ██████ remained eligible for services under the Other Health Impairment category she was not eligible under either the Emotional Disturbance or

Autism categories. One year later, at the October 2023 IEP team meeting, ██████s sought an autism classification but presented no new supporting data. School-based IEP team members disagreed, but Ms. Holton suggested conducting a reevaluation, including components for autism eligibility and a functional behavioral assessment (“FBA”). T vol 16 57:6-58:25. Ms. Holton conducted the functional behavioral assessment of ██████ on February 16, 2024. Pet’r Ex. 20. She discussed her observations of ██████ at the February 8, 2024 IEP team meeting. T vol 16 61:13-62:24. The full report was discussed at the reevaluation meeting on March 7, 2024. T vol 16: 96:16-20.

Changes in October/November/December 2023 Before February 2024 IEP

396. In mid-October 2023, ██████ attempted self-harm by cutting her wrists in a school bathroom, but her injuries did not require immediate medical attention. Upon her return to WMPCS, Ms. Holton observed that her demeanor was positive, and she collaborated with Ms. Whiteside to update her safety plan. T vol 16 67:11-24; Pet’r Ex. 20. Ms. Holton noted that ██████ readily complied with safety checks of her pockets before going to the bathroom. *Id.*

397. In mid-November 2023, Ms. Holton and other staff observed a significant decline in ██████s attentiveness and focus, describing it as an “almost a 180.” T vol 16 69:18-21. According to Ms. Holton, her average amount of work ultimately plummeted to one work per day—a two-thirds decrease. T vol 16 70:1-13.

398. Due to the significant decline in ██████s ability to focus and remain on task, before the holiday break, Ms. Holton scheduled an IEP team meeting for January 3, 2024. The first day back from winter break the IEP team met to discuss and address these concerns. T vol 16 73:8-14.

February 2024 IEP Meeting

399. ██████s Parents were unable to attend the scheduled meeting, resulting in its rescheduling to mid-January. T vol 16 73:24-74:5. However, a bout of COVID further delayed the meeting until January 30, 2024. T vol 16 74:8-9, 75:24-77:4.

400. WMPCS convened an IEP team meeting with ██████'s Parents on the 30th, see Pet'r Ex. 88. However, ██████'s Parents asserted that they could not proceed without certain records. When WMPCS sought clarification, ██████'s Parents became increasingly agitated, leading to a postponement of the meeting to February 8, 2024. T vol 16 77:12-24.

Modification of Goals and Services

401. The February 2024 IEP modified ██████'s services from a push-in model to a pull-out model so that she would be able to work in a smaller, distraction-free environment. T vol 16 79:12-24.

402. Additionally, a new organizational goal was incorporated into the February 2024 IEP to address the notable "180 degree" shift in ██████'s attention." T vol 16 80:12-21.

403. ██████'s math, reading, and social/emotional goals, which had been developed four months earlier, remained appropriate in February 2024 and were not revised. T vol 16 84:12-18.

404. Ms. Holton testified that when ██████'s October 2023 and February 2024 IEPs were created, ██████ had shown no difficulties at school in any of the following areas: initiating conversation; maintaining conversation; rigid thinking patterns; or hypersensitivity. T vol 16 237:7-238:22.

405. Between October 2023 through the February 2024 IEP meeting, ██████ showed no deficit in self-monitoring such that it was significantly impacting her educational or social performance at school. T vol 16 238:17-22. Likewise, despite the behavioral shift in November, ██████ was able to verbalize what she needed to do and the order she should do it in. However, ██████'s challenges lie in executing and completing the task. T vol 16 241:15-23.

406. Due to ██████'s dramatic behavioral changes, she used her sensory tools less frequently. Therefore, Ms. Holton emphasized the importance of explicitly incorporating sensory tool usage in the draft organizational goal. T vol 16 85:14-22. The primary objective of the organizational goal was to restore ██████ back to her October 2023 performance level as quickly as possible. T vol 16 90:10-14.

407. Although the goal was written in terms of measuring completed tasks, Ms. Holton clarified that it inherently encompassed the processes of initiating, maintaining, and finishing tasks. According to Ms. Holton, “anybody with any kind of educational background would know that.” T vol 16 92:19-93:8.

408. The IEP team, aware that a re-evaluation meeting was upcoming in a few weeks, appropriately introduced one additional goal and transitioned ██████ to a pull-out setting as an initial step. T vol 16 93:17-96:15. They chose not to consider more dramatic changes at the February 2024 meeting, as the re-evaluation results would soon be available and should be considered. T vol 16 262:1-6.

409. WMPCS conducted the re-evaluation results meeting on March 7, 2024. While the evaluations were reviewed, time constraints prevented the team from discussing what changes should be made to ██████’s IEP. Efforts to reconvene the meeting stopped when the due process petition was filed. T vol 16 96:20-12.

Return Per Stay Put Order

410. Despite receiving no educational services from April through the end of the 2023-2024 school year, since ██████ returned in late August, “she’s getting all her math work done” and was achieving Bs and Cs in her grades, demonstrating acceptable performance. T vol 16 117:18-118:6. Once ██████ understood and was comfortable with her new middle school routine, she had no problems rejoining her classmates at school. T vol 16 104:1-16.

411. Since she has returned, ██████ has demonstrated improved focus compared to when she left in March. Moreover, ██████ has been submitting her assignments timely and has excitedly shown Ms. Holton her completed work on Schoology, the school’s online learning management portal. T vol 16 139:13-22. Ms. Holton testified that ██████’s current ability to attend to tasks and complete work is even better than it was in October 2023. T vol 16 140:3-9.

Pragmatic Language, Conversational Flow, Reciprocal Social Curiosity, Written and Narrative Language

412. Over the past four academic years, Ms. Holton has spent a minimum of 30 to 90 minutes per school day, three to four days per week, in [REDACTED]'s educational setting. Her engagement included working with students in the regular education classroom and working with [REDACTED] directly. T vol 16 248:21-249:10.

413. Based on her extensive experience with [REDACTED] in the school setting, Ms. Holmes opined that [REDACTED] did not exhibit pragmatic language deficits, T vol 16 255:5-8, and that she did not demonstrate any difficulties with self-advocacy at school, T vol 16 255:18-25.

414. In reviewing the September 2024 video (Resp't Ex. 66), Ms. Holton noted that [REDACTED] did an excellent job of arguing her point that what was happening was unfair and what she wanted to change about it. She held her own in that conversation, engaging confidently in discussion and recognized a facetious remark made by her mother that Ms. Holton must be following [REDACTED] around because she thinks she was pretty. T vol 16 99:7-25.

415. Ms. Holton interpreted this interaction as a typical seventh-grade girl conversing with her Parents, validating that [REDACTED]'s conversational skills as displayed at school were also being displayed at home. T vol 16 100:1-15.

416. This conversation demonstrated that [REDACTED] had appropriate pragmatic language skills and understood age-appropriate language nuances, consistent with a typically developing 12-year-old. T vol 16 100:16-101:19.

417. [REDACTED]'s conversational abilities in that video match what she exhibited upon returning to school in late August. T vol 16 101:11-19.

418. [REDACTED]'s conversational style in the September 2024 video matched what she saw from [REDACTED] in October 2023, stating that she "always conversed with us or with her peers in a very similar manner to what was on that video." T vol 16 101:23-102:3.

419. Based on her multi-year experience with [REDACTED] in the school setting, Ms. Holton disagreed with Ms. Minnelli's opinions that [REDACTED] could not maintain conversational flow or reciprocal social curiosity, noting that Minelli's observations starkly contrast with [REDACTED] presentation at WMPCS. T vol 16 102:9-103:5.

420. Ms. Holton strongly disagreed with Ms. Minnelli's recommendation that [REDACTED] receive three hours of school-based speech-language therapy per week because she has never demonstrated a need for these services. T vol 16 104:18-105:17. Rather, Ms. Holton provided examples of over the last year of [REDACTED] engaging in appropriate pragmatic language and social skills at school, such as talking with friends appropriately about the things each does that bothers or puzzles others, T vol 16 109:8-111:11, and understands and verbalizes interpersonal dynamics, such as how her friends have reacted to her spending a significant amount of time with a boy at the school. T vol 16 109:8-111:11

421. Based on her multi-year experience working with [REDACTED] in the school setting, Ms. Holton concluded that the goals listed in Ms. Minelli's report were unnecessary. T vol 16 114:13-19. Ms. Holton further contested Jennifer Minelli's assertion that [REDACTED] required goals in written and narrative language, emphasizing that [REDACTED] was already proficient in these areas. T vol 16 115:16-21.

422. Ms. Holton also opposed Dr. Ohler's opinion that [REDACTED] lacked appropriate eye contact and has never noticed such an issue. T vol 16 128:3-4. Based on Ms. Holton's experiences with and observations of [REDACTED] she has never had a problem with maintaining reciprocating conversation or responding properly to social bids. T vol 16 128:8-18.

423. Responding to Ms. Holmes's assertion that [REDACTED] should be receive over 900 hours of compensatory services, Ms. Holton persuasively disagreed citing [REDACTED]'s successful reintegration and performance. [REDACTED] had done well across the board since her return, and did not qualify for those services for the time her Parents held her out of any educational services. T vol 16 119:7-8.

424. Ms. Holton also opposed Ms. Holmes recommendation for 35 hours of parent training as compensatory services, noting that WMPCS had incorporated parent training into the November 2023 IEP and provided the necessary instruction, and that at the time of this hearing, [REDACTED] was holding herself out as a special education expert to others and [REDACTED] indicated that he had taken multiple special education courses. T vol 16 120:14-121:20.

425. Addressing Ms. Meehan's observation that [REDACTED] would respond to questions with "I don't know" or "I don't remember," Ms. Holton testified that [REDACTED] will engage if the questioner persists. T vol 16 122:16-123:4, and that [REDACTED] participated in classroom discussions just like other typically developing students. T vol 16 123:9-16.

426. Ms. Holton persuasively opposed Ms. Meehan's Recommendations (Pet'r. Ex. 16 at 13), noting that Ms. Meehan had not evaluated [REDACTED] in the school setting, and that the deficits Ms. Meehan observed were not what she observed at school. Ms. Meehan testified that between October 2023 and March 2024, [REDACTED] complained of stomachaches only once or twice, T vol 16 124:8-15, self-advocated, T vol 16 125:19-126:6, demonstrated writing skills typical of her age, T vol 16 125:13-22, and that aside from appearing disheveled from time to time, hygiene was not an issue, T vol 16 125:23-126:14, and that an IEP goal in these areas were unnecessary.

School-Based Counseling Schedule

427. With respect to [REDACTED]'s school-based counselling schedule, her Parents never requested a change in [REDACTED]'s schedule. T vol 16 131:10-14. Even if such a request had been made, implementing the change would have been "almost a scheduling nightmare" because of the considerations that go into making sure that students with disabilities are pulled out for services at times least disruptive to their regular education curriculum and tasks. *Id.*

School Refusal

428. Regarding school refusal, there was no evidence of [REDACTED] engaging in elopement behavior at any time during the October 2023 to March 2024 timeframe. T vol 16 132:3-14. On the days that [REDACTED] was tardy during the October 2023 to March 2024 timeframe, she did not display signs of school refusal.

429. In Ms. Holton's professional opinion, if [REDACTED] had been experiencing school refusal, she would have been unwilling to exit the car at morning drop-off. This, however, never occurred. T vol 16 133:1-16.

430. During this period, [REDACTED] sometimes provided no explanation for her tardiness. On other occasions, [REDACTED] stated that one of her Parents had overslept or that they needed to stop for food. T vol 16 133:17-24.

431. Since being permitted to return to WMPCS on August 29, 2024, [REDACTED] has typically arrived 45 minutes to an hour before school starts for the day, commuting via carpool with a friend. Since she returned on August 29, 2024, [REDACTED] has been late on only two occasions due to doctor appointments. T vol 16 137:20-23.

432. Given her expertise and experience with [REDACTED] in the school setting, Ms. Holton's testimony was given significant weight.

CONCLUSIONS OF LAW

Based upon the above findings of fact, stipulations of the Parties, relevant laws, regulations, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

1. To the extent that the foregoing Conclusions of Law contain Findings of Fact or that the Findings of Fact are conclusions of Law, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011); *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. denied* 366 N.C. 408, 735 S.E.2d 175 (2012).

2. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate education ("FAPE") pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.* and implementing regulations, 34 C.F.R. Part 300.

3. The IDEA is the federal statute governing education of students with disabilities. The Federal regulations promulgated under IDEA are codified at 34 C.F.R. Part 300. The controlling State law for students with disabilities is Chapter 115C, Article 9 of the North Carolina General Statutes.

4. [REDACTED] is a “child with a disability” as defined by IDEA and is entitled to a free appropriate public education, which includes certain procedural safeguards. Petitioners, [REDACTED] and [REDACTED] as Parents of a minor child with a disability, and [REDACTED] are guaranteed procedural safeguards with respect to the provision of FAPE which includes contesting the appropriateness of educational decisions made by Wake County Public Schools and the implementation of [REDACTED]’s educational programming. *See* 20 U.S.C. § 1415.

5. Respondent, WMPCS is a local educational agency responsible for providing a free appropriate public education to [REDACTED] during the times relevant to this case.

6. The Parties are properly before the undersigned Administrative Law Judge, and jurisdiction and venue are proper. The North Carolina Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The Parties received proper notice of the hearing in this matter.

7. Petitioners have the burden of proof in this contested case and must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29 (a). Moreover, the administrative law judge must decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

8. Petitioners, as the Party requesting the hearing, may not raise issues at the hearing that were not raised in the due process petition unless the other Party agrees. 20 U.S.C. § 1415(f)(3)(B).

9. Likewise, pursuant to 26 NCAC 03 .0108, the parties may agree to the simplification of issues to be determined and the same may be made subject of an order by the administrative law judge. 26 NCAC 03 .0108.

10. Petitioners were free to frame their issues for purposes of the Final Order on Prehearing Conference in any manner that remained consistent with their two petitions. They were also free to limit the issues to be litigated by not including them in the “Contested Issues For Hearing” section of the Final Order on Prehearing Conference.

11. [REDACTED] as the party requesting the hearing, may not raise issues at the hearing that were not contained in her two petitions and then stated in the Final Order on Prehearing. 20 U.S.C. § 1415(f)(3)(B). Throughout the pre-hearing process and the evidentiary hearing, WMPCS refused to consent to any new issues being raised or to the expansion of any issue beyond what was stated in the Final Order on Prehearing Conference.

North Carolina Rules of Evidence

12. The North Carolina Rules of Evidence in Chapter 8C of the General Statutes govern all contested case proceedings before this Tribunal. N.C. Gen. Stat. § 150B-29; 26 NCAC 03 .0122 (1). All evidence admitted into the official record that has probative value must be considered by the administrative law judge and has been done in this case. 26 NCAC 03 .0122 (1) & (2).

Testimony of Expert Witnesses

13. The testimony of expert witnesses must be based on sufficient facts or data, the product of reliable principles and methods, and these principles and methods must be applied reliably to the facts of the case. N.C. Gen. Stat. § 8C-1, Rule 702(a).

14. Each of [REDACTED]'s experts were retained after the commencement of litigation and had testified for [REDACTED]'s counsel at least once (Dr. Ohler), and most had testified extensively for him. It is extremely troubling that [REDACTED]'s lawyer signed discovery responses in mid-May setting out the opinions of expert witnesses weeks before contacting them. Moreover, both of [REDACTED]'s Parents verified under oath those responses.

15. In addition, none of [REDACTED]'s experts were provided with [REDACTED]'s complete educational records, nor did they request them from WMPCS. Instead, [REDACTED]'s counsel provided them only (a) 161 marked potential exhibits from [REDACTED] and (b) 65 marked potential exhibits from WMPCS.

16. Importantly, none of Petitioners' experts had observed [REDACTED] in the school setting,¹⁰ nor did any try to obtain current data from WMPCS staff even though several of the rating tools used called for educator components to be used. Instead, Petitioner's experts largely relied on information provided by [REDACTED]'s Parents, who had not observed her in the school setting for at least a year. Such facts are not the type reasonably relied upon by experts. N.C. Gen. Stat. § 8C-1, Rule 703.

Deference to Educators

17. Due regard in administrative cases is given "to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." N.C. Gen. Stat. § 150B-34(a).

18. In special education cases in particular, "deference is based on the application of expertise and the exercise of judgment by school authorities." *Endrew F.*, 580 U.S. 386, 404. Therefore, it is a fair expectation that school employees "be able to offer a cogent and responsive explanation for their decisions that shows the IEP was reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Id.* However, when school employees are unable to do so, or the evidence presented does not support their decisions, they are not entitled to deference. *Gaston v. Dist. of Columbia*, 2019 WL 3557246, *8 ([REDACTED] C. August 5, 2019) (finding the "preponderance of the evidence available at the time showed the [] IEP was not reasonably calculated to enable [the Student] to make progress appropriate in light of her circumstances"); *Smith v. Dist. of Columbia*, 2018 WL 4680208, *7 ([REDACTED] C. Sept. 28, 2018).

19. "Nor does the required deference to the opinions of the professional educators somehow relieve the hearing officer or the district court of the obligation to determine as a factual matter whether a given IEP is appropriate. That is, the

¹⁰ The Tribunal notes that an argument that Petitioners' could not have had [REDACTED] evaluated in the school setting is unpersuasive. [REDACTED]'s Parents were aware that stay-put was in effect but took no action to enforce it from late March until May 28, 2024. Had they done so, evaluations could have been conducted in the school setting. Nor did they seek relief from the Tribunal to obtain one. *See* 34 CFR 300.502.

factfinder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Cnty. Sch. Bd. of Henrico Cnty., Virginia v. Z.P. ex rel. R.P.*, 399 F.3d 298, 307–08 (4th Cir. 2005).

20. The Undersigned afforded appropriate deference to WMPCS’ school staff regarding educational decisions for █████ where they demonstrated first-hand knowledge and expertise.

Hearsay of a Party Opponent

21. In several instances, the Tribunal admitted hearsay evidence of statements made by █████ when they were introduced as statements of a party opponent. *See generally* N.C. Gen. Stat. § 8C-1, Rule 801(d).

OVERVIEW OF IDEA

22. Analysis of Petitioners’ claims properly begins with an overview of the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.* The IDEA was enacted to “throw open the doors of public education” and help students with disabilities who had previously been “either completely ignored or improperly serviced by American public schools.” *T.B., Jr. ex rel. T.B., Sr. v. Prince George’s Cty. Bd. of Educ.*, 897 F.3d 566, 571 (4th Cir. 2018).

23. Congress enacted the IDEA to ensure “that children with disabilities receive needed special education services.” *G.M. v. Barnes*, 2024 U.S. App. LEXIS 22421 **2-3 (4th Cir. September 4, 2024) (quoting *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 137 S. Ct. 743, 748, 197 L. Ed. 2d 46 (2017)). The IDEA requires that States, in return for federal funding, guarantee certain children with physical and intellectual disabilities a “free appropriate public education” (FAPE). *Bouabid v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 62 F.4th 851, 856 (4th Cir. 2023) (quoting 20 U.S.C. § 1412(a)(1)(A)).

24. For most children, a FAPE entails an education “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Endrew F.*, 580 U.S. at 394. Where general education is sufficient to provide

such an education, the IDEA is satisfied, and no relief is required. *See Miller v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 64 F.4th 569, 575 (4th Cir. 2023). Where it is insufficient, the IDEA requires schools to work with parents to furnish “special education and related services” enabling the child to receive a FAPE. 20 U.S.C. § 1401(3)(A), (9); *see also, id.* §§ 1412, 1414.

25. In addition to this substantive right, the IDEA guarantees certain procedural rights, including the rights of parents to “examine all records” relating to their child and to “participate in meetings” regarding the identification, evaluation, and placement of their child. 20 U.S.C. § 1415(b); *see also, R.F. ex rel. E.F. v. Cecil Cnty. Pub. Schs.*, 919 F.3d 237, 248 (4th Cir. 2019).

26. The IDEA envisions a “cooperative process” between parents and educators, who are expected to work together to determine whether the child has a disability, whether that disability requires special education, and what any special education should look like. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005). But, as in this case, the IDEA anticipates that “parents and educators will not always agree.” *Bouabid*, 62 F.4th at 856.

27. A FAPE refers to “special education and related services” that are “(1) without charge, (2) meet the standards of the state educational agency, (3) include the appropriate level of education in the state involved and (4) are provided in conformity with an individualized education program (‘IEP’).” *K.I. v. Durham Pub. Schs. Bd. of Educ.*, 54 F.4th 779, 785 (4th Cir. 2022). The IEP is prepared by a team of teachers, school officials, and the student's parents, and it serves as the “primary vehicle for ensuring the student receives a FAPE.” *Id.*

28. To satisfy the IDEA requirements, WMPCS must offer an IEP that is “reasonably calculated to enable [REDACTED] to make progress appropriate in light of [her] circumstances.” *Endrew F.*, 580 U.S. at 399. Both the Supreme Court and the Fourth Circuit have emphasized that an IEP must be “reasonable,” not “ideal.” *Id.*; *A.B. by L.K. v. Smith*, 2023 U.S. App. LEXIS 12215, *2 (4th Cir. May 18, 2023). But still, the special education and related services in the IEP must be designed to meet [REDACTED]’s

“unique needs and prepare [her] for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).

29. As noted above, Petitioners were free to frame the issues for hearing, subject only to the requirement that the hearing issues were ones appropriately raised in their petitions.

Issue 1: Substantive Appropriateness of IEPs (“Appropriateness Issue”)

Whether the Respondent denied █████ a free appropriate public education by failing to appropriately develop IEPs during the 2023-24 school year, namely the October 2023 IEP and the February 8, 2024 IEP as alleged in the petition.

30. The primary issue in this case was whether the October 2023 and February 2024 IEPs were appropriate.

31. “At the beginning of each school year, each public agency must have an effect, for each child that disability within its jurisdiction an appropriate IEP.” 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a). The IEP is the “centerpiece” of delivering FAPE for disabled students; it must set out relevant information about the child's present educational performance and needs, establish annual and short-term objectives for improvements in that performance, and describe the specially designed instruction and services to meet the unique needs of the child. *Honig v. Doe*, 484 U.S. 305, 311 (1988) (quoting 20 U.S.C. §§ 1401 & 1414(d)). “[T]he formal requirements of a free appropriate public education, require that all of a child's special needs must be addressed in the educational plan.” *Town of Burlington v. Dep't of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd sub nom. Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 105 S.Ct. 1996, 85 L Ed. 2d 385 (1985).

32. The IDEA requires that both Parents and school staff, as members of the IEP team, have meaningful participation in developing █████'s educational program. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. §1414(d)(1)(B) (internal quotation marks omitted). These procedures

emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances. 20 U.S.C. §1414. The IEP is the means by which special education and related services are "tailored to the unique needs" of a particular child. *Endrew F.* 580, U.S. at 391 (citing *Rowley*, 458 U. S. at 181).

33. While a student protected under the IDEA may have a broad range of disabilities affecting each child's ability to access the general curriculum, the "substantive obligation" of the school district is the same for all students: "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. "[A] FAPE comprises 'special education and related services'—both 'instruction' tailored to meet a child's 'unique needs' and sufficient 'supportive services' to permit the child to benefit from that instruction." *Fry v. Napoleon Cmty. Sch.*, 580 U.S. at 158 (quoting 20 U.S.C. § 1401(9), (26), & (29)).

34. School districts, however, are not charged with providing the best program, but only a program that is designed to provide the child with an opportunity for a free appropriate public education. *Rowley*, 458 U.S. at 188-89 (1982); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 319 (4th Cir.2004). For most children, a FAPE entails an education "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Endrew F.*, 580 U.S. 394 (internal quotation marks omitted).

35. During the hearing, [REDACTED] presented no evidence regarding her actual school performance. She did not provide grades, IEP goal progress reports, work samples, testing results, or any other similar documentation.

36. Her only fact witness was her father, [REDACTED] who admitted that he had no firsthand knowledge of her school performance since August 2022, when he was banned from campus.

37. To challenge the appropriateness of [REDACTED]'s math, reading, and social/emotional goals in the October 2023 IEP, Petitioners needed to submit substantive evidence reflecting her school performance at that time. Such evidence

could have included grades, work samples, IEP goal progress reports from the October 2022 IEP, MAPS test results, or other contemporaneous, fact-based records documenting her performance.

38. Though Petitioners could have attempted to introduce some sense of ■■■■■s then-current school performance by questioning WMPC's witnesses about her performance in math, in reading, and in dealing with social/emotional issues, Petitioners did not.

39. Instead, Petitioners relied on expert witnesses, none of whom met ■■■■■ until months later.¹¹ None of Petitioner's expert witnesses spoken with or sought information from WMPCS staff, nor did they testify about ■■■■■s performance in math, reading, or social/emotional development in October 2023 or February 2024. None referenced contemporaneous, performance-based educational records from the relevant time periods.

40. Austin Andrews, Amanda Holton, and Arlene Whiteside each worked with ■■■■■ for multiple years, including during the periods covered by her October 2022 IEP, October 2023 IEP, and November 2023 addendum IEP. They credibly demonstrated ■■■■■s then-current strengths and weaknesses in math, reading, and social/emotional skills. They explained how present level statements were developed, how the various goals were supported by inputs and support tools, and how ■■■■■ progressed.

41. The disparity in the quality of evidence is clear. For instance,, WMPCS submitted multiple OT progress reports leading up to the October 2023 IEP team meeting, demonstrating that ■■■■■ did not require direct OT services or continued

¹¹ *But see Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017) (“[C]rafting an appropriate program of education requires a *prospective* judgment by school officials.” (emphasis added)); *Schaffer ex rel. Schaffer v. Weast*, 554 F.3d 470, 477 (4th Cir. 2009) (“Judicial review of IEPs under the IDEA is meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’ *Rowley*, 458 U.S. at 207. But this prospective review would be undercut if significant weight were always given to evidence that arose only after an IEP were created. Judicial review would simply not be fair to school districts, whose decisions would be judged in hindsight” (some citations omitted)).

consultative support. *See* Resp't Ex. 3-5, 7, 11. In contrast, Petitioners provided no comparable contemporaneous, firsthand documentation.

42. WMPCS's witnesses also addressed the "180-degree" shift in ██████'s attention and focus that occurred in late November 2023. None of ██████'s experts addressed that significant development in their reports or testimony except when asked about it on cross-examination.

43. This change occurred in late November, just before Thanksgiving break, followed by two or three weeks of school and then an extended holiday recess. Scheduling an IEP team meeting for January 3, 2024—the first day back from break—was a reasonable and timely response under the circumstances. Moreover, Petitioners did not inform WMPCS that ██████'s ADHD medication had been discontinued until later. Earlier disclosure may have allowed the school to act more swiftly.

44. The delay in holding the meeting until February 8, 2024, was caused by Petitioners' scheduling conflicts and illness among school staff, not a legal failing. The evidence demonstrated that WMPCS acted diligently in addressing the changes observed in ██████

45. Likewise, Petitioners presented insufficient evidence that ██████'s math, reading, or social/emotional goals were inappropriate at the time of the February 8, 2024, meeting. Petitioners provided no first-hand knowledge, and their experts cited no contemporaneous educational performance records such as grades, progress reports, or subject matter tests to substantiate their opinions.

46. In contrast, WMPCS proffered contemporaneous work with ██████. Amanda Holton discussed her ongoing functional behavioral assessment, which was still in progress at the time of the February 8th meeting. Additionally, although not yet complete at the time of the meeting, the Gyba, Zissette, and Temple evaluations did not support any changes to the math, reading, or social/emotional goals in the IEP.

47. During questioning, ██████'s counsel suggested that the new organizational goal adopted at the February 8th meeting should have been multiple

goals covering at least (i) task initiation; (ii) task maintenance; (iii) task completion; and (iv) turning in tasks appropriately. Amanda Holton appropriately addressed that contention by pointing out that task completion implies and presupposes all those intermediate steps.

48. Ms. Holton's explanation that the IEP team's immediate concern needed to be changing ██████'s special education setting to the less-distracting resource room and providing organizational assistance was reasonable in the context since the team planned to reconvene soon to consider evaluation results.

49. Another primary issue raised by Petitioners regarding the appropriateness of her October 2023 and February 2024 IEPs is the issue of school refusal. Petitioners contend that ██████ displayed such significant signs of school refusal during this period that WMPCS should have addressed the problem in her IEPs but did not.

50. School refusal occurs when a student experiences distress about going to school and being at school. The issue can be considered a symptom associated with other mental health disorders such as social anxiety disorder, generalized anxiety, depression, or post-traumatic stress disorder.

51. Although ██████'s Parents have asserted for several years in various documents that ██████ experiences school refusal or avoidance, Petitioners failed to carry their burden to substantiate that she exhibited such behavior during the 2023-2024 school year.

52. Notably, in her July 2024 interview with Dr. Lindsey Ohler, ██████ denied having school refusal or school-related anxiety.

53. When asked in his direct examination to explain ██████'s school refusal, ██████ explained that he had to prepare her clothing and lunch the night before and had to prompt her in the morning to leave the house. He testified that she was typically out of the house by around 7:20 am. Such behavior is not indicative of school refusal and aligns more closely with a typical morning routine of an 11-to-12-year-old.

54. In February 2024, [REDACTED] annotated a school attendance report to explain [REDACTED]'s unexcused absences to WMPCS's attendance committee. Pet'r Ex. 148. Despite including numerous notes, he did not mention school refusal. If school refusal were a disability-related cause of [REDACTED]'s absences, there was every incentive to document it.

55. The undisputed evidence regarding [REDACTED]'s school attendance from August 29, 2024, through October 25, 2024, proved that [REDACTED] was tardy only once and checked out early on only two occasions.

56. Petitioners offered no testimony from a qualified mental health professional indicating that she exhibited signs of school refusal due to an underlying disorder. Indeed, her refusal to provide mental health documentation in discovery led to this Tribunal blocking any such testimony or documentation because of those discovery failures.

57. WMPCS staff, who had worked with [REDACTED] in varying capacities across several academic years, testified that [REDACTED] did not display anxiety about being at school during the 2023-2024 school year, that she interacted appropriately with her classmates, and that tardiness was attributable to a Parent oversleeping or stopping for food along the way to school. During this period, [REDACTED] reported at most two instances of stomachaches while at school. Even if anxiety-related, two isolated incidents do not establish a pattern warranting intervention through an IEP goal. Additionally, no firsthand evidence was provided to explain the cause of these incidents. While school avoidance is a possibility, alternative explanations—such as a minor illness or dietary issues—are equally plausible. Without concrete evidence, there is no basis to assign fault to WMPCS.

58. Referring to a functional behavioral assessment performed by WMPCS, Ms. Grammer testified that “if [WMPCS] had documented that she was tardy because she was feeling sick or throwing up, then that to me is documenting not wanting to go to school.” T vol 11 110:19-21. However, Ms. Grammer's opinion presents several issues. First, the document she cited was a functional behavioral assessment conducted between November 2021 and February 2022—more than 1.5

academic years before the relevant period in this case.¹² Second her testimony mischaracterizes the content of the document. Third, that assessment itself states that █████'s stomachaches during that time did not impact her academic performance.

59. The majority of █████'s absences, tardies, and early checkouts from school during the 2023-2024 school year went unexplained in the hearing. █████ was the only witness offered by █████ who arguably had first-hand information relating to this topic, yet little testimony was elicited to clarify the reasons for these absences.

60. In two pieces of evidence, █████ herself established that she does not have school refusal. First, on July 11, 2024, as noted above, she denied having anxiety over going to school to Dr. Lindsey Ohler. Second, in Resp't Ex. 66, █████ makes clear that she has no school refusal issue. She presents as a typical emerging independent adolescent who wants to be viewed as no different than her friends, who she wants to be with and who questions authority from time to time. That is not school refusal; that is growing up.

61. █████ did not exhibit typical signs of school refusal, such as refusing to exit the car in the morning drop-off line or marked anxiety during the school day.

62. A factfinder cannot be left to guess the reason or reasons why █████ was absent, was late to school, or left early. Petitioners have the burden of proof to substantiate their school refusal claim, and they did not do so.

63. Another allegation in the petition regarding appropriateness of █████'s IEPs is that WMPCS failed to address █████'s tendency to elope.

64. To prevail on this issue, █████ had the burden to establish that (a) she engaged in elopement behavior due to a disability; and (b) WMPCS had failed to address that aspect of her disability in its educational planning.

65. █████ offered no evidence that she engaged in elopement at school. At most, there was a mention of her going to the bathroom without permission, but that does not constitute elopement.

¹² The Tribunal notes that while an assessment conducted 1.5 academic years earlier may be useful in understanding background information, such a document provides little if any probative weight as to █████'s experiences in October 2023 through March 2024.

66. Her father did not testify about elopement, nor did [REDACTED] present any documentary evidence indicating that elopement was a concern. Additionally, none of her expert witnesses addressed this issue.

67. In sum, there was no evidence that [REDACTED] had ever eloped at WMPCS during the timeframe relevant to this hearing.

68. Although [REDACTED] did not testify, she provided significant evidence in this case through a video recorded by her mother in early September 2024. *See Resp't Ex. 66.* The video captures a conversation between [REDACTED] and her mother under circumstances suggesting that [REDACTED] was unaware she was being recorded. Contrary to her experts' claims regarding communication deficits, [REDACTED] demonstrated clear, fluent communication with no hesitation. She engaged easily in back-and-forth dialogue, expressed her thoughts and preferences effectively, and even challenged a facetious remark made by her mother. Her conversational style in the 18-minute video was consistent with that of a typically developing 12-year-old.

69. IDEA requires that an IEP be tailored to a student's unique needs and circumstances. An IEP must accurately describe the student's present level of academic and functional achievement; must contain a statement of measurable annual goals designed to enable the student to be involved in and make progress in the general education curriculum; and a description of the specialized instruction and services that the child will receive. *See generally* 20 U.S.C. § 1414(d).

70. Petitioner [REDACTED] failed to meet her burden of proof that October 2023 and February 2024 IEPs failed to contain appropriate math, reading, behavioral social/emotional, written expression, speech language, and occupational therapy goals. She failed to offer contemporaneous evidence of her school performance at the relevant points in time to demonstrate that her existing IEPs were inappropriate.

71. Accordingly, WMPCS is the prevailing party on Issue No. 1.

Issue 2: Implementation of IEPs (“Implementation Issue”)

Whether the Respondent denied [REDACTED] a free appropriate public education by failing to provide counseling services during the period

of October 9, 2023, through March 9, 2024, and for failure to implement the February IEP after March 29, 2024 through May 28, 2024.

Counseling Services Between October 9, 2023 through March 9, 2024

72. [REDACTED]s October 2023 IEP provided that she would receive 30 minutes of counseling services once per week.

73. Since her October 2022, [REDACTED] received her weekly school-based counseling services on Thursday afternoons at 1:40 pm. Her Parents were aware of that schedule.

74. There was no evidence submitted that [REDACTED] missed her counseling sessions prior to Thursday, November 16, 2023. On that day, she left school early for a private OT evaluation.

75. Beginning shortly thereafter, her Parents checked her out of school early each Thursday afternoon, and [REDACTED] was unavailable for her school-based counseling sessions.

76. Because of her Parents' preference for private OT services, [REDACTED]s last school-based counseling session was on Thursday, November 30, 2023.

77. Based on WMPCS's school calendar, Pet'r Ex. 145, there were 12 possible sessions in the time after November 30th until March 9th. [REDACTED] established no entitlement to potential make-up for sessions prior to Thursday, December 7, 2023.

78. Contextually, it is important to note the following facts: (i) Arlene Whiteside is the school's only social worker, and no one else was qualified to provide counseling services to [REDACTED] (ii) contemporaneously with this change, [REDACTED] filed an ethics complaint against Ms. Whiteside with the North Carolina Social Worker and Licensure Board because, according to him, Ms. Whiteside had said [REDACTED] was not autistic; and (iii) when the Parents informed the school of the private OT therapy in January, they (a) did not ask that [REDACTED]s counseling schedule be changed and (b) stated that they did not want [REDACTED] to work with Ms. Whiteside going forward.

79. A school does not have a duty to rearrange its service delivery schedules because a parent chooses to make his/her child unavailable. In this case, ██████'s counseling schedule had long been established. ██████'s Parents chose to pull ██████ during a time that they knew she was scheduled for counseling services. They did not consult the school before doing so or request that ██████'s schedule be changed. Several weeks later, they made clear that they did not want Ms. Whiteside serving ██████

80. A parent may choose to “vote with their feet” by making their child unavailable for service delivery, but they cannot do so without consequences.

81. In some instances, a child becomes unavailable for services in a context that requires the school to act, such as needing to serve a child at home due to an autoimmune disorder that renders it unsafe for a child to attend school. This is not one of those situations.

82. Parents do not have veto power over who serves their child at school. If the staff member is qualified to provide the services in question, and Ms. Whiteside is, then the school decides who serves the child.

83. Under the facts submitted into evidence, the Undersigned concludes that the equities lie with WMPCS and further concludes that the school had no duty to change ██████'s counseling schedule or to hire another provider. In the alternative, even if WMPCS was obligated to change ██████'s counseling schedule, Petitioners did not carry their burden of demonstrating substantive harm, as discussed below.

Failure to implement the February IEP after March 29, 2024, through May 28, 2024

84. ██████ was excluded from WMPCS on March 29, 2024. Under North Carolina state law, charter schools have the power to “exclude” students and “return” them to their traditional home-zone public school.

85. ██████ filed the first of these two cases (24-EDC-01132) before the exclusion had concluded. She was represented by counsel at that time and has remained so throughout the proceedings.

86. Following ██████'s exclusion, WMPCS did not provide ██████ any services for the remainder of the 2023-2024 academic year.

87. After WMPCS returned from its spring break (which occurred during the week of April 1, 2024), Pet'r Ex. 145, ██████'s Parents repeatedly e-mailed the school, asserting that the exclusion violated the IDEA's stay-put provision and demanding that services be provided.

88. WMPCS repeatedly replied (a) that it did not believe it was in violation of IDEA; (b) that Petitioners had a lawyer who could advise them on stay-put issues; and (c) if they believed a violation had occurred, they should seek intervention from this Tribunal.

89. ██████ first formally raised the stay-put issue by filing her Petition in 24-EDC-02019 on May 28, 2024—69 days after her exclusion.

90. By May 28, 2024, WMPCS had already begun end-of-grade testing, and only 6.5 days of school remained in the academic year. *See* Pet'r Ex. 145.

91. Although this Tribunal ruled that ██████ could return to WMPCS's campus under stay-put beginning on August 29, 2024, the issue of what relief to which ██████ might be entitled for the post March 29th period is a very different one.

92. Despite WMPCS's suggestion that they seek this Tribunal's intervention, Petitioners waited two months to do so. The evidence is undisputed that Petitioners did not seek any educational services for ██████ after March 29, 2024. They did not enroll her in the Beaufort County Schools, a private school, or a homeschooling program, nor did they obtain tutoring services.

93. The IDEA provides for equitable relief rather than traditional damages. A party seeking equity must "do" equity—they must act in good faith. In this case, there is no evidence that Petitioners took reasonable steps to mitigate any alleged harm stemming from the cessation of services, raising concerns about their entitlement to equitable relief.

94. As noted above, WMPCS did not provide ██████ any services for the remainder of the 2023-2024 academic year after her exclusion. Because the filing of

24-EDC-01132 triggered stay-put, WMPCS's failure to provide services is a procedural violation of the IDEA.

95. However, at the time of her exclusion, [REDACTED] was represented by experienced legal counsel and had a case pending before this Tribunal (24-EDC-01132). Between March 29 and May 28, Petitioners made multiple filings in that case. Though Petitioners were well-aware that stay-put was in effect, they took no action to enforce it from late March until May 28, 2024. This inaction is inexplicable given that Petitioners voluntarily dismissed their MDR claims, did not provide any alternative educational support during that time, are versed in litigation, and were represented by experienced legal counsel.

96. In the alternative, equity issues aside, a key evidentiary consideration here is that although WMPCS did not provide services during this time period, the evidence reflects that [REDACTED] did not suffer any substantive harm. The uncontroverted evidence in this case is that when [REDACTED] returned to WMPCS under this Tribunal's order, she quickly adjusted to her new class and routine and is thriving. She was car-pooling with a friend's family and except for a couple of doctor appointments, had not missed any school. Her grades and work completion were better than when she left. Additionally, Dr. Ohler's July 2024 achievement testing remained right in line with Dr. Temple's achievement testing from January 2024. Petitioners failed to proffer any evidence of significant adverse impact.

97. In *Burlington Sch. Comm. v. Massachusetts Dep't of Educ.*, 471 U.S. 359, (1985), the Supreme Court of the United States held:

The statute directs the court to 'grant such relief as it determines is appropriate.' The ordinary meaning of these words confers broad discretion on the court. The type of relief is not further specified, except that it must be 'appropriate.' Absent other reference, the only possible interpretation is that the relief is to be 'appropriate' in light of the purpose of the Act [and that] means that **equitable considerations are relevant in fashioning relief.** (emphasis supplied).

98. Although the child's interests are paramount, *Burlington* emphasizes that the Tribunal has broad discretion in determining appropriate relief. [REDACTED]

represented by counsel at the time of her exclusion, was invited by WMPCS to seek the Tribunal's intervention. However, Petitioners' delay in action and failure to provide educational support for 69 days reflect poor judgment. Alternatively, Petitioners failed to carry their burden that this procedural violation resulted in substantive harm, as [REDACTED] successfully reintegrated into her school routine.

99. Considering the uncommon fact pattern here, the delay in seeking OAH intervention, the lack of obtaining other educational services for [REDACTED] and the lack of evidence of any substantive harm, Petitioners have failed to carry their burden and are not entitled to relief on this issue.

100. WMPCS is the prevailing party on Issue No. 2.

Issue 3: Procedural Violation

Whether the Respondent denied Petitioner's parents an opportunity to meaningfully participate in the IEP meetings on October 4, 2023, and February 8, 2024, by banning Petitioner's parents from campus, and by filing truancy charges against them on April 29, 2024.

101. As noted above, [REDACTED] voluntarily dismissed the portions of this issue relating to the October 2023 IEP team meeting and to the filing of truancy charges in April 2024.

102. In response to WMPCS's Rule 41(b) motion made at the close of [REDACTED]'s case, this Tribunal granted dismissal on the remaining portion of Issue 3.

103. WMPCS is the prevailing party on Issue 3.

Issue 4: Independent Educational Evaluation Issue

Whether Respondent denied Petitioners the opportunity to receive independent educational evaluations by utilizing criteria that precluded [REDACTED] from being able to receive independent education evaluations during March 29, 2024, through the end of the 2023-2024 school year.

104. After the March 7, 2024, IEP team meeting where team members (including [REDACTED]'s parents) discussed Emily Gyba's speech-language evaluation (Resp't Ex. 31); Caroline Zissette's occupational therapy evaluation (Resp't Ex. 35); Dr. Paige Temple's psychological evaluation (Resp't Ex.46); and Amanda Holton's

functional behavioral assessment (Pet'r Ex. 20), ██████'s parents requested independent educational evaluations ("IEEs") at public expense in those four areas.

105. On March 12, 2024, WMPCS granted that request in a letter to ██████'s parents. That letter included the required information about qualified providers in the community and IDEA's requirements related to IEEs at public expense. *See* Resp't Ex. 52.

106. One of those requirements is that the location of the IEE be the same as that utilized by the school's evaluators: "The criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation." T vol 11 205:1-9; North Carolina Department of Public Instruction, *Policies Governing Services for Children With Disabilities* at 83-84 (§ 1504-1.3); 34 C.F.R. § 300.502(e)(1).

107. While Parents are always free to obtain evaluations of their own, using whatever criteria they choose, the school is not obligated to fund such evaluations. Each one of WMPCS's evaluations were conducted in a school-based setting. That meant if Petitioners wanted to WMPCS to pay for the IEEs, those evaluations had to be conducted in school settings.

108. The issue here is whether, by following the regulation's location requirement, WMPCS had imposed a criteria inconsistent with the Parents's right to an independent educational evaluation.

109. As of March 12, 2024, the answer to this question is no. ██████ was enrolled at and was attending WMPCS, and Petitioners could have had an independent evaluator arrange to conduct an on-campus evaluation.

110. ██████'s March 29th disciplinary exclusion banned her from campus. From that date forward, she could not come onto campus without either permission from WMPCS or an order from this Tribunal (or other judicial officer with competent jurisdiction). Petitioners never contacted WMPCS to ask either (a) that ██████ be allowed to come back onto campus for the limited purpose of the IEEs; or (b) that

WMPCS waive the location requirement. None of her evaluators contacted WMPCS for any reason.

111. Importantly, as noted above, at the time of her exclusion, [REDACTED]'s parents were aware that stay-put was in effect but took no action to enforce it from late March until May 28, 2024. Had they done so, [REDACTED] would have been back in school and the evaluation requirement would be a non-issue.

112. The requirement is *not* that the IEEs had to be conducted necessarily at WMPCS, but rather in a school setting. Thus, if [REDACTED] had enrolled in public or private school (even under protest), Petitioners could have had her tested there.

113. One of [REDACTED]'s experts opined that the location requirement could not be complied with because it was summer, and school was not in session. That position is unpersuasive because the requirement exists in the regulations, and summer break is a predictable annual event.

114. The rationale for using the same criteria as the school did –such as the scope of the evaluation, the qualifications of the evaluator, and the setting – is reasonable. This approach ensures that the evaluations are consistent and comparable, which is essential for IEP team members to make informed decisions. And this case illustrates how location can impact evaluation results.

115. Under these circumstances, the Undersigned concludes that WMPCS did not utilize criteria that prevented [REDACTED] from being able to receive independent educational evaluations during the period of March 29, 2024, through the end of the 2023-2024 school year.

116. WMPCS is the prevailing party on Issue 4.

FINAL DECISION

BASED on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Petitioners failed to prove that the October 2023 and/or February 2024 IEPs were inappropriate.

2. Petitioners failed to prove that WMPCS denied [REDACTED] a free appropriate public education by failing to provide the counseling services contained in her IEP during the period of October 9, 2023, through March 9, 2024.

3. For the denial of FAPE from March 29, 2024 through the remainder of the 2023-2024 school year, it was uncontroverted that WMPCS did not provide services to [REDACTED] during that time. However, Petitioners failed to prove any substantive harm because of this procedural violation so this claim is dismissed with prejudice.

4. This Tribunal's oral rulings as well as its written rulings are incorporated into this Final Decision by reference.

5. WMPCS is the prevailing party on all issues, and Petitioners' claims are **DISMISSED WITH PREJUDICE**.

6. To the extent that ancillary claims have not been specifically addressed, [REDACTED] failed to meet her burden of proof as to any of those ancillary claims, and they are **DISMISSED WITH PREJUDICE**.

7. This Tribunal's Order Granting Petitioners' Amended Motion to Enforce Stay Put dated August 23, 2024, in 24-EDC-01132 is **VACATED** as of the entry of this Final Decision.

8. Prior to the publication of this Final Decision, all personally identifiable information about [REDACTED] or other information which may make it possible to identify [REDACTED] with reasonable certainty **SHALL BE REDACTED**.

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and similar North Carolina laws, the parties have appeal rights regarding this Final Decision.

Any party aggrieved by the findings and decision of a hearing officer may, under N.C. Gen. Stat. § 115C-109.6, institute a civil action in state court within thirty (30) days after receipt of the notice of decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of this Final Decision.

Because NC OAH may be required to file the official record of this contested case with the state or federal court, a copy of Petition for Judicial Review or complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated to ensure timely preparation of the record.

Unless appealed to state or federal court, the State Board of Education shall enforce the Final Decision of the administrative law judge.

IT IS SO ORDERED, this the 10th day of April, 2025.



Samuel K Morris
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

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This the 10th day of April, 2025.



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