

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
25 EDC 02545

<p>Student by parent or guardian Parent Petitioner,</p> <p>v.</p> <p>Winston Salem Forsyth County Board of Education Respondent.</p>	<p><b>REDACTED FINAL DECISION Originally issued January 20, 2026</b></p>
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**THIS MATTER** was heard before David F. Sutton, Administrative Law Judge Presiding, on the following dates: August 25-27, 2025 and October 1-3 and October 6, 2025, in Winston Salem, North Carolina.

After considering the hearing on the merits held on the above-mentioned dates, arguments from counsel for all parties, all documents in support of or in opposition to the parties' motions, all documents in the record including the Proposed Orders as well as all stipulations, admissions, and exhibits, this Tribunal finds that Respondent, the Winston-Salem/Forsyth County Board of Education ("WSFCS"), violated the IDEA and its implementing regulations, thus significantly impeding Student's parent's right to participate in the decision-making process regarding the provision of a free appropriate public education to Student., and denying Student a free appropriate public education, and judgment is Ordered for Petitioners.

**APPEARANCES**

For Petitioners: Ann M. Paradis  
Jeremy Sanders  
Gahagan Paradis, P.L.L.C.  
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Durham, NC 27707

For Respondent: Stephen Rawson  
Maya Weinstein  
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P.O. Box 1151  
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## WITNESSES

For Petitioners:      Petitioner’s Expert #1, Ed.D., BCBA  
Director of Health and Wellness  
Residential Director  
Petitioner’s Expert #2  
Petitioner Parent  
Petitioner’s Expert #3

For Respondent:      Middle School Special Education Teacher  
EC Director of Instruction  
Respondent’s Expert #1  
Respondent’s Expert #2  
Respondent’s Expert #3  
Respondent’s Expert #4

## EXHIBITS

The following exhibits were received into evidence during the course of the two hearings.

**Stipulated Exhibits (“Stip. Ex.”):** Stipulated Exhibits numbered 1-2, 9-15 were admitted into evidence.

**Petitioners’ Exhibits (“Pet’r Ex.”):** Petitioner’s Exhibits numbered 22, 59-60, 82, 91, 96, 133, 136 (BS 1215-1216), and 138 were admitted into evidence. The Tribunal admitted Petitioner’s Exhibits 1-2, 29, 52, and 56 for the limited purposes of historical reference and the basis for opinion. Petitioner’s Exhibit 134 was received only as an offer of proof by Petitioner.

**Respondent’s Exhibits (“Resp’t Ex.”):** Respondent’s Exhibits numbered 1-12, 14-15, 17-24, 27-42, 44, 47-52, 55, 57, 59-61, 64-66 were received into evidence.

The aforementioned exhibits have been retained as part of the official record of this contested case.

## OTHER DOCUMENTS

Transcript volumes 1 through 7 were received and have been retained in the official record of this case and cited as T vol \_\_\_ p \_\_\_:[line].

## ISSUES

1. Whether Respondent provided Student a FAPE from July 10, 2024, to November 4, 2025?
2. Whether Respondent failed to offer Student a FAPE in the July 14, 2025, IEP (developed on June 24, 2025)?

3. Whether Respondent significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child?

### **BURDEN OF PROOF**

Petitioners bear the burden of proof in North Carolina. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The standard of proof is by a preponderance of the evidence. *Id.*; N.C. Gen. Stat. §150B-34(a). “Courts give educators “deference . . . based on the application of expertise and the exercise of judgment by school authorities.” *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (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 Student’s circumstances.” *Id.* at 1001-1002.

### **PROCEDURAL BACKGROUND**

1. Petitioner filed a Petition for Contested Case Hearing on July 10, 2025, invoking Student’s stay-put rights to remain in Student’s residential placement wherein Student is attending Residential School.
2. The Petition was served on the Superintendent on July 14, 2025. Respondent timely responded on July 24, 2025.
3. On July 15, 2025, attorney Ann M. Paradis filed a Notice of Substitution of Counsel.
4. Counsel for Petitioner additionally filed a Notice of Service of Due Process Petition on July 15, 2025, detailing that the Petition was hand delivered to the office of the superintendent on July 14, 2025.
5. On July 16, 2025, attorneys Stephen Rawson and Maya Weinstein entered their appearances on behalf of Respondent.
6. On July 16, 2025, this Tribunal entered a Notice Setting Hearing and Prehearing Deadlines, scheduling the hearing to begin on August 25, 2025.
7. On July 29, 2025, this Tribunal entered a Notice of Hearing and Notice of Prehearing Conference, providing additional information regarding the hearing scheduled to begin on August 25, 2025, per the July 16, 2025, Notice Setting Hearing and Prehearing Deadlines.
8. On August 5, 2025, Respondent filed its Motion for Preliminary Injunction and/or to Modify Stay Put alleging two statutory bases for modifying Student’s “stay put” placement: 20 U.S.C. § 1415(k)(3)(A) and N.C. Gen. Stat. § 1A-1, Rule 65, Injunctions.
9. Respondent additionally filed a Certificate of Service of a foreign subpoena served on

Residential School on August 5, 2025.

10. On August 6, 2025, this Tribunal requested Petitioner submit Petitioner's Response to Respondent's Motion for Preliminary Injunction and/or to Modify Stay Put no later than August 15, 2025.
11. On August 12, 2025, the Parties submitted a Joint Motion to Extend Resolution Period and Adjust Hearing Schedule, requesting the Hearing on the Merits be continued until October 1, 2025, which was subsequently granted by this Tribunal on August 13, 2025.
12. On August 14, 2025, Petitioner filed a Motion to Permit Telephonic or Video Testimony, which was granted by this Tribunal on August 15, 2025.
13. On August 15, 2025, Petitioner's Counsel filed its Response Opposing Respondent's Motion to Modify Stay Put.
14. Petitioner additionally filed the served subpoenas for Director of Health and Wellness, Residential School Staff #1, Residential School Staff #2, Residential Director, and Mental Health Clinician on August 15, 2025.
15. On August 18, 2025, Respondent filed a Motion to Permit Telephonic or Video Testimony, which was granted by this Tribunal on August 19, 2025.
16. On August 18, 2025, this Tribunal entered an Amended Notice of Hearing for August 25-27, 2025, on Respondent's Motion to Modify Stay Put.
17. At a Pretrial Conference on August 19, 2025, this Tribunal heard oral arguments from both parties on their respective positions on the applicability of a Rule 65 preliminary injunction as it relates to the IDEA's automatic stay-put injunction and determined that issue was ripe for adjudication.
18. On August 20, 2025, Petitioner filed a second Motion to Permit Telephonic or Video Testimony, which was granted by this Tribunal on August 21, 2025.
19. Petitioner submitted a Proposed Order Denying Respondent's Motion for Preliminary Injunction at this Tribunal's request on August 20, 2025.
20. On August 21, 2025, Respondent submitted the Parties' Proposed Order on the Pre-Hearing Conference.
21. On August 22, 2025, this Tribunal entered an Order Denying Respondent's Motion for Preliminary Injunction.
22. On August 22, 2025, Respondent filed the Court Reporter request form for the August 25-27, 2025, Hearing.

23. This Tribunal entered the Final Order on Prehearing Conference on August 22, 2025.
24. The Parties participated in the Hearing on Respondent's Motion to Modify Stay Put from August 25, 2025, through August 27, 2025.
25. On August 28, 2025, this Tribunal entered a Post Hearing Order, requiring the Parties submit proposed orders on or before September 4, 2025.
26. On September 4, 2025, the Parties filed their respective Verification of Exhibits, the admitted exhibits, and their respective proposed orders on Respondent's Motion to Modify Stay Put.
27. This Tribunal denied Respondent's Motion to Modify Stay Put on September 11, 2025.
28. On September 16, 2025, this Tribunal entered a Notice of Hearing and Notice of Prehearing Conference.
29. Petitioner filed a Motion to Sequester Witnesses on September 18, 2025, which was granted on September 19, 2025.
30. The Parties participated in the Prehearing Conference on September 25, 2025.
31. The Parties additionally filed a Joint Motion for Video Testimony on September 25, 2025, which was granted on September 26, 2025.
32. On September 26, 2025, this Tribunal issued the Order on the Final Prehearing Conference.
33. The Parties participated in the Hearing on the Merits from October 1, 2025, through October 6, 2025.
34. Respondent filed a Trial Brief Regarding Educational Placement on October 1, 2025.
35. Respondent filed a Motion in Limine on October 1, 2025, to prohibit Petitioner's Expert #3 from testifying about, relying on, or referencing any information collected, created, or observed after the June 24, 2025, IEP meeting, including her evaluation report, and that Petitioner's Expert #3's evaluation report be excluded. The Motion was granted after oral arguments of counsel. Petitioner's Motion to Reconsider was denied on October 2, 2025.
36. Following the conclusion of the Hearing, the Parties filed a Joint Motion to Extend Hearing Deadlines on October 13, 2025, which was granted on October 15, 2025.
37. This motion was followed by a Joint Motion to Revise Deadlines on October 23, 2025, which was granted that same day.
38. The Parties filed their respective Verifications of Exhibits and the admitted exhibits on October 27, 2025.

39. The Parties filed their proposed Final Decisions on November 14, 2025.
40. On December 11, 2025, Chief Administrative Law Judge, Melissa Lassiter, extended the deadline by which the Undersigned had to file the Final Decision from December 15, 2025, up to and including January 5, 2026.
41. On January 2, 2026, Chief Administrative Law Judge, Melissa Lassiter, extended the deadline by which the Undersigned had to file the Final Decision from January 5, 2026, up to and including January 20, 2026.

### **FINDINGS OF FACT**

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, 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, and 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 including, but not limited to, verbal statements made at meetings as documented in the admitted exhibits, MDR documents, IEP documents, Prior Written Notices, correspondence, notes, evaluations, and all other competent and admissible evidence.

At the start of the hearing in this matter, the parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in a proposed Pre-Trial Order, which was approved and filed in the Office of Administrative Hearings on September 26, 2025. Stipulations are referenced as “Stip. 1,” “Stip. 2,” “Stip. 3,” etc. To the extent the Stipulations are not specifically stated herein, the Stipulations of Fact in the Order on the Final Pre-Trial Conference are incorporated fully herein by reference.

Based upon the stipulations of record and the preponderance of the admissible evidence, the Undersigned finds as follows:

1. Unless specifically contradicted herein, this Order incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation.
2. To the extent the Findings of Fact contain Conclusions of Law, or the Conclusions of Law are Findings of Fact, they should be considered without regard to their given labels.

### **Credibility of Witnesses**

3. The Undersigned determined the credibility of the witnesses in this case based on any inconsistencies in the record and the witnesses’ testimony as well as the Undersigned’s observations of witnesses’ demeanor, voice inflection, tone, hesitation in responding to

questions, facial features, body language, as well as any leading nature in the questioning by and the witnesses' interactions with legal counsel. The transcript of the hearing cannot record these mannerisms of witnesses.

4. In this case, as most others, the Undersigned has not indicated in the record to legal counsel how he intended to rule on the credibility of the witnesses. Occasionally in hearings, the Undersigned has noted on the record when a witness significantly and routinely delays answering a question. There is no legal authority requiring that an administrative law judge, or any judge, make any credibility determinations on the record or advise legal counsel on how the administrative law judge intends to rule on the credibility of witnesses.
5. Even though this Final Decision may incorporate language from the Parties' respective Proposed Final Decisions, credibility determinations are made independently from any proposals by the Parties. The Undersigned notes that legal counsel of both Parties also heard and/or observed each witness testify.
6. "An expert's testimony relies upon scientific, technical or other specialized knowledge to "provide insight beyond the conclusions that jurors can readily draw from their ordinary experience." *State v. Broyhill*, 254 N.C. App. 478, 485, 803 S.E.2d 832, 838 (2017) (internal citations omitted) (excluding expert opinion testimony from doctor who had not been identified as an expert).
7. "A lay witness may state instantaneous conclusions of the mind as to the appearance, condition, or mental or physical state of persons, animals, and things, *derived from observation of a variety of facts presented to the senses at one and the same time.*" *Broyhill*, 254 N.C. App. at 485 (internal citations omitted); *see also* N.C. Gen. Stat. § 8C-1, Rule 701.
8. "[W]hen an expert witness moves beyond reporting what he saw or experienced through his senses, and turns to interpretation or assessment 'to assist' the jury based on his 'specialized knowledge,' he is rendering an expert opinion." *Broyhill*, 254 N.C. App. 478, 485 (2017) (citing *State v. Davis*, 368 N.C. 794, 798 (2016)). *see also* N.C. Gen. Stat. § 8C-1, Rule 702

#### **A. Petitioners' Witnesses**

##### *Petitioner's Expert #1*

9. Petitioner's Expert #1 was qualified and received by the Tribunal as an expert in the following areas: special education related to students with behavioral disabilities and autism, as well as evidence-based practices and supports for students with challenging behaviors and autism, and functional behavioral assessments and behavior intervention plan development, and IEP development and progress monitoring. T vol 2 p 202:14-24.
10. Petitioner's Expert #1 earned her bachelor's and master's degrees in Exceptional Student Education: Emotional Disturbance and Intellectual Disabilities in 1995 and 1996

respectively, and her doctorate of education in Exceptional Student Education: Inclusion, Autism Spectrum Disorders, Early Intervention in 2007. She has been a Board Certified Behavior Analyst since 2005. Pet'r Ex. 59 p 658.

11. Petitioner's Expert #1 served as a special education teacher, a general education teacher, and a board certified behavior analyst. She taught undergraduate and graduate courses in special education at Winthrop University from 2007 to 2019. She has written three books on behavior support for students with autism and using Applied Behavior Analysis ("ABA") in the classroom. She has authored book chapters for three other books on autism, co-teaching, and inclusive classrooms. Pet'r Ex. 59 p 659-661. She has written or contributed to nineteen journal articles and manuals. She has presented at professional conferences multiple times. Pet'r Ex. 59.
12. Since 2022, Petitioner's Expert #1 has worked as a Senior Behavior Analyst for Positive Behavior Supports Corporation in Charlotte, North Carolina where she provides supervision and support to other board certified behavior analysts and manages her own caseload to support students with autism. She consults with schools and community groups to support the generalization of learned skills across settings and to address concerns specific to certain environments. Prior to 2022, she worked as a BCBA for the Autism Society of North Carolina, Charlotte where she provided support to families of children and adults with autism. Pet'r Ex. 59 p 658.
13. Petitioner's Expert #1 has worked as a consultant to educators in meeting the needs of students with autism spectrum disorders and supporting students with disability in general education settings. Pet'r Ex. 59 p 659. She works with school districts to support the needs of students with behavioral challenges, including conducting functional behavior assessments, developing recommendations for behavior intervention plans, providing training on implementation of those plans, and working with schools to include students with intellectual disabilities, autism spectrum disorders, and students with significant behavior problems in the general education setting. T vol 2 pp 200:22-201:6.
14. Petitioner's Expert #1 has also provided consultative services to public school districts to reduce the incident of seclusion and restraint in the classroom. T vol 2 p 203:1-10. She also has experience reviewing programs in private residential schools. T. of Petitioner's Expert #1, T vol 2 203:11-20.
15. Petitioner's Expert #1 conducted a functional behavior assessment ("FBA") of Student. in 2023. Resp't Ex. 5. The Undersigned notes Petitioner's Expert #1 observed Student for this FBA in WSFCS. Petitioner's Expert #1 also met with Residential School staff and briefly observed Student in Student's residential placement as part of her preparation for the hearing on Respondent's Motion to Modify Stay-Put. T vol 2 pp 203:21-204:5, 207:3-9. This perspective provided valuable insight to the Undersigned.
16. The Undersigned found Petitioner's Expert #1 credible and knowledgeable about Student's unique circumstances, and the issues presented in the FAPE hearing. As Petitioner's Expert #1 was a credible expert witness, her testimony will be given weight throughout the Order.

*Director of Health and Wellness and psychiatric nurse practitioner for Residential School*

17. Director of Health and Wellness and psychiatric nurse practitioner for Residential School (“Director of Health and Wellness”), testified for Petitioner at the hearing on Respondent’s Motion to Modify Stay Put. T vol 2 p 286:6-9. She has a doctorate of nursing and is a board-certified psychiatric nurse practitioner. She has been practicing as a psychiatric nurse practitioner since 2015. T vol 2 p 286:15-21. She has six years of experience working in residential schools, including almost one year at Residential School. T vol 2 pp 286:22-287:6. She currently treats Student’s psychiatric symptoms medically through prescribing and monitoring Student’s psychiatric medications. T. vol 2 p 287:17-21.
18. The Undersigned found Director of Health and Wellness credible and knowledgeable about Student’s psychiatric diagnoses, Student’s compliance with taking Student’s psychiatric medication, the potential risk to Student due to Student’s behaviors, and Student’s readiness to “step down” from Student’s current residential placement. As Director of Health and Wellness was a credible witness, her testimony will be given appropriate weight throughout the Order.

*Residential Director at Residential School*

19. Residential Director at Residential School (“Residential Director”), also testified for Petitioners at the hearing on Respondent’s Motion to Modify Stay-Put. Residential Director is a licensed clinical social worker and has a master’s degree in social work. T vol 2 pp 302:22-303:3. Residential Director has known Student since she began her employment at Residential School in February 2025, but she has worked in residential care programs for eighteen years. T vol 2 p 303:4-7. Residential Director has “expertise in trauma work and family work.” T vol 2 p 303:7-8. She served as Student’s mental health therapist in June and July. During the month of August, she worked on transitioning Student to another mental health therapist. T vol 2 p 303:20-23. She provided valuable information about Student’s mental health needs, Student’s residential life, Student’s relationships with peers and staff, and Student’s overall engagement and mental health symptoms since Student’s enrollment at Residential School.
20. The Undersigned found Residential Director to be a credible witness. Her testimony was supported by the documents in the record.

*Petitioner, Parent*

21. Petitioner Parent, testified at the hearing on Respondent’s Motion to Modify Stay Put and at the FAPE hearing. The Undersigned found Student’s parent to be credible even though, as Student’s parent, Parent has an explicit and implicit bias for Student’s best interests. The Undersigned observed Parent’s demeanor as Parent testified on direct examination and was cross examined by opposing counsel. The Undersigned observed Parent to be forthright during the entirety of Parent’s testimony and found Parent’s testimony of Student’s unique circumstances and needs to be consistent with the records. The Undersigned finds Parent

attended all Student's IEP meetings, participated in clinical family therapy sessions with Residential School, and is a devoted advocate for Student's unique needs. Additionally, Parent understood the difference between "placement" and "location." *See* Stip. Ex. 2 p 88, 97. As Student's Parent was a credible witness, Parent's testimony will be given weight throughout the Order.

*Petitioner's Expert #3*

22. Petitioner's Expert #3 received her Bachelor of Science in Experimental Psychology in 2002 from the University of South Carolina. She earned her master's degree in psychology from the University of North Texas in 2007. She continued her education at the University of North Texas and earned her Doctorate in Counseling Psychology in 2013. Pet'r Ex. 133, p 1137; T vol 5 pp 691:21-692:2.
23. Petitioner's Expert #3 currently holds licensure as a psychologist in North Carolina, Tennessee, Georgia, and South Carolina. Pet'r Ex. 133, p 1137; T vol 5 p 692:4-6.
24. Petitioner's Expert #3 has served as an evaluating psychologist since 2014 and owns an independent psychological practice where she offers comprehensive psychological services and evaluates students with disabilities for private and public charter schools. Pet'r Ex. 133, p 1137-1138; T vol 5 pp 694:21-695:4 Petitioner's Expert #3 currently conducts psychological evaluations for individuals as young as two and a half years of age and as old as ninety-nine years of age, conducting evaluations ranging from Autism, ADHD, learning disorders, trauma, bipolar, personality disorders, psychotic disorders, parasomnias, Alzheimer's disease, sexual perpetration, and school-based evaluations. T vol 5 pp 693:23-694:10.
25. Petitioner's Expert #3 worked as a primary therapist from 2007-2012, providing therapy and curriculum design and development for adolescent programming and family programming. T vol 5 p 698:1-7.
26. After her undergraduate degree, she worked as a direct care staff at a therapeutic boarding school and volunteered with a clinical research organization to gain research experience and "a better awareness of where [she] wanted to focus her graduate education." T vol 5 p 692:12-19.
27. Petitioner's Expert #3 has the unique experience of working as a field supervisor and therapist at two (2) separate therapeutic wilderness programs where she helped "develop a wilderness program and develop the therapeutic curriculum for the individual student and the family." T vol 5 p 693:3-12; Pet'r Ex. 133, pp 1138-1139. Additionally, Petitioner's Expert #3 had specific training on crisis prevention and working with victims of sexual assault. Pet'r Ex. 133, p 1142.
28. Petitioner's Expert #3 was qualified and received by the Tribunal as an expert in the following areas: an expert in child and adolescent psychology; selecting, conducting, and interpreting psychological evaluations of children and adolescents with disabilities;

consultation on therapeutic and mental health supports for students with behavioral and emotional disabilities; and educational accommodations, modifications, and consultation for students with disabilities. T vol 5 pp 704:23-705:5.

29. Petitioner's Expert #3 was the only expert psychologist with experience both in therapeutic residential placements and public schools.
30. To prepare for providing expert testimony, Petitioner's Expert #3 reviewed Student's sensory motor screening, psychoeducational reports, FBAs, OT evaluations, biopsychosocial assessments, IEP documents, behavior intervention plans, Residential School clinical notes, and schoolwork. T vol 5 pp 705:9-707:4.
31. Petitioner's Expert #3 provided several examples of how Student's behaviors and symptoms show up through Student's record. For example, "speaking out of turn, constant movement, that's really classic of ADHD. Poor decision-making, difficulty learning from experience, could indicate executive functioning challenges, impulse control disorders, aggression, interpersonal relationship difficulties, anxiety management, self-regulation, impulsivity, all of which are very common symptoms of [Student's] diagnoses." T vol 5 p 710:3-11.
32. Petitioner's Expert #3 opined that any of Student's diagnoses and symptoms of these diagnoses would significantly impact Student's classroom behavior and contribute to difficulty for Student to effectively learn, as well as being a big disruption to the other students' learning as well. *Compare* T vol 5 p 710:15-20 *with* Resp't Ex. 3 p. 18 (summarizing Student's behavioral history and transfer from Elementary School 1 to Elementary School 3, to Elementary School 4, to Elementary School 5, where Student experienced noncompliance, overactivity, anxiety, self-destructive behaviors, poor social boundaries, and over sensitivities.)
33. Petitioner's Expert #3 explained ADHD would influence Student's impulsivity in a traditional setting, DMDD would contribute to persistent irritability, negative mood states, aggressive behavior, affecting Student's classroom and peer relationships. Sensory processing disorder will present quiet triggers that could provoke a strong reaction others may not understand. Student's PTSD will prompt paranoia and mistrust in relationships and possibly provoke boundary testing, as well as affecting social/emotional experiences with regards to self-efficacy and sense of safety. T vol 5 pp 711:7-712:11.
34. Petitioner's Expert #3 opined Student's current diagnoses and need for residential placement are related to Student's academic functioning, asserting all these things left untreated, without specific intervention, are likely to interfere with Student's ability to access academic instruction. T vol 5 pp 712:21-713:6. Based on these diagnoses, this is going to be a student with a short fuse, quick attention span, with impulsive and aggressive tendencies, which will affect Student's ability to listen to teachers, and likely lead to disruption that prevents Student from learning. T vol 5 p 713:6-14. Student's social emotional needs require having support and building more adaptive ways of meeting Student's needs than can be applied in a traditional classroom because the residential

setting provides support throughout the entirety of Student's day. *Compare* T vol 5 p 714:1-12 *with* Resp't Ex. 3 p. 18 (describing incidents during the 2022-2023 school year, including 16 office referrals and 13 minor incidents, most of which were coded as classroom violations showing aggressive behaviors, major impulse control, physical aggression towards minors and adults, and harassment.)

35. The Undersigned found Petitioner's Expert #3 credible and knowledgeable about Student's unique circumstances as it relates to child and adolescent psychology, interpreting previous evaluation results, and appropriate educational accommodations, modifications, and consultation for students with disabilities. As Petitioner's Expert #3 was a credible expert witness, and the only psychologist with experience in residential placements and public schools, her testimony will be given weight throughout the Order.

## **B. Respondent's Witnesses**

Respondent called four (4) expert witness, Respondent's Expert #1, Respondent's Expert #2, Respondent's Expert #3, and Respondent's Expert #4. Respondent also called EC Director of Instruction.

### *Middle School Special Education Teacher*

36. Middle School Special Education Teacher works as special education teacher at Middle School. Middle School Special Education Teacher testified at the hearing on Respondent's Motion to Modify Stay Put but he did not testify regarding issues for the FAPE hearing. At the time Middle School Special Education Teacher testified, he had not worked with Student for over a year and a half. T vol 1 p 32:11-13. The Undersigned found Middle School Special Education Teacher to be a dedicated teacher. Middle School Special Education Teacher was able to provide testimony about Student's behaviors, Student's academic and functional needs during the 2023-2024 school year; however, he was unable to offer the Tribunal any testimony about the issues in the FAPE hearing as he had neither worked with nor observed Student since Student left Middle School.

### *Respondent's Expert #1*

37. Respondent's Expert #1 was qualified as an expert in Applied Behavior Analysis and educational programming for students with behavioral and emotional disabilities. T vol 1 p 45:12-15. Respondent's Expert #1 testified at the hearing on Respondent's Motion to Modify Stay-Put as well as the FAPE hearing.
38. Respondent's Expert #1 has a master's degree in Education with an advanced certification in Behavioral and Emotional Disabilities, and an undergraduate degree in Psychology. She is a nationally board-certified teacher in the area of Exceptional Needs Specialist. Respondent's Expert #1 is also a Board Certified Behavior Analyst and a licensed behavior analyst for the State of North Carolina. Respondent's Expert #1 has twenty-three (23) years of experience in special education working as a special education teacher for students with behavior and emotional disabilities, behavior support coach, and lead behavior specialist

for the district. T vol 1 pp 36-40. Resp't Ex. 50.

39. Respondent's Expert #1 is certified by Crisis Prevention Institute ("CPI") and has been a CPI physical restraint trainer for fifteen (15) years. She is a restorative practices facilitator under the International Institute of Restorative Practices model. T vol 1 p 41:12-21. Notably, Respondent's Expert #1 is not certified in TCIS (Therapeutic Crisis Intervention for Schools), the specific crisis program utilized by Student's assigned school, Residential School. T vol 1 p 93:5-8.
40. When asked whether the proposed placement in Student's June 24, 2025, IEP is a separate school for children with disabilities on the continuum of educational placements, Respondent's Expert #1 could not provide an answer, and merely stated the program is open to all qualified students who need "alternative programming support." T vol 5 p 935:9-936:1.
41. Respondent's Expert #1's contact with Student. was limited to seeing Student in Student's elementary school classroom at Elementary School 3 and participating in the June 24, 2025, IEP meeting. T vol 1 p 94:1-4 and 23-24. Respondent's Expert #1 did not attend Student's 2025 January BIP review and IEP meeting. Resp't Ex. 21 p 144. She has not supported students in residential treatment settings outside of attending Student's June 24, 2025, IEP meeting. T vol 1 p 93:13-22. She does not support students in PRTFs either. T vol 1 p 93:23 - p 94:1. As a result, Respondent's Expert #1 provided limited information helpful to the Undersigned on determining the issues in the FAPE hearing.

#### *Respondent's Expert #2*

42. Respondent's Expert #2 qualified as an expert in child and adolescent psychology and therapeutic interventions for adolescents with behavior and emotional disabilities T vol 1 p 118:25 – p 119:3. His work at the Institute was limited to providing psychological services for a seven to ten day inpatient program and the comprehensive assessment and treatment program of one to two months. T vol. 1 p 148:16-22. Respondent's Expert #2 did not evaluate or observe Student, speak with Residential School staff, or review the clinical notes from Residential School. T vol 1 p 144:8-20 and p 145:16-18. As a result, while he seemed to be a dedicated and knowledgeable professional, his opinions were based on incomplete information and he provided limited information helpful to the Undersigned on determining the issues in the FAPE hearing.

#### *Respondent's Expert #3*

43. Respondent's Expert #3 is Director of Psychological Services for Respondent. T vol 1 p 150:17-19. Respondent's Expert #3 was qualified as an expert in school psychology and programming for students with emotional and behavioral disabilities. T vol 1 p 161:4-8. Respondent's Expert #3 participated in a single exclusively virtual observation of Student in March or April 2025. T vol 1 p 162:1-3. She also attended Student's February and June 2025 IEP meetings. T vol 1 p 161:22-25. When she testified at the hearing on Respondent's Motion to Modify Stay Put, she was unaware of the progress monitoring data taken by

Residential School, and she had only received the Residential School incident reports. By contrast, at the FAPE hearing, she testified she did not see any behavior progress monitoring data but testified on cross-examination she had reviewed the data that was required to be kept as part of Student's Behavior Intervention Plan. *Compare* T vol 1 p 165:7-13 *with* T vol 6 p 875:23-876:8. She also testified in favor of Student receiving school-based mental health services but conceded those services would not include "trauma-informed CBT, cognitive behavioral therapy," (T vol 1 p 169:2-10), and she acknowledged that school-based mental health services are not part of Student's June 2025 IEP. T vol 6 p 874:10-18. Respondent's Expert #3 was a compassionate school psychologist but her testimony was of limited utility on the issues in the FAPE hearing.

44. Her testimony that the Alternative School was Student's least restrictive environment was undercut by her testimony about Student's needs for mental health services as she acknowledged such services were not included in Student's IEP. As Respondent's Expert #3's testimony was not based on what the June 2025 IEP offered Student, the Undersigned finds her testimony not credible and presented at the behest of Respondent, her employer.

*Respondent's Expert #4*

45. Respondent's Expert #4 was qualified as an expert in special education policies and procedures. T vol 6 p 952:23-24. She earned a bachelor's degree in Special Education in 1985 and master's degree in Special Education in 1987, both from Winthrop University. She earned a PhD in Special Education Leadership from the University of South Carolina in 2016. She currently serves as the Executive Director of Exceptional Children's Services in Winston-Salem Forsyth County Schools and has held this position since 2023 and serves as the representative for the district in this matter. Prior to her current position, she has served in various capacities in the South Carolina and North Carolina Public School Systems, ranging from special education teacher to school and district administration. Resp't Ex. 49.
46. During her testimony, Respondent's Expert #4 attempted to establish that Student's placement at Initial Residential School was primarily due to the 2024 settlement agreement. However, all team members agreed Student required a residential placement during the June 4, 2024 IEP meeting. *Compare* T vol 6 p 962:5-6; 1004:1-17; 1007:8-14 (T of Respondent's Expert #4) *with* Resp't Ex. 12 (June 4, 2024, Prior Written Notice).
47. Respondent's Expert #4 asserted Residential School did not provide progress monitoring or data requested by the district. T vol 6 p 976:12-14 (T of Respondent's Expert #4) (she "couldn't get what [she] asked for" and "sends numerous emails asking for things that were outlined in the contract"). However, the evidence in the record indicates Residential School provided quarterly progress reports, progress monitoring and data sheets, a November summary of progress, clinical session notes, incident reports, attendance reports, and various Residential School work samples. Resp't Exs. 29 (various Residential School work samples); 30 (incident reports); 32 (attendance records); 33 (progress monitoring and data sheets); 34 (quarterly progress reports); 35 (summary of progress); and 39 (clinical sessions). Resp't Ex 59.

48. Respondent's Expert #4 confirmed on cross-examination that she received progress reports roughly a week after her April 4, 2025, email requesting progress monitoring. T vol 6 p 1001:12-15. She also received a clinical update and records on December 2, 2024. Resp't Ex 59.
49. Respondent's Expert #4 asserted the IEP team found Residential School did not provide a FAPE and was therefore no longer appropriate, T vol 6 p 996:16-23, and emphasized that the Alternative School could implement the IEP developed by the team. T vol 6 p 999:16-19.
50. Respondent's Expert #4 confirmed that Alternative School was not a separate school for students with disabilities, and students did not require an IEP to go to Alternative School. T vol 6 1009:10-22. Respondent's Expert #4 explained the IEP team chose "Separate School" on Student's IEP because "[i]n ECATS we can't fill that in. We can't write that in, so you have to choose what is most closely aligned to the placement that is chosen by the team. So, within ECATS we can choose general education, special education, separate school, hospital/homebound, residential." T vol 6 p 1012:13-18.
51. The Undersigned found this testimony contradictory to her testimony that Student was not making progress in a residential setting, which Respondent's Expert #4 testified was more restrictive. T vol 1 p 999:20-232. If Student were not receiving a FAPE at Residential School as Respondent's Expert #4 opined, she provided no basis for why a less restrictive—presumably the general education setting—would be appropriate.
52. The Undersigned understands "you can't just keep a child in a residential placement forever," as Respondent's Expert #4 opined, however, the district has not wavered from its stance that Student has not made progress at Residential School. T vol 6 p 999:11-12. Based on the Undersigned's understanding of the continuum of services, it would be procedurally incorrect to remove Student from a residential placement, when Student has allegedly not demonstrated the progress needed to do so.
53. The Undersigned finds Respondent's Expert #4's testimony has limited value due to contradictions in her testimony, unsubstantiated claims, and disputed evidence.

*Respondent EC Director of Instruction and Professional Development*

54. Respondent EC Director of Instruction and Professional Development ("EC Director of Instruction") taught special education for nine years before moving into a coaching position coaching general education and special education teachers within the school building. She subsequently served as an assistant principal, then a principal. She became an EC program manager for hospital, homebound, and significant disabilities before moving into her current role. T vol 1 p 171:1-15. As EC Director of Instruction lacks experience working in a residential therapeutic school, her testimony was of limited utility to the Undersigned.
55. EC Director of Instruction testified about her virtual observation of Student at Residential

School on April 21, 2005 T vol 1 p 173:10-13, and an in-person observation at Residential School on May 14 and May 15, 2025. T vol 1 p 175:19-21. She testified “there was no direct focus on providing specially designed instruction” on the behaviors she observed, nor did she hear the conversation between Student and Residential School staff when staff was “just surrounding Student and working with Student, talking with Student to get Student back in the classroom.” T vol 1 p 181:22-182:1. Yet, on re-cross examination EC Director of Instruction admitted she was not privy to the conversation and did not “know whether or not they were encouraging [Student] to work on Student’s self regulation skills.” T vol 1 p 182:8-13. This shift in her testimony when pressed was troubling to the Undersigned. On re-direct, EC Director of Instruction downplayed the Residential School’s staff’s response to the Tribunal, yet when cross examined on the topic, admitted she was not part of the conversation and did not know what was being taught during those moments. As such, the Undersigned will give EC Director of Instruction’s testimony the appropriate diminished weight throughout this Order.

### **Jurisdictional, Party, and Legal Findings**

56. This Tribunal has personal jurisdiction over Petitioner, Student, along with Parent, and Respondent, Winston-Salem/Forsyth County Board of Education. September Stip. 1.
57. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate public 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.* (2004) and implementing regulations, 34 C.F.R. Part 300; specifically, 20 U.S.C. § 1415 and N.C. Gen. Stat. § 115C-109.6(a) control the issues to be reviewed. September Stip. 2.
58. 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. September Stip. 3.
59. Respondent, Winston-Salem/Forsyth County Board of Education, is a local educational agency (“LEA”) as defined by the IDEA and receives monies pursuant to the IDEA. *See* 20 U.S.C. § 1401 and N.C. Gen. Stat. § 115C-5(7a). September Stip. 4.
60. The controlling state law for students with disabilities is N.C. Gen. Stat. Chapter 115C, Article 9. September Stip. 5.

### **Relevant Facts**

#### ***I. Educational History and Individualized Needs***

61. The student is thirteen (13) years old, and Student’s date of birth is XX/XX/XXXX. Student’s parent is Parent. During all times relevant to the allegations presented at the hearing, Student and Student’s family resided in Forsyth County, North Carolina.

62. Student is eligible for special education services under the category of Emotional Disability. Resp't Ex. 22 p 145.
63. Student is now an eighth-grade student placed through WSFCS in a private residential placement. WSFCS assigned Student to Residential School in November 2024 to fulfill Student's IEP setting of "residential placement."
64. Student has been enrolled in the WSFCS since 2016.
65. Student has an extensive psychiatric history and multiple diagnoses including Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Disruptive Mood Dysregulation Disorder (DMDD), Posttraumatic Stress Disorder (PTSD), Sensory Processing Disorder, and encopresis. Resp't Ex. 41 p 917.
66. Student initially qualified for special education services in the first grade in the category of Speech Impairment. In the initial referral, Student's Parent reported concerns of non-typical behavior including reaction to noises, repetitive speech, banging Student's head, lack of boundaries with social space, and sensitivity to clothing. Resp't Ex. 6 p 41.
67. In May 2021, Student's primary area of eligibility was changed from Speech Impairment to Emotional Disability as Student's difficulty with maintaining attention, managing anxiety, self-regulation, impulsivity, and appropriate peer interaction significantly impacted all academic areas and limited Student's ability to keep pace and demonstrated consistent growth in the general education classroom. Goals were added to Student's IEP for math, written expression, and behavior. Resp't Ex. 6 p 41.
68. Student has severe, complex psychiatric conditions marked by mood instability, chronic suicidal and homicidal ideation, significant behavioral dysregulation, and a history of extensive trauma. Despite pharmacological management, Student remains highly symptomatic, with ongoing disruptive behaviors and poor functional capacity in academic and social settings. Resp't Ex. 41 p 921.
69. Student has a long history of trauma. Student's home life was chaotic and inconsistent due to Student's father's substance abuse and domestic violence toward Student's mother as well as Student's father's emotional and physical abuse toward Student. Student also experienced Student's parents' divorce, the loss of Student's grandfather, and sexual abuse from peers at school. Student also reported being assaulted by a WSFCS school janitor. Student has made further allegations that two adult males pushed Student into a janitor's closet and sexually abused Student at Student's previous school setting in the WSFCS. Resp't Ex. 40 p 912.

#### Educational History Prior to Residential School

70. Student started preschool in 2016 at Elementary School 1 and attended through the end of Student's third grade year in June 2021. In July 2021, Student transferred to Elementary School 2 for fourth grade. During Student's fourth grade year, Student was sexually assaulted at school. Pet'r Ex. 1 p 4. In November 2022, Student transferred to Elementary School 3 during Student's fifth grade year. Student transferred to Elementary School 4 for

a portion of Student's fifth grade year where Student received therapeutic support through Day Treatment Program from January-April 2023. T vol 5 p 640:14-25; Resp't Ex. 5 p 34. Student was then transitioned to the SBS (behavior support) classroom at Elementary School 5 on April 19, 2023 to complete Student's fifth grade year in Student's third elementary school. Resp't Ex. 3 p 17. In August 2023, Student entered the sixth grade at Middle School where Student was enrolled until entering Initial Residential School in June 2024, and finally, Residential School on November 4, 2024. T vol 5 p. 643:22-25; September Stip. 16 and 20.

### 2018 Psychoeducational Evaluation

71. In November and December 2018, while Student was in the first grade and almost seven years old, and attending Elementary School 1, the district evaluated Student. At that time, Student had diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), anxiety, Sensory Processing Disorder, and Disruptive Mood Dysregulation Disorder (DMDD). Resp't Ex. 1 p 1.
72. Student was having difficulty with attending during homework, dinner, getting ready for school, when asked to follow directions, with following a bedtime routine and disorganization. Resp't Ex. 1 p 1.
73. Student demonstrated some task avoidance and less engagement with writing tasks. Student also exhibited moderate delays with mathematics. Resp't Ex. 1 p 7.
74. Student's overall intellectual functioning or General Conceptual Abilities ("GCA") fell into the average range with a standard score of 99 (47<sup>th</sup> percentile). Student's verbal abilities were better developed than Student's non-verbal reasoning (Verbal SS=103, 58<sup>th</sup> percentile; Nonverbal Reasoning SS=93, 32<sup>nd</sup> percentile). On the measures of academic performance, Student achieved in the average range on Basic Reading Skills (SS=92, 29<sup>th</sup> percentile); and was "comparable to Student's same age peers on Written Language (SS=90, 25<sup>th</sup> percentile). Student's Mathematics score was in the below average range (SS=77, 7<sup>th</sup> percentile). Student's adaptive behavior skills fell in the below average range. Resp't Ex. 1 pp 3-4.
75. In an assessment for autism, Student's teacher rated Student higher in a single area: Emotional Responses, due to having temper tantrums when frustrated, when not getting Student's way, and when told to stop doing something Student enjoyed. Resp't Ex. 1 p 5.
76. The evaluator noted some of Student's rated and observed behaviors could be related to "numerous mental health disorders." Student's therapist from The Mood Treatment Center reported DMDD can have the following characteristics associated with the disorder: frequent temper outbursts, irritability, rigidity, intense energy, fidgetiness, and misinterpretation of social cues and interactions. Resp't Ex. 1 p 7.

### May 11, 2020 Psychoeducational Evaluation

77. In 2020, Student was reevaluated by the district when Student was in the second grade.
78. Respondent’s evaluator outlined Student’s behavior incidents in 2018, 2019, and 2020.
- 2/6/2019 - hit another student in his private area and lied to Student’s teacher about the incident. Resp’t Ex. 2 p 8.
  - 2/18/2019 - put Student’s bottom in the face of another student. Resp’t Ex. 2 p 8.
  - 3/6/2019 - asked a student if he would like to see Student’s “butt rash.” Resp’t Ex. 2 p 8.
  - 2/4/2020 – hit other students. Resp’t Ex. 2 p 8.
  - February 2020 – hit other students, pulled down Student’s pants, and called others inappropriate names. Resp’t Ex. 2 p 8-9.
  - 2/24/2020 - punched another student in a private area saying Student was “trying to beat the demon out of him.” Resp’t Ex. 2 p 9.
79. On the *Reynolds Intellectual Assessment Scales, 2<sup>nd</sup> edition (RIAS-2)*, Student obtained an overall intellectual ability or Composite Intelligence Index (CIX) within the Average range (SS=92; 30<sup>th</sup> percentile). Once again, there was a notable difference between Student’s verbal and nonverbal intellectual functioning with Student’s verbal knowledge and problem solving being average while Student’s nonverbal, spatial problem solving skills showed slightly less developed functioning when compared to Student’s same age peers.
- Verbal Intelligence: 47<sup>th</sup> percentile
  - Nonverbal Intelligence: 18<sup>th</sup> percentile.

Resp’t Ex. 2 p 10.

80. On the *Woodcock Johnson Test of Academic Achievement – Fourth Edition (WJ ACH IV)*, Student earned the following scores.

<b>Subtest/Composite</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>Descriptive Category</b>
<b>Reading</b>	100	49	Average
Letter-Word Identification	112	78	Average
Passage Comprehension	88	21	Low Average
<b>Mathematics</b>	77	6	Below Average
Calculation	75	5	Below Average
Applied Problems	76	6	Below Average
<b>Written Language</b>	86	18	Low Average
Spelling	97	41	Average
Writing Samples	79	8	Below Average
<b>Academic Applications</b>	79	8	Below Average

Resp't Ex. 2 p 11.

81. Student demonstrated stronger word identification skills than reading comprehension skills. Student's math skills were moderately delayed. Student's writing skills were in the low average range, and when asked to write a sentence, Student often used one word. Student demonstrated little detail and inconsistent writing mechanics. Resp't Ex. 2 p 11.
82. On the *Behavior Assessment System for Children, Third Edition (BASC-3)* used to assess Student's behavioral and emotional functioning, only a few of Student's scores fell within the average range. Scores marked with \*\* are in the "Clinically Significant range, and scores marked \* are in the "At Risk" range.

<b>BASC-III</b>	<b>Parent</b>		<b>Teacher</b>	
	<b>T-Score</b>	<b>Percentile</b>	<b>T-Score</b>	<b>Percentile</b>
<b>Scales/Composites</b>				
Hyperactivity	94**	99	83**	99
Aggression	116**	99	104**	99
Conduct Problems	114**	99	99**	99
<b>Externalizing Problems</b>	<b>117**</b>	<b>99</b>	<b>99**</b>	<b>99</b>
Anxiety	60*	86	52	67
Depression	86**	99	92**	99
Somatization	76**	98	88**	99
<b>Internalizing Problems</b>	<b>79**</b>	<b>98</b>	<b>85**</b>	<b>99</b>
Attention Problems	74**	98	65*	91
Learning Problems	N/A	N/A	60*	83
<b>School Problems</b>	N/A	N/A	64*	89
Atypicality	77**	97	85**	98
Withdrawal	60*	86	75**	97
<b>Behavioral Symptoms Index</b>	<b>97**</b>	<b>99</b>	<b>93**</b>	<b>99</b>
Social Skills	51	49	38*	13
Functional Communication	44	24	42	20
Leadership	33*	6	34*	5
Activities of Daily Living	19**	1	N/A	N/A
Study Skills	N/A	N/A	30**	3
Adaptability	34*	6	35*	9
<b>Adaptive Skills</b>	<b>34*</b>	<b>7</b>	<b>34*</b>	<b>6</b>
Anger Control	98**	99	93**	99
Bullying	110**	99	95**	99
Emotional Self-Control	91**	99	77**	97
Executive Functioning	80**	90	75**	99
Negative Emotionality	82**	99	78**	97

Resp't Ex. 2 p 14.

83. The BASC revealed Student’s significant difficulties with internalizing and externalizing problems. Both raters agreed that Student’s personal and social skills (i.e., adaptive skills) are in the At-Risk range for developing into significant problems for Student particularly with Student’s leadership skills and adaptability. Student’s teacher also reported Student’s school learning problems to be at the At-Risk range for developing into significant difficulties for Student. Student’s Parent and teacher agreed that Student has significant difficulties with executive functioning including behavioral control, emotional control, attentional control, and problem solving. The pattern of results is consistent with behavior emotional difficulties such as internalizing and externalizing behaviors, and difficulty with executive functioning including planning, organizational skills, problem solving, attention, following directions, being distracted, maintaining self-control, regulating impulsive behaviors, difficulties with outbursts, frequent mood changes, and emotional instability. Resp’t Ex. 2 p 15.

84. Behaviors of particular concern to Student’s teachers included:

Speaks out of turn, annoys others on purpose, threatens to hurt others, breaks the rules, lies, loses temper too easily, has trouble keeping hands / feet to self, hits and hurts others, teases others, cannot wait to take turns, disrupts others' activities, isolates self from others, and uses others' things without permission.

Resp’t Ex. 2 p 13.

85. Behaviors of particular concern to Student’s Parent included:

Lies, breaks the rules, steals, threatens others, hits and hurts others, bullies others, cannot wait to take turns, disrupts others activities, interrupts others, and wets bed.

Resp’t Ex. 2 p 13.

86. During Student’s attendance at the district’s schools, Student had significant behaviors resulting in reported discipline referrals.

School Year	School	Incidents
2018 to July 2021	Elementary School 1	45 recorded discipline reported incidents
	Elementary School 2	9
11/9/2022 – 2/22/23	Elementary School 3	3
February 23, 2023 – April 18, 2023	Elementary School 4 – Day Treatment	4 behavior incidents including excessive profanity towards students and staff, sexual behavior towards

	Program Treatment	Day	others, threw objects, kicked and hit staff, made attempts to bite staff and stab self, used discriminatory names, and threatened students and staff, off-task and disruptive behaviors, specifically being constantly out of assigned areas, yelling out during instruction, and not completing assigned tasks, thrown chairs, to look for sharp objects and threaten others, engage in physical aggression, engage in sexual moaning and movements in class, left the classroom unsupervised and made attempts to wander campus, to used profanity, vulgarity and draw guns and genitalia, and engaged in impulsive reactions without warning
September 9, 2022 to November 29, 2022			25 behavior incidents ranging from minor to major
From the start of the 2022 school year until May 6, 2023,	Elementary School 2, Elementary School 3, Elementary School 4		16 office referrals and 13 minor incidents recorded on the district's online incidents database including aggressive behaviors, major impulse control, physical aggression towards minors and adults, and non-sexual harassment (race, color, or national origin).
April 19, 2023 -	Elementary School 5 SBS Classroom		oppositional and noncompliant. Student has also used excessive profanity, vulgarities, made inappropriate sexual comments, refused schoolwork, and has left the classroom unattended. Resp't Ex. 3 p 18.

Resp't Ex. 3 p 18-19; Resp't Ex. 10 p 74.

87. In April 2018, the district conducted a Functional Behavioral Assessment (FBA). On November 8, 2018, the district put an "intervention plan" in place for Student's behavior concerns. Resp't Ex. 2 p 8. The FBA documented many the same behaviors outlined in the psychological evaluation: hitting another student in his private area and lying to Student's teacher about the incident, putting Student's bottom in the face of another student, asking

a student if he would like to see Student's "butt rash," hitting other students, pulling down Student's pants, calling others inappropriate names, and punching another student in a private area saying Student was "trying to beat the demon out of him." Resp't Ex. 2 p 8-9.

88. The district subsequently developed a Behavior Intervention Plan which has been in place since the end of the 2020-2021 school year and reviewed as follows:

- 11/5/21: [Student] is making minimal progress. Student's parents are separated and Student is adjusting to this change.
- 12/13/21: [Student] is not having explosive episodes recently and is not using curse words for shock value, yet Student is still cursing in the classroom. The current BIP is not working- Student's work completion percentage has gone from 60% to 48% and Student has earned rewards 39% of the time when before Student earned rewards 64% of opportunities.
- 2/11/2022: Although there are incidences of challenging behavior, those that work with [Student] report Student is not as explosive, and appears to be calmer, Student can be redirected easier. [Student] is communicating more clearly. [Student] has started an adjustment in medication that appears to make a difference in Student's behaviors at school. There is a decline in verbal out burst when frustrated and in impulsive behaviors. Plan was put into place at the end of 2020-2021 school year and [Student] has had multiple absences during the 2021-2022 school year so far.
- 9/26/22: The plan is consistently implemented, however [Student] is not receptive to attempted strategies, reinforcements, and accommodations established in the plan. The most recent incidences require use of the crisis plan.
- 2/2/2023: [Student] has been enrolled at Elementary School 3 since 11/9/2022. From 11/9/2022 - 11/29/2022 [Student] was at school for 10 school days. During that time, [Student] had behaviors daily and Student's crisis plan was implemented multiple times. [Student] was not at school from 11/29/22 - 1/29/23 due to hospitalization and mental health concerns. Student returned to school on 1/30/23. Student has required use of Student's crisis plan on 1 day since returning to school. When at school, [Student]'s BIP is implemented consistently. When [Student] is upset, Student is not receptive to strategies and will not use coping skills.
- 3/13/2023 [Student] has been enrolled at Elementary School 4 since 2/23/2023. [Student] has had behaviors which resulted in Student acting out in 80% of Student's attendance. The team has determined that adjustments need to be made such as ..... to support Student while attending Elementary School 4. [Student] continues to require support when Student is upset and learn additional strategies to help Student cope while Student is acting out.
- 9/14/23: [Student] has only exhibited the behaviors of inappropriate language/comments, staying on task and drawing inappropriate things. The

frequency has reduced since the beginning of this school year and at the same time Student's attention in class and work completion has increased.

- 2/23/24: [Student] has only exhibited the behaviors of inappropriate language/comments, staying on task Student's drawing of inappropriate things has reduced. This behavior has all but extinguished. The frequency of physical behavior has decreased. However, the intensity has increased. Student has had two episodes of aggression, One towards a student and the other towards a staff member. Student's on task behavior has reduced. Student has learned to use the BIP to avoid classroom expectations. Student will either ask to go to a cool down location and not return or Student will increase the intensity and frequency of sexual, racial or vulgar language until Student is so disruptive Student has to be given the cool down location. In the case of each, as soon as Student leaves the classroom Student seeks to escape, Student is calm. The minute Student enters the cool down location Student will use Student's Chromebook to access YouTube. The team modified the cool down location to be device free and set a target time limit of 10 minutes.

Resp't Ex. 10 p 73-74.

89. Student had 57 absences for the 2021-2022 school year, and subsequently 20 unexcused absences and 6 early checkouts from the beginning of the 2022-2023 school year until May 6, 2023. Resp't Ex. 3 p 19.
90. During Student's fourth grade year, Student reported that Student was sexually abused multiple times. Resp't Ex. 5 p 34. Student subsequently transferred to a different school.

*District Referral for Psychiatric Residential Treatment Program*

91. On January 26, 2023, Student's community based mental health provider, Day Treatment Program, assessed Student and documented Student's need for a Psychiatric Residential Treatment Program (PRTF). Pet'r Ex. 1.
92. The therapeutic referral completed by WSFCS on January 30, 2023 while Student attended the fifth grade at Elementary School 3 reflects Student displayed uncontrollable behaviors, major disruptions in class and the school setting, significant traumas with Student's parents' divorce, and frequent changes in placement due to a hospitalization for suicidal ideation for nine (9) days in September 2022. Pet'r Ex. 2 p 9; Resp't Ex. 3 p 18.
93. From September 9, 2022 to November 29, 2022, a little over two (2) months, Student had twenty-five (25) behavior incidents ranging from minor to major, and rarely stayed in the general education setting because of Student's behaviors. Student was suspended multiple times, only attended school for three weeks. Pet'r Ex. 2 p 9.
94. The EC program at Elementary School 3 was not equipped to support Student's needs and then classroom environment presented many stressors for Student and creates safety concerns for other students. Pet'r Ex. 2 p 10.

95. On February 10, 2023, Parent filed a due process petition against WSFCS. September Stip. 10. On April 13, 2023, Parent and WSFCS resolved the 2023 petition when the parties entered a settlement agreement and agreed to identify and select a residential treatment facility for Student's next educational placement. September Stip. 11.
96. After attending Elementary School 3, Student was placed in an DAY TREATMENT PROGRAM program at Elementary School 4 and given intensive in-home treatment. Resp't Ex. 5 p 34.
97. At Day Treatment's Program at Elementary School 4, Student used profanity toward students and staff, exhibited explicit sexual behaviors towards students and staff, threw objects, kicked and hit staff, attempted to bite staff and used objects to stab staff, made racial and gender-based comments, and threatened students and staff. Resp't Ex. 9 p 59. Student's Parent explained that due to Student's language, including racial slurs and homophobic language, Student was targeted by other students, so Student was quickly moved to a separate room on Student's own where Student was not provided much classwork, and Elementary School 4 staff restrained Student on an almost daily basis. T vol 5 p. 641:24-642:4.
98. Student's April 11, 2023, Behavior Intervention Plan (BIP) Review at Day Treatment's Program at Elementary School 4, reflects Student's challenging behaviors, including off-task and disruptive behaviors, being constantly out of assigned areas, yelling out during instruction, and not completing assigned tasks. Student was documented to have thrown chairs, to look for sharp objects and threaten others, engage in physical aggression, engage in sexual moaning and movements in class, leave classrooms unsupervised, make attempts to wander campus, use profanity and vulgarity, draw guns and genitalia, and engage in impulsive reactions without warning. Resp't Ex. 3 p 18-19.
99. On April 19, 2023, Student transitioned from Day Treatment's Program to Elementary School 5. At Elementary School 5, Student's behaviors increased when Student was around a larger group of people or after lunch; Student ran out of the room thirteen (13) days Student was present, refused to complete work, showed difficulty communicating with peers, and demonstrated difficulty with being told no. Resp't Ex. 9 p 59.

### 2023 Reevaluation

100. Student was reevaluated by the district in the spring of 2023. As part of the evaluation process, the WSFCS school psychologist attempted to evaluate Student at Elementary School 5, Student's assigned school, on eight (8) separate occasions. On five (5) of the days, Student refused to participate in the evaluation. On two (2) of the days, Student was sick or absent. Student participated for thirty (30) minutes on one (1) day the psychologist attempted to work with Student. Resp't Ex. 3 p 21.
101. When Student participated in testing, Student engaged in behaviors that interfered with completing the testing. Student sat on the floor and put Student's shirt over Student's head; directed profanities and obscenities to staff and made attempts to leave the room unattended; Student overshared personal information and had difficulty sustaining

attention and motivation; Student complained of stomach aches, weakness from blood sugar levels, and fatigue from the evaluation; Student made attempts to leave the school building unattended; Student engaged in negative self-talk and self-blame for his actions; Student reported Student does not deserve things because of Student’s behavior; and Student frequently wanted to apologize for this refusal to participate but continued to refuse participation. Resp’t Ex. 3 p 20-21.

- 102. The psychologist conducted the *Reynolds Intellectual Ability Scales (RIAS-II)* with Student; however, he cautioned that due to Student’s behavior throughout the assessment, the scores were likely an underestimate of Student’s functioning. Resp’t Ex. 3 p 23.
- 103. The differences between Student’s *RIAS-II* scores in 2020 and 2023 are stark and indicate more about Student’s significant behavioral difficulties in 2023 than Student’s actual cognitive abilities.

	<b>2020 Standard Score</b>	<b>2023 Standard Score</b>
Composite Intelligence Index	92 (average)	76 (low)
Verbal Intelligence Index	99 (average)	85 (low average)
Nonverbal Intelligence Index	86 (low average)	73 (low)

Compare Resp’t Ex. 2 p 10 with Resp’t Ex. 3 p 23.

- 104. Due to the severity of Student’s emotional and behavioral difficulties throughout WSFCS’s examination attempts, the psychologist was unable to evaluate Student’s academic achievement with a standardized assessment. Instead, the psychologist reviewed work samples, progress reports, report cards, and teacher feedback. Resp’t Ex. 3 p 23.
- 105. On his *iReady* math benchmark assessments, Student stagnated in math, scoring in the fourth (4th) percentile on both the beginning (2022) and middle of the year (2023) assessments. In *iReady* reading, Student fell fifty-one (51) percentile points over the fall semester – from the seventy-sixth (76th) percentile in the fall of 2022 to the twenty-fifth (25th) percentile midyear in 2023. Resp’t Ex. 3 p 24.
- 106. The psychologist conducted the *Behavior Assessment System for Children – Third Edition (BASC-III)* by providing Parent, Student’s special education teacher, and Student’s general education teacher with rating scales. They provided the following information:

	<b>Parent</b>	<b>Special Teacher</b>	<b>Ed.</b>	<b>General Teacher</b>	<b>Ed.</b>
Externalizing Problems	Clinically Significant	Clinically Significant		Average	
Internalizing	Clinically	At Risk		Average	

Problems	Significant		
Behavioral Symptoms Index	Clinically Significant	Clinically Significant	At Risk
School Problems		Average	Average
Adaptive Skills	Clinically Significant	At Risk	At Risk

Resp't Ex. 3 p 24-26.

107. The raters provided several specific comments of concern for Student's behavior:

- Student's parent noted Student hoarded and hid food and reported Student is "hypervigilant" and "possibly dissociates or hallucinates" around unfamiliar people
- The special education teacher reported Student used sexually explicit comments towards others
- The general education teacher reported a concern for anxiety.

Resp't Ex. 3 p 25.

108. The psychologist measured Student's adaptive functioning through the rating scales of the *Vineland-III* evaluation.

	Parent Standard Score	Special Ed. Teacher Standard Score	General Ed. Teacher Standard Score
Adaptive Behavior Composite	64 (very low)	65 (very low)	72 (low)
Communication	69 (very low)	83 (low average)	95 (average)
Daily Living Skills	54 (very low)	61 (very low)	57 (very low)
Socialization	67 (very low)	53 (very low)	68 (very low)

Resp't Ex. 3 p 27.

109. Finally, the psychologist assessed Student on his characteristics of autism spectrum disorder utilizing the *Autism Diagnostic Observation Schedule-2 (ADOS-2)* and the *Autism Spectrum Rating Scales (ASRS)*. On the *ADOS-2*, "Student was noted to have exhibited a moderate level of autism-related symptomatology." For the *ASRS*, both Parent and Student's teacher indicated that Student exhibited "many behavioral characteristics similar to youth diagnosed with autism spectrum disorder." Resp't Ex. 3 p 28. However, the psychologist concluded that Student's mental health conditions "overlapped with autism-related characteristics" and the results should not be used in isolation. Resp't Ex. 3 p 30.

110. As part of Student's 2023 reevaluation, the district also conducted an occupational therapy evaluation. Resp't Ex. 6. The Occupational Therapist reported impulsiveness, decreased motivation, chewing on tools at times, possible benefit to the use of headphones to

minimize distractions, some differences in proprioception and vestibular sensory areas, and heavy pressure on writing tools, and excessive force on doorknobs and when slamming the laptop shut. The OT noted increased fidgeting, movement and liking tight or squishy locations “can have a sensory basis . . . not uncommon with anxiety, ADHD, and ODD diagnosis. Resp’t Ex. 6 p 45.

111. On June 12, 2023, Parent completed Student’s social history as part of the evaluation process. Parent reported struggles with Student’s relationships with peers as well as susceptibility to manipulation by peers. Parent further reported Student is defiant and aggressive towards school staff and attempts to elude the classroom. Resp’t Ex. 8 p 55.

May 22, 2023, Independent Functional Behavior Assessment by Petitioner’s Expert #1

112. On May 22, 2023, Petitioner’s Expert #1 conducted an independent Functional Behavior Assessment (FBA) of Student while Student was attending Respondent’s schools. Resp’t Ex. 5.
113. In addition to the diagnoses of ODD, ADHD, DMDD, PTSD, and Sensory Processing Disorder, Petitioner’s Expert #1 noted Student also had been diagnosed with Encopresis, a condition that causes the involuntary passing of stool. Resp’t Ex. 5 p 34.
114. Petitioner’s Expert #1 reported Student’s prior disclosure that Student had been sexually assaulted by peers multiple times in Respondent’s school bathroom when Student was in fourth grade. Resp’t Ex. 5 p 34.
115. Petitioner’s Expert #1 summarized that as of her evaluation, Student had been discharged from the Day Treatment Program program at Elementary School 4, and the IEP team was seeking a residential placement to “address [Student]’s behavioral and mental health needs.” In the interim, Student was attending Elementary School 5 but had not completed any academic work since arriving a month prior, April 2023. Resp’t Ex. 5 p 34.
116. Petitioner’s Expert #1 identified the following target behaviors for her assessment: profanity, inappropriate sexual behaviors, physical aggression, verbal aggression, elopement, and refusal with academic engagement. Resp’t Ex. 5 p 35.
117. Petitioner’s Expert #1 documented the triggers for Student’s target behaviors included being told no; being given corrective feedback, directions, or invitations to engage in academic activities; and wanting to stay somewhere and being told it is time to go. Resp’t Ex. 5 p 35.
118. Petitioner’s Expert #1 hypothesized three (3) functions of Student’s target behaviors:
1. To avoid or escape academic tasks
  2. To gain or maintain control over Student’s environment
  3. To gain adult and peer attention due to deficits in social skills

Resp’t Ex. 5 p 36.

119. Petitioner's Expert #1 questioned whether Student had autism spectrum disorder and recommended an autism specific evaluation. Resp't Ex. 5 p 36.
120. In her suggestions for a Behavior Intervention Plan (BIP), Petitioner's Expert #1 suggested the primary goal of the interventions should be for adults to build a positive rapport with Student. She predicted that "the problem behaviors Student is expressing are simply a shield and a coping mechanism." Resp't Ex. 5 p 37.
121. Student's final grades for the 2022-2023 school year were all 50's. Pet'r Ex. 52. Petitioner's Expert #1 opined Student was not making academic gains. T vol 4 549:23-550:1.
122. Student also had significant absences for the 2022-2023 school year, missing more than one-third of the school year. Pet'r Ex. 52; T vol 4 p 550:5-9.

### 2023-2024 School Year

123. Neither the district nor Student's Parent was able to identify a residential treatment facility for Student that would accept Student prior to the start of the 2023-2024 school year.
124. Student was assigned to Middle School for the 2023-2024 school year. August Stip. 5.
125. Parent testified, and the Undersigned finds as fact, this was a terrible school year for Student. Student was hospitalized numerous times and two of Respondent's teaching assistants brought criminal charges against Student. T vol 5 p 644:2-7.
126. Student regressed in behavior from the beginning of the school year until February 14, 2024, which was the last data point reported. Student had downward trends on using kind words, remaining in Student's assigned class, and completing work. Resp't Ex. 9 p 57-58.
127. Student engaged in multiple behavior incidents in school; spitting blood on a teacher, making inappropriate sexual noises in the classroom, refusing to go to in-school suspension, using profane language, punching another student, throwing pencils at other students, threatening harm to staff members who were removing Student from the classroom, striking a teaching assistant, and using sexual words and gestures. Resp't Ex. 9 p 58; Pet'r Ex. 29 p 481.
128. Student had numerous disciplinary referrals including two incidents of assault on a non-student, two incidents of disruptive behavior, having inappropriate items, assault on a student, two incidents of communicating threats, and sexual harassment. Pet'r Ex. 29. Shortly after the December 12, 2023, incident, Student was involuntarily committed at Children's Hospital. T vol 5 p 646:6-12.
129. Student was hospitalized multiple times in the second half of the 2023-2024 school year and upon Student's discharge from Initial Residential School. August Stip. 6. As a result, Student's attendance became spotty after the second quarter of the school year. T vol. 1 p 21.

130. According to Student's special education teacher at the time, Middle School Special Education Teacher, Student is intelligent, but lacks self-confidence. "Many times in a classroom setting with Student's peers, Student would shut down." It was very difficult to get Student to do anything. As a result, it was difficult for Middle School Special Education Teacher to "determine where Student's baseline was or where Student's capability was." T vol 1 p 22:14-19. Behaviorally, Student made sexual and racial comments to students and then to teachers, was loud and disruptive in class, climbed under the desk, yelled in class, and was physical toward another student and staff. T vol 1 p 23:12-21. As time went on, Student's behaviors increased and intensified. T vol 1 p 26:8-11.
131. According to Middle School Special Education Teacher, Student lacks the social skills necessary to build meaningful relationships. T vol 1 p 29:21-23.
132. Student was triggered by being required to complete written work or math computation. T vol 1 p 24:23-25:1. When any expectation challenged Student academically, Student pushed back. T vol 1 p 25:3-4. Student was more likely to produce on a computer, but that was short lived. T vol 1 p 25:5-8.
133. The primary strategy employed by Middle School Special Education Teacher was the cool down room. After the first quarter of the school year, Student would refuse to return to class. T vol. 1 p 25:13-19.
134. According to Student's former teacher, Middle School Special Education Teacher, Student requires a smaller setting to build positive relationships with staff and peer, where Student can have constant and repeated contact with people Student feels safe with, who can build Student up and help Student understand that Student is not Student's behavior, and that "success can be as small as sharpening [Student's] pencil." T vol 1 p 24:14-21. Student requires a smaller setting where Student can receive direct instruction with immediate feedback where Student can learn social skills with peers, continue to build relationships with staff to where Student feels safe and secure. T vol 1 p 32:2-6.
135. On numerous occasions, school staff from Elementary School 2 requested Student's Parent to take Student to the hospital to have Student evaluated. This occurred one time at Middle School when the school principal requested Parent take Student to the hospital to be evaluated. T vol 3 p 464:7-20.
136. On May 1, 2024, Student and WSFCS engaged in mediation. They entered a Settlement Agreement to locate an appropriate private school or therapeutic treatment facility which would need to accept and work with middle school youth who have experienced sexual trauma. September Stip. 14. Per the terms of the settlement agreement, the district utilized an educational consultant, Educational Consultant, to help locate an appropriate placement. September Stip. 18. Educational Consultant located Initial Residential School. T vol 5 p 647:7-11.

137. Student's full year grades for the 2023-2024 school year were poor, with marks in the 50's or 60's with the exception of health & PE. Pet'r Ex. 56. Student's grades reflected frequent absences and refusal to complete assignments. *Id.*
138. Petitioner's Expert #3 testified Student's education records suggest significant neurodevelopmental difficulty that could be solely explained by ADHD but is more likely explained by another neurodevelopmental disorder such as a learning disorder, autism spectrum disorder, and also social/emotional/behavioral disorders. Student's changes in behavior and varied responses such as defiance and engagement suggest significant emotional and behavioral factors were influencing Student's ability to adequately demonstrate Student's true capacity. T vol 5 p 708:4-16.
139. Student's most recent psychiatric assessment conducted by Director of Health and Wellness, DNP, PMHNP-BC, Director of Health and Wellness, and Board-Certified Psychiatric Nurse Practitioner, on June 29, 2025, reflects that Student currently struggles with mood lability, chronic suicidality and homicidal ideation, aggressive behaviors, and an inability to function within the academic setting. Resp't Ex. 41 p 917.

## ***II. Initial Residential School***

140. During the IEP meeting held on June 4, 2024, WSFCS placed Student at Initial Residential School, a private residential treatment program ("PRTF") as the IEP team agreed a traditional school setting was not appropriate to meet Student's needs, and that Initial Residential School was an appropriate setting to meet Student's needs. Resp't Ex. 14 p 88; August Stip. 7.
141. The IEP team developed a new IEP with a start date of June 5, 2024, and an end date of February 22, 2025. Resp't Ex. 9 p 57.
142. Student's Parent's concerns were noted as "Parents (sic) concern (sic) are placement. Seeking out placement. Feels Student's behaviors are increasing and become problematic." Resp't Ex. 9 p 57.
143. The present levels were not updated. The most recent data in the present levels were from February 23, 2024. Resp't Ex. 9 p 57-60.
144. Relevant medical information included Student's diagnosis of encopresis, oppositional defiant disorder ("ODD"), Attention Deficit Hyperactivity Disorder ("ADHD"), Disruptive mood Dysregulation disorder ("DMDD"), and Sensory Processing Disorder, and PTSD. The IEP noted Student takes medication for DMDD. Resp't Ex. 9 p 60.
145. The June 5, 2024, IEP reflects a medical diagnosis of encopresis, a condition that causes repeated passing of stool usually involuntarily into clothing, which can affect Student's education. Resp't Ex. 9 p 60.
146. When asked to describe how Student's disability impacts involvement and progress in the general curriculum, the IEP team recorded that Student's:

emotional disability affects the ability to self-regulate behavioral responses under normal circumstances, resulting in acting or speaking inappropriately (e.g. speaking out of turn, being in constant motion), poor decision making, difficulty learning from experience, sustaining focus, aggressive behavior and difficulty making relationships. [Student]'s difficulty with maintaining attention, managing anxiety, self-regulation, impulsivity, and appropriate peer interaction significantly impact math and writing related instruction and limit Student's ability to keep pace and demonstrate consistent growth in the general education classroom.

--[Student]'s deficits in writing make it difficult for Student to respond to open ended questions and writing prompts across all curriculum.

Resp't Ex. 9 p 60-61.

147. The IEP reflects that Student has behaviors that impede Student's learning or that of other students. Resp't Ex. 9 p 61.
148. Due to the intensity and duration of [Student]'s behaviors, Student required a person to support Student throughout the school day.

The teacher assistant will provide one-on-one academic support and supervision through the entirety of the school day. The one-on-one will sit with [Student] and provide academic support throughout the day. The one-on-one will address behavior needs and follow through with the BIP to its entirety. All staff who work directly with [Student] will receive additional training on common language and approach in problem solving based on the team decision from the most recent BIP on 02/23/2024. The one-on-one will supervise and support [Student] in the cool down location when needed due to [Student]'s anxiety and frustration.

Resp't Ex. 9 p 62.

149. The IEP includes goals for behavior, written expression, and math. The behavior goals targeted completing non-preferred assignments and reducing inappropriate language. Counseling services were incorporated to address inappropriate language in Student's behavior goal. The written expression goal was to "write 14 total written words." The math goal was to solve and simplify fractions when completing mixed operations problems. Resp't Ex. 9 p 62-64.
150. The behavior goals reflect the following accommodations:

-[Student] will be allowed one extra day to complete assignments in all academic subjects.

-Classroom and homework assignments should be shortened and/or modified (i.e. leveled) so that [Student] can focus on quality vs. quantity and meet the learning objective of the lesson in a timely manner in all

subject areas.

-[Student] needs to sit close to instruction to aid with attention in all subject areas.

-[Student] requires a visual cue and/or hand signal to reinforce expected behaviors.

-[Student] requires a behavior chart that Student can easily locate to aid Student with daily and/or weekly behavior targets.

-[Student] requires unlimited bathroom breaks due to toileting concerns.

- [Student] requires additional adult support (teacher assistant) to support Student through the school day. The support person will help [Student] with deescalation, data collection, and identifying triggers prior to Student escalating. As well as support Student in the calm down area.

Resp't Ex. 9 p 63.

151. Student also has accommodations for written expression.

-Graphic organizers to help facilitate learning, vocabulary and concepts through visual and/or interactive support in all areas.

-[Student] will have the option to complete writing assignments on a word processing device.

- Talk-to-Text may be utilized within the classroom.

Resp't Ex. 9 p 63-64.

152. The IEP team added counseling as a related services to address coping skills, social skills, and support within the classroom. The counseling did not include mental health counseling. Resp't Ex. 9 p 65; Resp't Ex. 12 p 80.

153. The service delivery includes specially designed instruction for behavior for 90 minutes 5 times per week in the special education setting, math for 55 minutes 5 times a week, and written expression for 30 minutes. Counseling was to be for 15 minutes, one time per week. All services were to be in the special education setting. Resp't Ex. 9 p 64-65.

154. Student's classroom accommodations for English Language Arts, Math, Physical Education Science, and Social Studies included: having paper/pencil versions of tests, extended test time of one hour, dictate to scribe for constructive responses on tests and classroom assignments longer than 5 sentences, marking testing answers in the booklet, testing in a separate setting one-on-one, testing session breaks. Resp't Ex. 9 p 65-67.

155. For the Supports for school personnel, the IEP reflects, "Staff will need training on the collection and interpretation of behavior data to meet [Student] 's unique needs and provide supports." Resp't Ex. 9 p 67. The district was to determine what training is required. Resp't Ex. 12 p 80.

156. The IEP team did not review Student's Behavior Intervention Plan as Student had only attended school thirteen (13) days since the last BIP review on February 23, 2024. Resp't Ex. 12 p 80.

157. According to the Least Restrictive Environment Justification in Student's IEP:

[Student] requires intense specialized instruction and behavioral support in a small setting that allows for direct feedback and on the spot corrections. Student requires instruction in an environment, for Math and Written expression that will provide Student with immediate feedback and specially designed instruction. Due to [Student]'s diagnosis and unresolved trauma, the increased amount of stimulations in the general education setting can have an adverse effect on the mental processing necessary for academic success. This has been supported by [Student]'s use of the BIP to escape academic requirements (isolate) specifically when Student is in the general education classrooms with Student's non-disabled peers.

Resp't Ex. 9 p 68.

158. Student was found eligible for Extended School Year services. Resp't Ex. 9 p 70.

159. Student began attending Initial Residential School on June 20, 2024. August Stip. 8. However, Initial Residential School discharged Student on July 5, 2024, after Student was there approximately two weeks. August Stip. 9. As Student still required a different placement or PRTF, the district needed to find another appropriate placement. Resp't Ex. 14 p 88.

160. Initial Residential School noted on Student's discharge summary the reason for discharge was a "Step-up Transition (i.e. moving to hospitalization or more intensive treatment)." Pet'r Ex. 22 p 337.

### ***III. Implementation of IEP-Post Initial Residential School***

161. Student's transition from Initial Residential School on July 5, 2024, was very challenging. Student declined physically and emotionally, locked self in Student's room, cycled in and out of the hospital, and became significantly more physically aggressive towards Student's family to the point police were called. T vol. 3 p 454:3-6; T vol 5 p 650:22-651:1; August Stip. 6.

162. Between the time of Student's discharge from Initial Residential School and Student's transition to Residential School, Student was hospitalized twice at Children's Hospital and once at Hospital in Raleigh for a total of two to three weeks. T vol 3 p 452:13-453:23.

163. On August 9, 2024, Student was accepted to Residential School. Stip. Ex. 1; Pet'r Ex. 82 p 757-758. However, the school district did not convene an IEP meeting until over a month later on September 19, 2024. Parent testified, and the Undersigned finds, the district has a pattern of being slow to schedule IEP meetings for Student. and to respond to Parent's emails. T vol 5 p 649:12-13.

August 15, 2024, Prior Written Notice

164. WSFCS created a prior written notice for Student on August 15, 2024, without convening an IEP meeting. Resp't Ex. 14 p 88.
165. At the time WSFCS created the prior written notice, Student had been home for over a month following the failed placement at Initial Residential School without WSFCS convening an IEP team to discuss Student's needs and how to serve Student while Student had no placement. Resp't Ex. 14 p 88.
166. WSFCS documented its proposal to provide Student with:  
instruction in a homebound setting while continuing the search for an appropriate Psychiatric Residential Treatment Facility (PRTF). The District is proposing this option in lieu of a return to a traditional school setting. This action is not proposed to be a change in the IEP, but rather as the way the District is able to provide services for [Student] while waiting for another PRTF to be identified.  
Resp't 14 p 88.
167. Further, the IEP team wrote, "The District determined that a traditional school setting was not appropriate to meet [Student]'s needs, the District is proposing that Student be educated via homebound . . . until an appropriate placement is identified," and "There has been no additional data provided to the District to suggest that the IEP [team] would consider a different placement or that a PRTF is no longer needed." Resp't Ex. 14 p 88.

#### September – October 2024 Homebound Services

168. Student attended homebound-hospital sessions September 5, 2024 to October 31, 2024. Pet'r Ex. 138 p 1233-1239. In total, Student attended eight one-hour sessions of homebound services. Pet'r Ex. 138 p 1240-1241.
169. WSFCS intermittently provided homebound services as Student would refuse to participate or would become explosive and disrupt the public library where Student was scheduled to meet with the teacher. T vol 3 p 451:17-452:2. Initially, the sessions were provided in Student's home. Due to Student running to Student's room and locking Student's self in, the location was changed to the public library. In the library, Student also eloped to avoid the sessions. Student's behavior escalated to the point where Student screamed in the library so that sessions could not be provided in that location either. T vol 5 p 650:8-14.
170. Petitioner's Expert #1 opined the homebound services did not meet Student's needs and denied Student a FAPE as Student required a residential placement. T vol 4 p 519:10-21.
171. Petitioner's Expert #1 opined the district did not provide a FAPE from the time of Student's discharge from Initial Residential School to November 4, 2024. T vol 4 p 519:16-21.
172. Student began attending Residential School on November 4, 2024, and Student continues to attend Residential School. August Stip. 10, 4.

#### ***IV. September 2024 IEP Meeting***

173. On September 19, 2024, Student's IEP team met to consider Student's placement at Residential School acknowledging "the prior IEP team decision to place [Student] in a PRTF still stands and that a PRTF is currently [Student]'s least restrictive environment." Resp't Ex. 17 p 112.
174. Student's school counselor agreed Student requires more services than were being offered to Student at that time. Stip. Ex. 1 p 3.
175. As Student had been home since Initial Residential School removed Student and there was difficulty finding appropriate placements, the district proposed a short term trial of 90 days with a review of progress at the end of the trial period. "At that time the IEP team will determine whether the placement is appropriate and should continue." Resp't Ex. 17 p 112.
176. During the meeting, WSFCS staff asked Parent to provide information about where Student was educationally. Parent correctly informed the team Student was unable to focus on academics because of Student's emotional needs, was having difficulty taking care of Student's self, including hygiene, and was running away from home. Student hit Parent with a toy gun causing Parent to black out. Student's brother had to move out of the house and into the home of other family members for his safety. Parent discussed how Parent has tried a variety of community services, including the inpatient programs. Parent stated Student was "blacklisted" from or denied admission to thirty-two (32) long term care facilities due to aggressive and sexual behaviors. Stip. Ex. 1 p 2.
177. Student's homebound teacher asked what the goal would be for Student to return to the regular school setting, and Residential School staff responded that Residential School would follow the IEP they received from the school district. Stip. Ex. 1 p 2.
178. The IEP team did not make any material changes from the June 2024 IEP meeting because the team determined, at that time, that Student required a PRTF, and that fact had not changed. Resp't Ex. 17 p 113.
179. The IEP start date of September 23, 2024, was added to the IEP. Resp't Ex. 15 p 91. Petitioner's Expert #1 opined the start date signified that Student would be at Residential School by September 23, 2024. T vol 4 516:11-17.
180. Petitioner's Expert #1 opined the failure to implement the IEP denied Student a FAPE from July 10, 2024 to November 4, 2024. T vol 4 519:16-21.

#### ***V. Implementation of IEP at Residential School***

181. Student's program at Residential School includes implementation of the IEP and BIP developed in collaboration with the school district. The programming utilized includes the following: therapeutic programming including TCIS, the Residential Life program to help Student with Student's adaptive behaviors, life skills, and social relationships with peers,

and community engagement to help Student experience leisure in the community without severe problem behavior. T vol 2 p 212:11-25 (T of Petitioner’s Expert #1).

182. Student’s September 19, 2024 IEP, which was Student’s operational IEP from November 4, 2024 when Student was placed at Residential School until February 12, 2025, includes outdated Present Levels capturing Student’s baseline performance in WSFCS:

Behavior	[Student] is friendly with a good sense of humor. [Student] can communicate feelings when prompted as to why Student is upset or frustrated. [Student] can express when Student needs a break after academics as listed in Student’s behavior intervention plan, however Student uses the break to escape class and is rarely willing to return to class. [Student] acts impulsively. Student needs prompting and guidance in identifying what triggers Student’s frustration. Student needs to identify alternative reactions. [Student] has shown an unwillingness to use Student’s behavior intervention plan for anything other than escaping academic expectations.
Written Expression	[Student] can form Student’s letters correctly. Student uses a period in the appropriate places. Student begins sentences with capital letters. Student can stay on topic when Student chooses to. Student can add details when prompted to simple sentences. [Student] can’t consistently write more than one sentence when given a writing probe.
Math	[Student] can identify greater than and less than numbers. Student can compute basic single digit equations with addition, subtraction, and problems with more than 50% accuracy. Also Student can give value of coins but does not add them together accurately. [Student] can add with regrouping with a sum up to 100. [Student] has shown some growth in math when Student is willing to work. [Student] cannot correctly calculate fractions using any of the four operations. It is a struggle to get Student to participate in class. Student would be much further along if Student focused on Student’s academics.

Resp’t Ex. 15 p 93-94

183. Student’s September 2024 IEP reflects that Student refused all attempts at progress monitoring on Student’s math IEP goal of completing word problems with money. Resp’t Ex. 15 p 94.
184. Student’s behavior goals focused on completing non-preferred tasks and using coping strategies to reduce the instances of inappropriate language. Student’s written expression goal targeted writing “14 total written words in 4/5 trials.” Student’s math goal targeted using appropriate strategies to solve and simplify fractions. Resp’t Ex. 15 p 96-99.

November 2024 Residential School Summary of Progress

185. Student's November 2024 "Summary of Progress" prepared by Residential School reflects Student was interested in Student's classes. Student was described as a "leader and model for Student's peers during group music making," and offered "sincere apologies with an immediate cease of behavior or statements" when corrected after making sexually explicit comments. Resp't Ex. 35 p 757.
186. Residential School reported that Student demonstrated proficiency with writing complete sentences of at minimum 15 words, but more frequently 20-25 words, in response to daily writing prompts. Resp't Ex. 35 p 758.
187. Residential School addressed Student's math goal through functional, transdisciplinary activities with recipe reading and cooking. "Student can correctly identify proper fractions with 100% accuracy, and has thus far shown proficiency with doubling these fractions." Resp't Ex. 35 p 759.

January and February 2025 IEP Meeting

188. Student's behavior goals targeted completion of non-preferred tasks or assignments, using coping strategies to reduce instances of inappropriate language, identifying instances where Student feels unsafe, and identifying triggers while applying alternative responses. Resp't Ex. 18 p 122-123.
189. The January 2025 IEP behavior present level reflects progress at Residential School to that point. Student had been working towards "better understanding trauma triggers, the concept of safety, and have been developing supports that help [Student] feel more autonomy and confidence in managing Student's overwhelming emotions." Resp't Ex. 18 p 117-118.
190. The present levels reflect increased communication and increased sense of external safety. There is documentation of strategies to decrease Student's use of profanity, inappropriate language/gestures, and increased documentation of journaling. Resp't Ex. 18 p 118.
191. On non-preferred assignments, [Student] was able to complete the task in its entirety in 3 out of 5 instances, with several prompts needed. On average, [Student] required 2-3 verbal prompts to begin Student's work, with additional visual schedules/supports in the classroom, and Student needed some occasional verbal prompting to remain on task. Resp't Ex. 18 p 118.
192. [Student] frequently used inappropriate language and encouraged inappropriate discussion during class time, Student can commonly be redirected by staff and teachers; however, Student has been observed to be dysregulated by an outside party when extremely aggravated/dysregulated. Resp't Ex. 18 p 118.
193. Student's math present level reports demonstrated math skills and number sense, strong skills in addition/subtraction of double-digit numbers with/without borrowing, some multiplication facts (digits up to 12), and money math skills including coins and bills.

[Student] can correctly identify proper fractions with 100% accuracy and has thus far shown proficiency with doubling. Resp't Ex. 18 p 119.

Behavior Intervention Plan and Behavioral Support

194. Student arrived at Residential School with an operational behavior intervention plan ("BIP") which Respondent had developed. Resp't Ex. 15 p 96. However, Respondent updated Student's BIP during the January 29, 2025 IEP meeting. Residential School staff reported "he is still blurting out, posturing to fight, and making sexual gestures/comments. [Student] also struggles with daily living skills particularly hygiene. These behaviors occur when [Student] feels unsafe or perceives that adults are targeting or shaming Student for Student's behaviors." Resp't Ex. 19 p 131.
195. His IEP team updated the BIP to include the following:
- Replacement behaviors- breaks to regulate emotions in the classroom or in a preferred area;
  - Draw or journal as a replacement for verbal outbursts and/or physical aggression;
  - Using a swear jar;
  - Make a safety plan;
  - Changing setting conditions;
  - Therapeutic Crisis Intervention Support (TCIS);
  - Reinforcements were reviewed and updated to include incentive-based plans to preferred activities (token economy);
  - Verbal praise;
  - The crisis plan was reviewed and the team added notifying the parent and district as a last step;
  - Data collection logs were added and the team agreed to report on a quarterly basis.

Resp't Ex. 21 p 141.

196. The January 29, 2025, BIP contains the following Crisis Plan for Student:
- Verbal de-escalation with choices of regulation and calming strategies and activities.
  - Offer [Student] the designated calm down space with supervision and support for the time necessary to calm down. Target time is 10 minutes. All devices will be left in the classroom.
  - Call administration and room clear for behaviors that include physical aggression or sexual content. Continue with verbal de-escalation and limit verbal intervention to 1 adult speaking. Team should document the time of the event.
  - As a last resort, use nonviolent physical intervention techniques if the risk behavior escalates and presents a harm to self or others. The team must document any use of restrictive intervention.
  - Notify the parent and district.

Resp't Ex. 19 p 133.

197. The IEP team added the following strategies for teaching the replacement behaviors:
- Developing a safety plan with [Student] which includes both triggers and coping skills. (clinical staff)
  - Use of a swear jar as an accountability mechanism. (Residential School Staff)
  - When [Student] is feeling unsafe, staff will change settings conditions, use active listening, and Therapeutic Crisis Intervention Support. (Residential School Staff)

Resp't Ex. 19 p 132

198. Since Student began attending, Residential School has written approximately ninety (90) incident reports utilizing TCIS strategies. Resp't. Ex. 30.
199. Petitioner's Expert #1 opined that Residential School thoroughly documented the supports for Student. In documenting behavior incidents, especially what they did proactively to attempt to de-escalate before any physical restraint and what they did afterward, Residential School consistently documented de-escalation and coping strategies. T vol 2 p 214:5-19. The transdisciplinary notes reflect evidence of the strategies being implemented and positive results from the strategies. T vol 2 p 215:19-25.

Data Collection

200. Residential School has kept some form of data sheets on Student's goal progress on an almost daily basis since February 2025:

Goal	Data Sheet Dates
When given a non-preferred task or assignment, [Student] will complete the task in its entirety with no more than 2 prompts in 3 out of 5 opportunities.	2/3/25-2/7/25
	2/10/25-2/14/25
	2/24/25-2/28/25
	3/3/25-3/7/25
	3/10/25-3/14/25
	3/17/25-3/21/25
	3/24/25-3/28/25
	3/31/25-4/4/25
	4/7/25-4/11/25
	4/21/25-4/21/25
	4/28/25-5/2/25
	5/5/25-5/9/25
	5/19/25-5/23/25,
	5/26/25-5/30/25,
6/2/25- 6/6/25,	
6/9/25-6/13/25,	
6/16/25-6/20/25	
Across settings, [Student] will use a coping	2/3/25-2/7/25

strategy (e.g. take a break, deep breaths, alternative activity) to reduce instances of inappropriate language (e.g. profanity, racial / gender-based comments and sexual gestures and comments) or to no more than 1 incident per day.	2/10/25-2/14/25
	2/24/25-2/28/25
	3/3/25-3/7/25
	3/10/25-3/14/25
	3/17/25-3/21/25
	3/24/25-3/28/25
	3/31/25-4/4/25
	4/7/25-4/11/25
	4/21/25-4/21/25
	4/28/25-5/2/25
	5/5/25-5/9/25
	5/12/25-5/16/25
	5/19/25-5/23/25
	5/26/25-5/30/25
	6/2/25- 6/6/25
6/9/25-6/13/25	
6/16/25-6/20/25	

Resp't Ex. 33

201. The Residential School April 2025 progress report reflects Student's progress on completing Student's hygiene tasks and written expression goals, and inconsistent progress on Student's behavior goals, and math goals. Resp't Ex. 34 p 727-732. Residential School provided anecdotal descriptions of Student's progress.
202. Student's demonstrated growth in using positive coping strategies when triggered, including deep breathing, walking away from a situation, and taking space in Student's room. Resp't Ex. 34 p 727.
203. By April 11, 2025, Student demonstrated increased ability to complete hygiene tasks, complete non-preferred tasks 3 out of 5 times, and some progress with utilizing independent coping strategies while still being primarily reliant on support from staff in class to co-regulate. Resp't Ex. 34 p 725-727.
204. Student demonstrated growth in writing while attending Residential School. Student's ability to formulate responses in complete and proper sentences improved, and Student's ability to construct responses with accurate beginning capitalization and ending punctuation improved. On average, Student writes five (5) complete sentences when responding to prompts. Resp't Ex. 34 p 732.
205. Student demonstrated strong math skills and number sense, strong skills in addition, subtraction of double-digit numbers with and without borrowing, some multiplication facts, with digits up to twelve (12), and money skills including with coins and bills. Stip. Ex. 2 p 18.

206. Respondent's Expert #4 also confirmed she received progress reports roughly a week after her April 4, 2025, email requesting progress monitoring from Residential School staff. T vol 6 p 1001:12-15.

*Residential School's programming goes beyond the services written in Student's IEP*

207. Petitioner's Expert #1 opined the comprehensive program Residential School provides Student is well beyond what is provided by a typical school-based program. T vol 2 p 213:11-13.
208. Residential School also offers a clinical component with mental health services and individualized support. Residential School's program provides Student with transdisciplinary support in which all the professionals, academic, clinical or residential are communicating and collaborating throughout the day to coordinate supports and interventions including monitoring Student's level of escalation so that staff can respond appropriately. T vol 2 p 213:1-11 (T of Petitioner's Expert #1).

*Clinical Session Notes – Mental Health and Occupational Therapy*

209. Student's clinical staff reports Student to be someone who seeks out mental health services. T vol 2 p 309:9-12. One of Student's therapists, Residential Director, testified Student has made significant progress since arriving at Residential School. T vol 2 p 310:12-13. Student has identified friends and is out in the community engaging safely with these peers. T vol 2 p 311:14-19.
210. Upon Student's arrival at Residential School, Student and Student's therapist identified treatment goals: maintaining a sense of safety, identifying warning signs for dysregulation (aggression), and practicing new coping skills. Resp't Ex. 39 p 908. They also agreed to work on how to ask for and accept support, and how to engage in education related to cleanliness. Resp't Ex. 39 p 905. Student explored these themes with Student's therapist on numerous occasions including November 15, 25, December 5, 9, 13, 18, 20, January 8, 17, 30 Resp't Ex. 39 p 902, 898, 896, 894, 893. 885, 882, 881, 880.
211. After Student's sessions were changed to twice a week, Student's therapist began to target how trauma has affected Student's life. Resp't Ex. 39 p 878.
212. Student's therapist provided instruction and strategies on coping skills and assisted with emotional regulation. Resp't Ex. 39 p 862, 853, 846, 841, 842, 843.
213. Although Student did not have occupational therapy as a related service in Student's September 2024 or Student's February 2025 IEPs, Residential School supported Student's observed needs by providing occupational therapy services to Student. The occupational therapist observed or provided consultative services to Student on November 7, 13, 19, 25; December 2, 4, 11, 18, 23, 30; January 7, 15; February 7, 11, 27; March 7, 20, 27; and April 3 targeting sensory processing/integration, self-regulation, vocational activities and skills, activities of daily living, fine motor skills, behavior. Resp't Exs. 15, 18, 39.

214. When Student arrived at Residential School, Student struggled with encopresis. Student soiled Student's self and refused to take showers due to Student's sexual trauma and Student's desire to protect Student's self. That condition has almost completely resolved and rarely occurs at Residential School. T vol 2 p 27:11-20.
215. Student's April 11, 2025 ITEP documented significant advances in activities of daily living ("ADLs") as indicated through occupational therapy present levels and services provided by Residential School. At baseline, Student struggled to maintain hygiene, to clean Student's self after using the bathroom, and to change Student's clothing. Resp't Ex. 34 p 725.
216. On April 8, 2025, Student reported having a toileting accident while sleeping, demonstrating accountability and responsibility. Staff reminded Student that accidents happened and there was no need for any shame. Student helped the staff change Student's sheets. Staff reported Student had been successful in changing Student's clothes after accidents in recent weeks and had improved Student's hygiene, recognizing when Student needed to change Student's clothes and when to keep Student's body and room clean. Resp't Ex. 36 p 774.
217. On April 13, 2025, Student expressed interest in participating alongside peers during a Passover religious celebration. Although Student became dysregulated when Student was informed that Student could only attend the scheduled event for an hour, Student regulated Student's frustration and anger through adult assistance, eventually opening up about past experiences, underlying emotions, and past challenges. The event culminated in Student demonstrating insight by acknowledging that personal growth involves working through past challenges. Student returned to baseline and offered apologies for Student's earlier behavior. Resp't Ex. 36 p 774.
218. On April 18, 2025, Student apologized without any provocation to a female staff member after using inappropriate language and making sexist comments. Resp't Ex. 36 p 774.

#### Attendance

219. From November to February, Student only accumulated two unexcused absences from class periods. Resp't Ex. 32 p 665-669.
220. From February 3 to June 2025, Student only had six (6) unexcused absences from class, and Student never missed a single entire day of school. Resp't Ex. 32 p 669-674.

Any imperfection in the implementation of the IEP and BIP is due to the district's failure to work collaboratively with Residential School to support Student.

221. The district did not send Residential School the January IEP 2025 IEP until mid-March 2025. Stip. Ex. 2 p 16; T vol 6 p 1017:8-17. Respondent's Expert #4 could not explain why

the IEP was not provided to Residential School by her staff while she was on medical leave. T vol 6 p 1018:5-9.

222. However, Respondent's Expert #4 acknowledged one of her EC directors asked Student's assigned EC facilitator to hold off on scheduling a BIP meeting in April. T vol 6 p 1021:3-6.
223. Respondent's Expert #4 also confirmed the IEP team did not review the BIP during the June 2025 IEP meeting. T vol 6 p 1021:19-22.
224. While the Undersigned finds Residential School did materially implement Student's IEP when Respondent finally provided Residential School staff a copy of Student's IEP, Residential School's perfect or substantial implementation of Student's IEP has no bearing on whether or not Student requires a residential placement. The overwhelming evidence presented in this matter shows Student requires a residential placement. Furthermore, the Undersigned finds Student has made progress in Student's residential placement at Residential School.
225. Residential School provided progress monitoring data to Respondent on the IEP goals it implemented on both April 11, 2025 and June 20, 2025 documenting Student was making progress on certain goals (i.e. non-preferred assignment completion, written expression, hygiene) and had inconsistent progress on other goals (i.e. behavioral regulation, using coping strategies, emotional intelligence, responding to triggers, and math).
226. The Undersigned finds Student had not been consistently attending any school within WSFCS for years and dealing with significant trauma, so these reports of inconsistent progress in these areas are unsurprising.

#### ***VI. Progress Monitoring***

227. The District expressed concerns about Residential School's data collection yet, by the time of the hearing, there had been no conversation about how to progress monitoring between the district and Residential School. The district continued asking for data. T vol 4 p 564:4-21.
228. Petitioner's Expert #1 opined Residential School is doing good work, which is more of her concern. She further opined it was concerning to the District that the data was not being presented visually, and a consultant could assist with the presentation of the data "so that everybody feels comfortable about the progress that's being discussed. T vol 4 p. 564:10-21.
229. Petitioner's Expert #1 opined:

there are times where there are students who have IEP goals that are set as annual goals and they're not ready to have data collected on those goals because they have to teach some prerequisite skills leading up to that or, in Student's case, working -- focusing on Student's mental health needs may delay implementation of, say, a writing goal or something to that effect. That's not uncommon for kids with severe behavioral concerns where we're

not able to have data on academic goals while we're still trying to figure out how to prevent the problem behavior. T vol 4 p 574:10-19.

230. Residential School was working on skills to get Student to participate in academic instruction, but they were not goals the district had outlined in the IEP, so Residential School was not reporting on those benchmarks to the IEP team; however, Petitioner's Expert #1 testified she did see data regarding work Residential School did with Student on the prerequisites for Student to be able to work on the goals in Student's IEP. T vol 4 p. 575:10-22.
231. Public schools do not document every accommodation listed in the IEP, nor would the teacher be asked to provide that documentation. T vol 4 p. 581:6-12.
232. When discussing progress, Petitioner's Expert #3 cautioned examining progress linearly, asserting "this is not a kid who's going to make changes linearly. If Student would, Student would have done it by now. We're going to see starts and stops and starts and stops, which underscores the need for residential treatment because there's going to be times when Student's not going to music class but Student's showing up for math." A lack of progress in one particular area doesn't mean there is a lack of overall progress. T vol 5 p 773:15- p 774:5.
233. Petitioner's Expert #3 also cautioned relying exclusively on documentation because participation in therapeutic programming does not always come with a session note. Therapeutic programming provides several opportunities for informal check-ins. Residential placement provides programming opportunities where Student's therapist is influencing all other interactions, even when Student is not actively meeting with Student's therapist. T vol 5 p 775:22-776:6.
234. Respondent's Expert #1 criticized Residential School's data collection on behavior goals but did not acknowledge Respondent had this data and did not address concerns related to the data with Residential School until the June 24, 2025 IEP meeting. Stip Ex 2 p 32, 52-53. Specifically, she complained the data sheets did not capture what "type" of assignments, group or independent, Student is being presented with and whether prompting was provided was not discussed with Residential School, and the data do not reflect if Student used a coping strategy but only if Student used inappropriate language. T vol 6 p 909:21-911:9.
235. Respondent's Expert #1 testified that once the district determined Residential School was not implementing the IEP, based on the data sheets and the lack of documentation of programs and specially designed instruction, the IEP team could "[m]ake a decision that would provide Student with individualized educational supports that would provide FAPE." T vol 6 p. 914:6-21. Petitioner's Expert #1 also recommended a consultant to support Residential School with progress monitoring. T vol 4 p 564:5-15.

## ***VII. January and February 2025 IEP Meetings***

236. Student's WSFCS IEP team convened on January 29 and February 3, 2025, for an annual review and Behavior Intervention Plan (BIP) review. August Stip. 11; Resp't Ex. 21 p 144.
237. The WSFCS IEP team agreed to review the BIP no later than April 17, 2025. Resp't Ex. 19 p 133.
238. However, the WSCFS IEP team did not meet to review the BIP again after January 30, 2025. T. vol 1 p 94:25-96:1.
239. Residential School staff provided updates to Student's progress at the meeting including the belief that Student's behaviors were based on previous sexual trauma. They noted Student was no longer leaving class and some of Student's maladaptive behaviors had declined. Residential School staff, who were working with Student, raised the concern that returning to a generalized setting may cause Student to revert back to Student's previous behaviors. Student's Residential School therapists informed the team they were using a trauma-informed approach and validation to assist Student through the day. They were working on the replacement behaviors of self-regulation skills and communication. Resp't Ex. 20 p 138.
240. Based on a review of Student's present levels of performance, additional goals were added in the areas of emotional intelligence, written expression, and math. Resp't Ex. 21 p 141-142.
241. Student's behavior goals targeted completion of non-preferred tasks or assignments, using coping strategies to reduce instances of inappropriate language, identifying instances where Student feels unsafe, and identifying triggers while applying alternative responses. Resp't Ex. 18 p. 122-123.
242. The January 2025 IEP behavior present level reflects Student's progress at Residential School to that point. Student had been working towards "better understanding trauma triggers, the concept of safety, and ha[d] been developing supports that help [Student] feel more autonomy and confidence in managing Student's overwhelming emotions." Resp't Ex. 18 pp 117-118.
243. The present levels in the January IEP reflect increased communication and increased sense of external safety since the IEP that had been developed in advance of Student's start at Residential School. The January IEP contains documentation of strategies to decrease Student's use of profanity, inappropriate language/gestures, and increased documentation of journaling. Resp't Ex. 18 p 118.
244. On non-preferred assignments, [Student] was able to complete the task in its entirety in 3 out of 5 instances, with several prompts needed. On average, [Student] required 2-3 verbal prompts to begin Student's work, with additional visual schedules/supports in the classroom, and Student needed some occasional verbal prompting to remain on task. Resp't Ex. 18 p 118.

245. [Student] frequently used inappropriate language and encouraged inappropriate discussion during class time, Student can commonly be redirected by staff and teachers; however, Student has been observed to be dysregulated by an outside party when extremely aggravated/dysregulated. Resp't Ex. 18 p 118.
246. Student's math present level reports demonstrated math skills and number sense, strong skills in addition/subtraction of double-digit numbers with/without borrowing, some multiplication facts (digits up to 12), and money math skills including coins and bills. [Student] can correctly identify proper fractions with 100% accuracy and has thus far shown proficiency with doubling. Resp't Ex. 18 p. 119.
247. The IEP team agreed to continue the support of a one-on-one as Student's behavior requires more support than can be provided by the classroom teacher. Resp't Ex. 21 p 142.
248. The only refusal documented was including "24 hour wrap around [sic] into the Behavior Intervention Plan." The IEP team documented its rationale stating Residential School provided Student with "access to a counselor as needed" seeming to suggest that because 24-hour support was provided, it was unnecessary to include the support in Student's BIP. Resp't Ex. 21 p 143.
249. The IEP team updated Student's service delivery to the following:

Service	Amount of Time	Frequency	Location	Duration
Behavior	335 minutes	5 per week	Residential	2/23/25-1/28/26
Math	20 minutes	5 per week	Residential	2/23/25-1/28/26
Written Expression	30 minutes	5 per week	Residential	2/23/25-1/28/26
Counseling	30 minutes	2 per week	Residential	2/23/25-1/28/26

Resp't Ex. 21 p 142.

250. The IEP team greatly increased the amount of time for behavior from 90 minutes five days a week to 335 minutes five days a week. Math was reduced from 55 minutes five days a week to 20 minutes five days a week. Written Expression remained the same, and counseling services increased from 15 minutes one time per week to 30 minutes twice a week. Resp't Ex. 15 p 99-100.
251. The January 2025 IEP reflects the following:

[Student]'s emotional disability impacts Student's ability to regulate behavioral responses in typical situations, leading to inappropriate actions or speech (e.g., speaking out of turn, constant movement), poor decision-making, challenges in learning from experience, difficulty sustaining focus, aggressive behaviors, and struggles in forming relationships. Student's

difficulties with attention, anxiety management, self-regulation, impulsivity, and appropriate peer interactions significantly affect Student's progress in math and writing instruction, limiting Student's ability to keep pace and demonstrate consistent growth within the general education classroom.

Resp't Ex. 18 p 120.

252. The IEP team added numerous accommodations for all education settings including student preferred seating, one-on-one attendant throughout the school day, chunked assignments, breaks upon student request, access to preferred locations (as clinically indicated or cool down), directions read aloud as requested and provided in visual format, flexible schedule within perimeters of educational setting, access to a calculator, small group instruction, access to counselor as needed. Resp't Ex. 18 p 126-127.
253. There was no disagreement that Student continued to require a residential placement. "The team determined that [Student] continues to require a residential placement." Resp't Ex. 21 p 143.
254. Further, the team updated the least restrictive environment statement to include its justification for Student's residential placement to the following: "In order to receive explicit trauma informed services as it relates to academics and counseling, [Student] will be provided services in a separate setting." Resp't Ex. 18 p 129.
255. The Undersigned finds following this IEP meeting, Student continued at Residential School and continued making progress.

### ***VIII. Residential School Biopsychosocial and Psychiatric Assessments***

#### ***January 9, 2025, Biopsychosocial Assessment***

256. Student's mental health clinician at Residential School, Mental Health Clinician, ATR-BC, completed a Biopsychosocial Assessment of Student on January 9, 2025. Resp't Ex. p 40.
257. Mental Health Clinician documented Student has a low frustration tolerance and a perceived sense of being threatened, exhibits aggression, struggles with physical and emotional boundaries, becomes dysregulated responding "with disruptive language and behaviors, at times including sexualized language and movements," struggles with interpersonal relationships, and struggles with activities of daily living including "not cleaning properly after bowel movements or refusing to shower." Resp't Ex. 40 p 911.
258. Mental Health Clinician defined Student as a "highly vulnerable youth" based upon Student's trauma history. Resp't Ex. 40 p 911.
259. Mental Health Clinician noted, "In the school setting, [Student] has a history of refusing to complete work, leaving the classroom, and engaging in disruptive and noncompliant behaviors, including throwing chairs, searching for sharp objects, displaying physical aggression, and making sexual noises and gestures. The underlying contributor to these

behaviors are [sic] also likely linked to Student's past trauma history as they seem to provide [Student] with a sense of control over Student's environment and relationships, serving to help manage Student's fear and vulnerability." Resp't Ex. 40 p 912.

260. Mental Health Clinician documented "transitions are often difficult for [Student], and Student faces challenges building trust and rapport in Student's interpersonal relationships." Resp't Ex. 40 p 913.
261. Only two (2) months into Student's placement at Residential School, Student began making progress, developing limited relationships, engaging in collaboration for Student's shower/hygiene plan, and developing insight into meeting Student's educational goals. Mental Health Clinician noted, "[Student] benefits from ongoing structure . . . provided both in the education day and campus life programming. The predictable environment with adequate supports, continue to increase Student's sense of safety and ability to engage in Student's day-to-day programming." Resp't Ex. 40 p 914.
262. She recommended Student "continue to reside and attend school at [Residential School] to provide Student with adequate supports and structure to meet Student's current mental health and educational needs." Resp't Ex. 40 p 915.
263. Mental Health Clinician documented:

Student's trauma history contributes to Student's overall sense that the world is unsafe, and that Student is unsafe in it. Student has a history of aggressive behaviors that seem to be a trauma-based response, often serving to present Student as being threatening, strong, powerful, and dangerous. Aggressive behaviors have included threats, physical aggression, attempts to self-harm, throwing objects, and on one occasion Student attempted property destruction (pouring olive oil in front of the home and trying to set it on fire). Reports indicate that when triggered and becoming aggressive, Student "dissociates or hallucinates," often struggling to access supports or grounding.

Resp't Ex. 40 p 912.

264. Prior to attending Residential School, Student consistently struggled in school. "Documentation reports consistent struggles in school settings, described as physical and verbal aggression, difficulties with impulse control, frequent disruptive behaviors, such as yelling or walking out of place, patterns of making racially based threats, difficulty remaining focused, and sexualized behaviors and language." Resp't Ex. 40 p 913.

June 29, 2025 Updated Psychiatric Assessment

265. On June 29, 2025, Director of Health and Wellness, Residential School Director of Health and Wellness, and Psychiatric Nurse Practitioner, completed an updated psychiatric assessment. Resp't Ex 41.

266. In her report, she noted “prior to attending [Residential School], [Student] attended a therapeutic school in Utah [Initial Residential School] for survivors of sexual trauma but was deemed inappropriate due to Student’s high level of sexualized behaviors.” Resp’t Ex. 41 p 918.
267. Director of Health and Wellness, also noted that at Residential School, Student exhibits severe behavioral disturbances including verbal aggression, vulgar language, and sexual remarks, noises and gestures disruptive to the classroom, refusal to complete academic work, property destruction (throwing chairs, seeking sharp objects for aggression), and multiple episodes of elopement from class. Resp’t Ex. 41 p 917-918.
268. Since Student’s admission to Residential School, Student has continued to display significant mood dysregulation with frequent inappropriate sexualized verbal statements and behaviors toward peers, opposition to staff direction and structured activities, and poor hygiene and resistance to completing activities of daily living (ADLs). Resp’t Ex. 41 p 920.

### ***IX. Appropriateness of June 2025 IEP Meeting***

#### *June 24, 2025, IEP Meeting*

269. Student’s IEP team convened again on June 24, 2025, but did not review Student’s BIP. T vol 2 p 269:19-270:2; *see also* Resp’t Ex. 24 (PWN does not include a BIP review).
270. The IEP team discussed Student’s progress at Residential School, difficulties during the prior two (2) weeks, not demonstrating readiness to learn, and sleep issues. Residential School staff reported Student had thirteen (13) incidents in May, including self-injurious behavior. Resp’t Ex. 23 p 174-175. Residential School discussed the impact of the district’s visit on Student’s progress, which left Student feeling less stable and resistant to engage in Student’s trauma work, as it made Student “unsure of whether . . . Student should invest here . . . what’s going to happen next.” Stip. Ex. 2 p 34.
271. During the portion of the meeting when Residential School staff was present, the IEP team discussed Student’s progress on Student’s IEP goals, Student’s dysregulation at the time, and data collection for the IEP goals. Resp’t Ex. 23.
272. Residential School Staff #2 from Residential School staff shared data sheets with Respondent’s Expert #4 and Ms. EC Director of Instruction in May. She reported that since the last IEP meeting, Residential School has seen some improvement in Student being able to complete assignments. However, since May, Student has been struggling more with regulation, which affected Student’s ability to complete [non-preferred] tasks. Stip. Ex. 2 p 25.
273. Residential School Staff #3 from Residential School attributed the decline in Student’s regulation to where Student “is in Student’s process; Student is showing a lot of insight, but Student’s still not able to utilize skills without a lot of support when Student has a curveball or a challenge.” Stip. Ex. 2 p 26. Residential School Staff #3 explained Student was not in a place where Student was using skills independently like Residential School

- staff would expect before a student is ready to move to a lower level of care. Stip. Ex. 2 p 26-27.
274. Residential School Staff #2 explained based upon the in-person observation by the district, Residential School is trying to bridge the gap between topics that are preferred for Student while increasing Student's academic instruction levels. Stip. Ex. 2 p 27. Residential School staff was seeing a significant level of volatility even after the first or second prompt that Student is receiving for work completion. Stip. Ex. 2 p 27.
275. Residential School Staff #2 described the changes Residential School made to help Student be more successful with completing non-preferred tasks such as having Student complete tasks on an iPad. Stip. Ex. 2 p 27.
276. When discussing the impact of the recent increase in Student's dysregulation, Student was only able to complete two non-preferred written assignments. Stip. Ex. 2 p 28. Residential School compared this decline to Student's prior performance when Student was completing two of five non-preferred assignments a week and engaging appropriately in classroom tasks "upwards of three out of five days a week." Stip. Ex. 2 p 29. Student was more successful with non-preferred assignments activities in health class where Student was completing tasks in five out of six opportunities and less successful in functional academics where Student had not been completing three out of five tasks. Stip. Ex. 2 p 36.
277. Residential School staff reported Student's internal preoccupations interfere with Student's ability to address any academic tasks. As a result, Residential School focused on Student's level of safety for Student and others, so Student could return to the instructional challenges. Stip. Ex. 2 p 31. Student always required a one-to-one and needed in-class intervention by that staff member at all times. Even with that level of support, Student needed to leave the classroom to regulate a minimum of twice in the morning and twice in the afternoon. Stip. Ex. 2 p 31. The incidents involving physical interventions since the May 14, 2025, observation involved self-injurious behavior, danger to others, and significant property destruction. The incidents did not include Student's "weaponized" language towards others. Stip. Ex. 2 p 32.
278. Residential School Staff #2 reported Residential School staff had seen an increase in Student's profanity and comments to six to eight a day. Stip. Ex. 2 p 33. She noted Student was responding very well to quick walks or deep breathing, and reminders of what helps Student calm down and return to class. Stip. Ex. 2 p 34. Student maintained appropriate comments and language in health class but there are one or more instances of language in all areas, and Residential School was tracking data on where Student was using Student's coping strategies most effectively. Stip. Ex. 2 p 37.
279. Residential School staff reported Student was articulating to staff when Student feels unsafe, which is captured in the incident reports and data tracking. Stip. Ex. 2 p 41.
280. Residential School Staff #3 acknowledged the district's request, and Residential School's intent, to increase the level of complexity of academic tasks presented to Student to be

more on par with seventh grade level but explained Student's increased level of dysregulation was interfering with Student's ability complete tasks. Stip. Ex. 2 p 45. Residential School staff agreed to provide samples of the assignments presented to Student since the district's visit and the teacher change. Stip. Ex. 2 pp 45-46.

281. Residential School Staff #2 articulated the plan to increase Student's academic rigor after the district's observation in May and explained she had been working closely with the teacher to increase the level of texts and word problems provided to Student. Residential School was also planning to regroup Student's cohort as well. Stip. Ex. 2 p 47-48.
282. Residential School Staff #3 also explained, once again, after Respondent's Expert #4 asked, again, for a proposal to increase the academics, that Residential School had shifted the curriculum presented to Student; the teacher, was regrouping the students to shift the peer dynamics, and changed the clinician. Stip. Ex. 2 p 49.
283. Residential School Staff #3 expressed the importance of the IEP team reviewing the upcoming quarterly progress reports, which would not be sent until Friday or Monday [after the IEP meeting] due to Residential School teachers being on break. Stip. Ex. 2 p 51.
284. Residential School Staff #3 stated it was premature to make a placement decision, and it would be a catastrophic time to move Student. Stip. Ex. 2, at p 51.
285. Petitioner's Expert #1 noted Residential School staff explained the progress Student had made through Student's time there in Student's daily living skills, ability to form relationships, and ability to participate in community outings. Residential School had shared Student's challenges were still significant, and they needed a lot more time to get Student to a place where Student was stable and secure enough to be discharged. T vol 4 p 523:1-9.

### Decisions Made

286. The IEP team updated the present levels by adding selections from the April 11, 2025, progress report. Resp't Ex. 22 p 146-160. The IEP does not include the forthcoming June 2025 progress report that was not available to the team at the meeting. Resp't Ex. 24 p 3.
287. The IEP team did not make any changes to Student's IEP goals. *Compare* Resp't Ex. 18 (Jan. 29, 2025, IEP) *with* Resp't Ex. 22 (June 24, 2025, IEP)

### Placement Change

288. The district changed Student's placement from residential to separate school and provided the following explanation in its Prior Written Notice:

The District proposed a change in placement from a residential treatment facility to a separate setting in an alternative school within the District

because there was no evidence to show that Residential School has been implementing the IEP and very little data provided to the District even after multiple requests for data. There was no evidence to support that Residential School has been or is able to meet [Student]'s academic needs. The Residential School staff did not have any progress monitoring data for the academic annual goals and nothing to support the provision of appropriate academic instruction. The only work samples shared for the time period of November 2024 to June 2025 were kindergarten, 1st and 2nd grade worksheets (for example, labeling the body parts of a rabbit and 2 digit addition and subtraction without regrouping). There was no evidence of any opportunity for [Student] to learn grade level work even though Student is a rising 8th grade student with average to above average cognitive and academic ability. Residential School was not able to describe any specially designed instruction for behavior. The incident reports shared showed that 73% of the incidents resulted in Residential School staff placing [Student] in a physical restraint. 34% of the incidents occurred during school hours and 66% occurred before or after school hours, weekends or holidays. 42.9% of the incidents were the results of a peer conflict or peer dysregulation, and 28.6% were due to denied requests or unmet needs. However, there was no evidence of any instruction being provided to address these concerns.

Resp't Ex. 24 p 181.

289. The district further explained its rationale, stating:

The separate setting in an alternative school in the District is an option that has not previously existed in the District, but that is designed to meet the needs of students with significant social-emotional/behavioral needs. The District believes the Student's needs can be effectively met in this setting as opposed to a residential setting because there will be a high level of social-emotional/behavioral support and instruction at the school, as well as daily counseling and access to mental health professionals as a part of the school environment.

Resp't Ex. 24 p 182.

290. The district did not consider all placement options, but only considered general education, a special education class in a traditional school, home/hospital, the current setting at Residential School, and the alternative learning setting in the district. Resp't Ex. 24 p 183.

291. Petitioner's Expert #1 opined the district staff did not consider the data and information shared by Residential School. District staff were hyper-focused on how the data were being shared, fixating instead on the manner in which the district wanted data collected. Overall, the June IEP conversation between WSFCS and Residential School surrounding data seemed more frustrated than collaborative. T vol 4 p 529:24-p 530:10.

292. Petitioner's Expert #1 opined the district staff at the IEP meeting did not consider Student's unique needs or the consequences of changing Student's placement at such a vital time for Student. T vol 4 p 531:5-7. Importantly, Residential School staff were not seeking to remove Student from their school. T vol 4 p 530:20-24.
293. Petitioner's Expert #1 opined the social-emotional and behavior goals are not appropriate for Student as they are not developmentally appropriate or obtainable in one year. The goals lack alternative ways for Student to engage in academic instruction as it is so difficult for Student to engage in written work. Although Student requires goals for Student to develop and sustain positive relationships with peers due to Student's significant challenges with social relationships, the IEP does not include those goals. There are no goals for Student "with coregulation to be able to deescalate with support." Petitioner's Expert #1 opined the profanity goal is a strong emphasis in one behavior goal but Student wasn't sent to a residential school due to profanity. T vol 4 pp 538:2-539-1.
294. Petitioner's Expert #1 opined the IEP team did not have data to support that Student's placement should be changed from Student's current residential placement to a separate school. Rather, the data indicate Student needs to remain in a residential placement. T vol 4 p 529:15-20.
295. Dr Petitioner's Expert #1 opined the school district's proposed placement would not support Student's needs in any "way, shape, or form" as Student's current services provide intensive mental and behavioral supports compared a program that has not been developed or validated for students like Student. T vol 2 pp 228:21-229:7.
296. Petitioner's Expert #1 noted the June 2025 IEP included school counseling services, which typically work on social skills or coping strategies. It is not mental health treatment. T vol 4 p 532:25-533:6; Resp't Ex 22 p 165.
297. Residential Director testified at the hearing on Respondent's Motion to Modify Stay-Put, pending Student's continuation at Residential School, that Student was ready to begin Trauma-Focused Cognitive Behavior Therapy (TF-CBT). TF-CBT is an evidence-based practice designed to decrease symptomology and help deal with cognitive distortions, ultimately leading to the healing process. T vol 2 p 320:17-25.
298. Even though Residential School staff have not started the TF-CBT process yet, they've begun the psychoeducational pieces, specifically discussion of emotional regulation, symptoms, managing triggers, and identifying the trauma, which are necessary to the foundation of beginning TF-CBT. T vol 2 pp 321:24-323:3.
299. Respondent's expert witness, Respondent's Expert #2, also testified to the importance of the psychoeducational pieces of TF-CBT, specifically building a sense of safety and discussing specific emotional awareness and deregulation skills. T vol 1 pp 147:15-148:5.

300. The district's proposed program in Student's June 24, 2025, IEP lacks Trauma Informed Cognitive Behavior Therapy. T vol 1 p 168: 14-17; Resp't Ex. 22. Ms. Respondent's Expert #3 clarified there is no trauma informed CBT "in the school setting," yet, confusingly claimed school-based mental health providers "could be assigned to Student's case to provide those services." T vol 1 p 169:1-4.
301. Ms. Respondent's Expert #3 revealed the district's intent to rely on outside private providers to provide "therapy to address Student's history of trauma and I guess to determine whether medication management is needed, warranted, and you know, just to continue to monitor and ensure that he's receiving those services." T vol 1 p 169:7-10.
302. Despite the testimony of all the things that "could be provided" and the outside private providers Student's Parent would need to secure to ensure Student receives the supports the district acknowledges Student needs; the proposed June 24, 2025, IEP and placement do not provide access to these providers or outside therapy sources. Resp't Ex. 22.
303. The IEP includes only school counseling sessions with no "mention [of] the use of any cognitive behavior therapy" and no guarantee of being provided by someone trained in trauma-informed practices. T vol 2 p 229:18-25.
304. In the district's proposed placement, there is the potential Student will once again miss school due to suspensions and hospitalizations. T vol 1 p 101:17-21.
305. The district admitted Student is the only current student who could be served in a separate setting program specifically designed for students who are returning from alternative learning environments like PRTFs. T vol 1 pp 103:16-104:2.
306. Petitioner's Expert #1 opined the proposed placement in the IEP developed on June 24, 2025, would not meet Student's needs and is not appropriate. T vol 4 p 536:4-5. The proposed placement is a new program that has not started or tested. T vol 4 p 537:18-21. It would not offer "the mental health treatment [Student] needs, which is the whole reason Student was sent to a residential placement, and Student's mental health needs are so significant that Student was not able to maintain placement at Day Treatment Program and Initial Residential School." T vol 4 p 536:12-17.
307. Petitioner's Expert #1 noted that the district was not able to maintain Student in a placement [prior to Residential School], and the June 2025 IEP appeared to have nothing unique or comparable to what we would get in a residential placement. T vol 4 p 536:18-22.
308. Petitioner's Expert #1 opined it would be catastrophic to move Student to a less restrictive setting due to the severity of Student's behaviors, Student's history of hospitalizations when Student did not receive instruction, the danger to Student's family, and the need for coordinated mental health and academics which school districts do not provide. T vol 2 pp 227:17-228:20.

309. Petitioner's Expert #1 opined that Student requires a residential placement and it is Student's least restrictive environment. T vol 4 p 539:2-7.

### ***X. Need for Residential Placement***

#### *Student Requires a Residential Placement*

310. Petitioner's Expert #1 opined due to the severity of Student's mental health needs, including suicidal and homicidal ideation, and the fact that Student is almost always in a dysregulated state, Student cannot engage in academic work due to the severity of Student's mental health conditions. Student's academic performance and functional performance cannot be separated. T vol 2 p 209:21-210:12. Student can only maintain regulation for short periods of time and requires intense one-on-one support throughout the day to prevent peer interactions from becoming dangerous. T vol 2 p. 210:6-12.
311. Student had not had a consistent educational placement since fifth grade until Student entered Residential School. Student was in and out of the school building, hospitalized, placed in day programs, or on homebound receiving limited instruction. T vol 2 p 208:12-16.
312. Petitioner's Expert #1 testified that there is no evidence in her review of the records to indicate Student is ready to step down from Student's current placement in a residential program to a less restrictive educational placement. T vol 2 p 223:11-17. Student is still in a state of crisis, still developing trust in Student's current environment, and actually making significant progress. Petitioner's Expert #1 opined, and the Undersigned finds, Student needs to continue at Residential School until Student can reach a point where Student can apply the skills Student has learned to the everyday world. Student is currently "nowhere near being able to do that. Student requires one-on-one support all around the clock to even be able to do what Student's doing now." T vol 2 pp 223:19-224:8.
313. Petitioner's Expert #1 evaluated Student's progress through Residential School's reports regarding Student's daily living skills, Student's ability to form relationships with other people, and Student's ability to go out in community outings. Even though Student's challenges were still significant, Residential School treated Student's various disabilities and indicated staff needed a lot more time to get Student to a place where Student is stable and secure enough to be discharged. Based on her review and understanding of the opinions asserted by Residential School staff during the June IEP meeting, removing Student from Student's residential placement would be catastrophic to Student's progress and could cause Student to revert to a state significantly worse than when Student was originally sent to Residential School as Student's residential placement. T vol 4 p 523:1-13.
314. Petitioner's Expert #1 concluded her testimony at the FAPE hearing by strongly emphasizing Student's need for a residential placement; specifically, a residential placement where Student has 24-hour supervision, care, intervention, and support. Student needs a placement where mental health components are incorporated throughout Student's day, in either an academic setting or a life skills setting. Student requires a placement where

the assigned location has the ability to target Student's trauma-related conditions, Student's PTSD, in conjunction with Student's significant impairments in social interaction, communication, and emotional regulation associated with Student's ASD. T vol 4 p 539:5-25.

315. Additionally, Petitioner's Expert #1 emphasized that Residential School provides these services Student requires to make educational progress. At Residential School, Student receives the mental health treatment Student needs and has a developed, structured plan to provide trauma-focused cognitive behavior therapy. T vol 4 p 540:3-11.
316. Petitioner's Expert #1 testified, Student is not in a position where anybody providing Student services feels confident that Student can "show up to school and not be a danger to Student or others or go home and not be a danger to Student or others in that setting. Student's certainly not showing that Student's ready to just show up and engage in academics, which is primarily what this separate school [outlined in the June 2025 IEP] is going to focus on." T vol 4 p 540 14-24.
317. Residential Director, licensed clinical social worker, Director of Residential Life at Residential School, and Student's interim mental health therapist, testified at the hearing on Respondent's Motion to Modify Stay Put that she does not recommend that Student step down to a less restrictive placement at this time. Student needs a highly structured educational and residential program with significant supports in place. T vol 2 p 337:5-25.
318. Student's safety and stability rely on having support staff for extended periods of the day and living in a structured setting. T vol 337:15-18.
319. Based on Petitioner's Expert #3's review of Student's records, Student presents with "solid intelligence" but difficulty, at times, being able to use that intelligence effectively due to executive functioning deficits, math weaknesses, and significant behavioral disruptions due to Student's aggressive and disruptive behavior. T vol 5 p 707:18-24.
320. Student appears to have "significant neurodevelopmental difficulty" that could "be solely explained by ADHD but more likely explained by, potentially another neurodevelopmental disorder such as a learning disorder or autism spectrum but also social/emotional/behavioral disorders." T vol 5 p 708:4-10.
321. Student's significant emotional and behavioral factors influence Student's ability to demonstrate Student's true capacities, especially in the evaluations she reviewed. T vol 5 p 708:10-16.
322. In reviewing Student's June 2025 IEP, Petitioner's Expert #3 testified how Student's medical diagnoses present as described in Student's IEP: "speaking out of turn, constant movement, that's a really classic [trait] of ADHD. Poor decision-making, difficulty learning from experience, could indicate executive functioning challenges, impulse control disorders, aggression, interpersonal relationship difficulties, anxiety management, self-

regulation, impulsivity, all of which are common symptoms of [Student's] diagnoses." T vol 5 p 710:3-11; Resp't Ex 22 p 160.

323. Petitioner's Expert #3 opined Student's symptoms will significantly impact Student's classroom behavior and contribute to difficulty for Student to effectively learn, as well as create disruption to the other students' learning. T vol 5 p 710:15-20. Specifically, Student's ADHD would influence impulsivity and include "blurting things out, getting out of Student's seat, but socially/emotionally this can look like saying something inappropriate to a peer that would cause a negative reaction, saying things inappropriately to authority figures also. This can also look like doing things impulsively, throwing something, hitting something, you know, making a threat." T vol 5 p 711:7-15.

324. Student's DMDD (Disruptive Mood Dysregulation Disorder):

is a depressive disorder that their hallmark symptoms are significant behavioral disruptions and temper tantrums past the appropriate developmental age, persistent irritability and negative mood states. Typically, we see aggressive behavior so that is absolutely going to affect Student's -- Student's classroom relationships but -- peer relationships.

T vol 5 p. 711:16-23.

325. Sensory processing disorder will present quiet triggers that could provoke a strong reaction others may not understand. It also includes sensation seeking behavior such as stimming that can be off-putting to peers and affect self-esteem. T vol 5 p. 711:24-712:5.

326. Student's PTSD will create a lot of paranoia and mistrust in relationships and possibly provoke boundary testing, as well as affect social/emotional experiences with regards to self-efficacy and sense of safety. T vol 5 p 712:6-11.

327. Petitioner's Expert #3 endorsed Student's need for residential placement, especially considering its relation to Student's academic functioning needs. She opined that with all of these things present and untreated through specific intervention, it is very likely going to interfere with Student's ability to access academic instruction. T vol 5 p 713:2-14. Petitioner's Expert #3 asserted Student's need for a residential placement was also related to Student's social-emotional functioning. T vol 5 p 713:15-25. "These types of presenting diagnoses . . . require such a high degree of individualization of education and daily living . . . where residential can be really helpful to individualize the curriculum and instruction." *Id.*

328. "Similarly, these disorders are not just present in the classroom. They're present in all aspects of [Student]'s life and Student requires having support and building more adaptive ways of getting Student's needs met so that Student could then apply them into a traditional classroom." The majority of the work is happening during unstructured time, where residential placement offers lots of opportunities to employ an intervention that will be effective for Student learning new skills. T vol 5 p 714:1-12.

329. Petitioner's Expert #3 opined that Student continues to require a residential placement. Even though it seems Student has made progress at Residential School, Student still has significant work to do to refrain from any disruptive behaviors. T vol 5 p 715:1-6. The threats of violence and aggressive behavior tied to Student's previously identified ADHD, poor impulse control puts Student at a great risk for hurting Student, staff, or other students if Student were to transition to an alternative school such as Alternative School. T vol 5 p 753:4-12. Transitioning Student to an alternative school could expose Student to negative peer groups that could potentially expose Student to drugs or take advantage of Student in a way that exploits Student's trauma reactions and background. T vol 5 p 756:12-24.

### ***XI. Predetermination***

330. Petitioner's Expert #1 opined the district did not truly consider the data and information shared by Residential School at the June 24, 2025 IEP meeting. T vol 4 p 529:21-530:10. The district did not consider Student's unique needs and the consequences of changing Student's placement at such a vital time for Student. T vol 4 p 531:5-7.

331. Instead, the district was focused on the cost of Residential School and repeatedly raised the cost during the course of this case including in the district's pleadings. T vol 4 p 545:11-25; 546:6-8.

332. Well before the June IEP meeting, on May 21, 2025, Respondent's Expert #4 emailed WSFCS General Counsel, informing her, "The contract with Residential School ends on June 30, so we'll need to plan how to proceed – either keeping Student there or bringing Student home." Respondent's Expert #4 and WSFCS's General Counsel agreed to formulate a plan by including Attorney Steve Rawson, the district's counsel for this case, in a conversation. Pet'r Ex. 91.

333. Prior to the IEP meeting in June, Parent advised Respondent's Expert #4 Parent would only be available for two (2) hours to participate in the meeting, requested everything be completed in that timeframe, and alerted Respondent's Expert #4 Parent had requested a DPI facilitator to assist in keeping the meeting running on track. Pet'r Ex. 96. Respondent's Expert #4 responded and said "In my experience, a DPI Facilitator will ask the team to allow 3-4 hours for the IEP meeting." Pet'r Ex. 96.

334. Residential School staff described Student's high level of emotional dysregulation following changes made to increase the rigor of Student's academic instruction after the district's May 14 observation. Specifically, Residential School Staff #3 reiterated Student's mental health needs are inextricably intertwined with Student's educational and academic needs stating, "He's in class and participating more than Student ever has been in history, but Student does not have completed assignments that are being graded at this point. Student is a mess. Student's mental health is not okay. And we have to get back to what Student's baseline is." Stip Ex. 2 p 49. However, Respondent's Expert #4 did not address those concerns about the increased emotional dysregulation. Stip Ex. 2 p 49-54. Instead, Respondent's Expert #4 led the team in forcing a decision to remove Student from

Residential School regardless of Student's progress or emotional well-being stating, "We're going to need to continue with meeting," "A decision has to be made today," and "We have to make a decision today because, well, for one thing, *Residential School is pressuring the district about renewing the contract.*" Stip. Ex. 2 p 50 (emphasis added). As the IEP team approached the fourth hour of the meeting, Respondent's Expert #4 pushed the team to make a placement determination while Parent said "We have nine minutes to decide placement. And we still have questions." Stip. Ex. 2 p 93.

335. This was not the first time funding was an issue in Student's placements. Although, Student's Initial Residential School discharge summary reflects a recommendation for a step-up in services to include "intensive outpatient, residential treatment, inpatient hospitalization," "[d]ue to funding constraints, placement was not feasible at the moment." Pet'r Ex. 22 p 337 (emphasis added).
336. Petitioner's Expert #1 opined the district did not provide a cogent response to Parent's concerns that the IEP meeting was held due to budget concerns; the team discounted the concern and moved on stating that cost was not relevant. T vol 4 p 545:10-546:8.

*Refusal to consider another residential placement*

337. When Parent distinguished Residential School from residential placement and asked about the provision of FAPE by another residential school, Respondent's Expert #4 improperly separated Student's academic and social-emotional needs:

Parent: So take Residential School off the table . . . we're talking about placement . . . what is the safest and best environment for [Student]? Would it be residential or would it be separate school?

Respondent's Expert #4: So for the educational part, I think that's a good question for the team to consider. Because with the educational part, I don't know that we've said that residential is providing anything different. For the other parts that have more to do with the psychiatric or therapeutic pieces, that's separate. So, we're almost talking about two separate things there, as far as what would be better for Student. The educational part, we can't afford to ignore that part.

Stip. Ex. 2 p 88.

338. Parent testified that even when Parent made this distinction, the district did not respond to Parent and it seemed they had already made up their mind. T vol 5 p 661:11-25.
339. Petitioner's Expert #1 opined the district did not have an open mind and was not willing to consider Parent's request to keep Student in a residential placement or even consider another residential school besides Residential School. T vol 4 p 546:9-14; 559:11-22. She testified the district did not provide a lengthy response or discussion concerning the request, (T vol 4 p 546:21-25), and the district did not consider looking for another school

and simply changed Student's placement to its new, separate school within the district. T vol 4 p 548:4-8.

340. Petitioner's Expert #1 opined the district did not provide a cogent response to the parent's request to consider another residential placement, as the district primarily focused on academics and suggested Student's therapeutic needs and educational needs are separate. T vol 4 p 548:12-25.
341. Respondent's Expert #4 admitted the reason for developing a program, was not because of its duty to tailor an education for Student's needs but instead because they did not have another residential placement to send Student to. T vol 6 p 997:9-11.

Q. Okay. And so if you don't have another program to send Student to, what are the options before the IEP team?

A. To develop something. To develop a program. I mean the IEP team – the school district is responsible for FAPE regardless of where it is. As long as the student's enrolled, the school district is responsible for FAPE and so the IEP has to figure that out . . . so if we don't have another residential placement, then we have to figure out how we can do that.

T vol. 6 p 997:9-17.

342. Respondent's Expert #4 testified moving Student to another residential program was not an option because "we didn't have another residential program at that time. There was not one that we knew of at the time to pursue." T vol 6 p 996:24-997:3.
343. Parent understood the June 24, 2025 IEP was limited to four hours. T vol 5 p 658:1-6; Pet'r Ex. 96. However, the meeting lasted approximately six hours, continuing well after Parent left the meeting. Stip. Ex. 2 p 163.
344. Petitioner's Expert #1 opined the district did not have an open mind when Parent requested to reconvene the meeting as evidenced by the fact that Parent left the meeting and they continued the meeting without Parent. T vol 4 p 558:14-20. Petitioner's Expert #1 further explained that even when the district recognized that there may be another residential program that would be appropriate, the district continued with the meeting and the decision to place Student in a separate school. T vol 4 p 559:11-22.
345. Petitioner's Expert #1 opined the district's failure to come to the meeting with an open mind regarding Student's continued placement in a residential placement will result in educational harm or a loss of educational benefits. Bringing Student home will result in challenges and Residential School is unable to start trauma-focused cognitive behavioral therapy without knowing whether Student will continue enrollment for a sustained period. T vol 4 p 561:5-15.

346. Parent emphasized that the prior written notice did not provide any refusal to leave the location of the services as residential facility but instead only focused on Residential School. *Compare* T vol 5 p 663:22-25 and T vol 6 p 997:1-3 *with* Resp't Ex. 24 p 182 ("The District refused to leave [Student] at Residential School . . .").
347. The prior written notice from the June 2025 IEP meeting does not provide *any reasons* for the IEP team refusing to consider alternate residential placements. After listing rationale for not placing Student in a general education setting, a special education setting in a traditional school, or home/hospital setting, the team documented the following about its considerations: "The final two settings that were considered were the current setting at Residential School and a proposed separate setting in an alternative learning setting in the District." Resp't Ex. 24 p 183 (emphasis added).
348. The Undersigned finds the IEP team failed to consider any other residential placements for Student. The Undersigned further finds the IEP team denied Parent meaningful participation in the IEP meeting.
349. Even though, Parent read parent concerns at the IEP meeting and the district agreed to attach them to the IEP, they did not do so. T vol 5 p 659:3-5; Resp't Ex. 22.

## ***XII. Relief***

350. Petitioner's Expert #1 opined that Student's placement in Student's IEP should remain residential for at least a full academic year. T vol 4 p 564:24-565:3.
351. Petitioner's Expert #3 opined Student's residential placement should include providers that specialize in treating trauma in co-occurring ADHD and depressive symptoms. T vol 5 p 754:22-755:1. The one-on-one attendant needs to be a licensed mental health professional or be supervised by a licensed mental health professional. T vol 5 p 755:13-16.
352. Student's IEP needs to be amended to include goals for Student to engage in instruction in alternative ways, to develop and sustain positive relationships with peers, to coregulate and be able to deescalate with support. T vol 4 p 538:2-539-1.
353. Petitioner's Expert #1 recommended revising Student's Behavior Intervention Plan to incorporate the recommendations in her May 2023 FBA. T vol 4 p 565:10-14.
354. Petitioner's Expert #1 recommended an independent consultant to work with Student's residential program staff to assist the IEP team in developing an IEP that is appropriate, including the goals Student requires along with supplementary aids, services, and training for staff. T vol 4 p. 562:15-22.
355. Petitioner's Expert #1 recommends that the consultant be a Board-Certified Behavior Analyst who specializes in special education at an advanced level and understands and has experience with children with autism spectrum disorders. T vol 4 p 563:9-13. The consultant could be from any state and does not necessarily have to travel to New York

where Student's current residential school is located. T vol 4 p 563:14-20. The consultant should have contact with the school at least quarterly and provide guidance on progress monitoring, collecting it, and graphing it as that is a great concern for the district. T vol 4 p 564:4-8.

### CONCLUSIONS OF LAW

Based on the above findings of fact and relevant laws and legal precedent, the Undersigned concludes as follows:

1. This Final Decision incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this contested case
2. To the extent that the forthcoming 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).
3. The Respondent, Winston-Salem/Forsyth County Board of Education, and Petitioner, Student, by and through Student's parent, Parent, are properly before this Tribunal, and this Tribunal has personal jurisdiction. September Stip. 1.
4. Respondent WSFCS is a local education agency (LEA) receiving funds pursuant to the IDEA and is the LEA responsible for providing educational services in Forsyth County, North Carolina. Respondent is subject to the provisions of applicable federal and state laws and regulations, specifically 20 U.S.C. § 1400 *et seq.*; 34 C.F.R. § 300 *et seq.*; and N.C. Gen. Stat. 115C-106 *et seq.*
5. The Office of Administrative Hearings has jurisdiction over this contested case 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 its implementing regulations, 34 C.F.R. § 300. N.C. Gen. Stat. § 115C-109.6(a) controls the issues to be reviewed.
6. Petitioners, being the complaining party, have the burden of proof to show by a preponderance of evidence that Respondent did not provide Student with a free appropriate public education. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); N.C. Gen. Stat. §§ 150B-25.1(a) and 34(a).
7. The IDEA "requires great deference to the views of the school system rather than those of even the most well-meaning parent[s]." *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004). "[D]eference is based on the application of expertise and the exercise of

judgment by school authorities.” *Andrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 404 (2017). “[T]he required deference to the opinions of the professional educators [does not] 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 fact-finder 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 (4th Cir. 2005).

8. It is a fair expectation school employees “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 his circumstances.” *Andrew F.*, 580 U.S. at 404. However, when school employees unable to do so, or the evidence presented does not support their decisions, they are not entitled to deference. *Smith v. Dist. of Columbia*, 2018 U.S. Dist. LEXIS 168005, \*23 (D.D.C. Sept. 28, 2018) (finding “DCPS has failed to offer the ‘cogent and responsive explanation for its placement decision’ that would entitle it to deference).

**ISSUE - Whether Respondent failed to offer Student a FAPE in the July 14, 2025 IEP (developed on June 24, 2025)?**

***I. FAPE in the LRE***

9. The IDEA offers States federal funds to assist in educating children with disabilities. 20 U.S.C. § 1400 et seq.; *Andrew F.*, 580 U.S. at 390 (2017). In exchange for the Funds, a State must comply with statutory conditions of the IDEA, chief among them, providing a free and appropriate public education to all eligible children. *Id.*
10. The IDEA was enacted to “ensure that all children with disabilities have available to them a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).
11. The statutory requirements of a FAPE, include providing “Special Education,” denoted as “specially designed instruction to meet the unique needs of a child with a disability,” and “related services,” which are the support services “required to assist a child . . . to benefit” from that instruction. 20 U.S.C. §§ 1401(26), (29); *Andrew F.* 580 U.S. at 390 (2017).
12. All schools covered by the IDEA must provide a student with a disability with such special education and related services “in conformity with the [child’s] individualized education program,” commonly called the child’s “IEP.” 20 U.S.C. § 1401(9)(D); *Id.* at 390-91 (2017).
13. An IEP is “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with” the IDEA. 20 U.S.C. § 1414(d)(1)(A).
14. The IEP must include statements of the child’s present levels of academic achievement and

- functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa).
15. The IEP team must develop an IEP which considers a child's behavior, the behavior's impediment on the child's learning or that of others, and positive behavioral interventions, supports, and strategies to address that behavior. 20 U.S.C. § 1414 (d)(3)(B)(i).
  16. Specifically, the IEP Team must consider "the strengths of the child; the concerns of the parent[] for enhancing the education of [her] child; the results of the . . . most recent evaluation of the child; and the academic, developmental, and functional needs of the child." 20 U.S.C. § 1414(d)(3)(A).
  17. The child's IEP is "[t]he primary vehicle for implementing" the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). The IEP is "[p]repared at meetings between a representative of the local school district, the child's teacher, the parents or guardians, and, whenever appropriate, the disabled child," and the IEP "sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives." *Id.*
  18. While students 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.
  19. "Progress through [the education] system is what our society generally means by an 'education,' [a]nd access to an 'education' is what the IDEA promises," *Endrew F.*, 580 U.S. at 400-401 (citation omitted); therefore, [i]t cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot." *Id.* at 402. "[A] student offered an educational program providing 'merely more than *de minimis* progress from year to year can hardly be said to have been offered an education at all." *Id.* at 402-403. In fact, "[f]or children with disabilities, receiving instruction that aims so low would be tantamount to 'sitting idly . . . awaiting the time when they were old enough to 'drop out.'" *Id.* at 403 (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 179 (1986)).
  20. The Court rejected the school's argument that "*any* educational benefit" is sufficient, *Id.* at 399, and mandated "every child should have the chance to meet challenging objectives" and be offered an educational program that is "appropriately ambitious," *Id.* at 402.
  21. A "well-written IEP goal must pass the 'stranger' test[:] Could a stranger to the IEP goal be able to implement the goal, be able to implement the assessment of student's progress

on the goal, and be able to determine whether the student’s progress was satisfactory?” *Mason City Comm. Sch. Dist.*, 106 LRP 51522 (SEA IOWA 2006).

22. “The purpose of goals and measurable objectives is to permit the IEP team to determine whether the pupil is making progress in an area of need.” *L.A. Unified Sch. Dist.*, 110 LRP 34448 (SEA CA 2010) (citing 34 C.F.R. § 300.320(a)(2)(i)(ii)(2006); 34 C.F.R. part 300, App. A, Q.1 (2006)).
23. The evaluation of a student’s progress is directly related to the student’s IEP goals; therefore, the district must ensure the student’s goals are clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 131 F.Supp.2d 926, 932–33 (E.D. Mich. 2001), aff’d, 56 Fed.Appx. 655 (6th Cir. 2003) (unpublished) (holding that measurable goals must have “sufficiently objective criteria” for measuring progress).
24. An IEP must include “a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child . . . (aa) to advance appropriately toward attaining the annual goals; (bb) to be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and (cc) to be educated and participate with other children with disabilities and nondisabled children.” 20 U.S.C. § 1414(d)(1)(A)(i)(IV).
25. The Undersigned finds that the September 2024 IEP was not appropriate as the goals did not meet Student’s individualized needs. The placement was not appropriate as it was not a residential placement.
26. The Undersigned finds that the January 2025 IEP was not appropriate as the goals did not meet Student’s individualized needs.
27. The Undersigned finds that the June 2025 IEP was not appropriate as the goals did not meet Student’s individualized needs, it did not contain appropriate goals, and it did not offer a residential placement.

## ***II. Placement-Continuum and Relationship to FAPE***

### *LRE Mandate*

28. The IDEA requires children with disabilities be educated “to the maximum extent appropriate” with children who are not disabled, unless the “nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A).

### *Placement on Continuum Depends on Individualized Needs*

29. Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. § 300.115(a).
30. Such contemplated alternative placements include “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.” 34 C.F.R. § 300.115(b)(1).
31. “This ‘continuum’ of alternative placements may include ‘placement in a public or private *residential* program,’ in the event such a program ‘is necessary to provide special education and related services to a child with a disability.’” *M. S. v. Los Angeles Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 14356 at \*22-23 (C.D. Cal. Jan. 9, 2019), *aff’d sub nom. M. S. v. Los Angeles Unified Sch. Dist.*, 913 F.3d 1119 (9th Cir. 2019) (quoting 34 C.F.R. § 300.104) (emphasis in original).
32. A school district is “obligated to ‘ensure that a continuum of alternative placements [was] available to meet [the student’s] needs,’ and federal law further mandated that potential placement in a residential treatment center be a part of that continuum.” *Id.* at \*26. (quoting 34 C.F.R. § 300.115).
33. “The LRE continuum is not a progressive step by step process, wherein you must await failure to move into a more restrictive setting. It is a continuum, not a step ladder. If the Student cannot receive educational benefit from a particular placement, a more restrictive placement should be considered.” *Danbury Board of Educ.*, 115 LRP 1631 (SEA CT 2014) (internal citations omitted). “If a student's placement does not confer a meaningful benefit to the student and a more restrictive program is likely to provide such a benefit, the student is entitled to be placed in that more restrictive program.” *Id.* (citing *P exl rel Mr. and Mrs. P. v Newington Bd. of Educ.*, 546 F.3d 111, 122 (2d Cir. 2008)).

*Educational Placement is not Synonymous with Location/School*

34. “The [U.S. Department of Education’s] longstanding position is that placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school.” 71 Fed. Reg. 46,687 (2006).
35. “Educational placement” is not defined by the IDEA. *AW v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 679 (4th Cir. 2004). Placement refers to the extent to which options on the continuum differ from a mainstream assignment, and does not refer to a particular location. *Id.* at 682. “[T]he touchstone of the term ‘educational placement’ is not the location to which the student is assigned but rather the environment in which educational services are provided.” *Id.*
36. “[W]here a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in “educational placement” occurs.’. *Id.* at 682.

### ***III. Need for Residential Placement - Factors that Require Residential Placement***

#### **To Receive a FAPE and Make Educational Progress**

37. When a student needs to attend a public or private residential placement to receive appropriate special education and related services, the district must place the student in that program at no cost to the parents if the placement “is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” 34 C.F.R. § 300.104.
38. “States may not escape responsibility for the costs properly associated with [a student’s need for] a residential placement simply by stating that the placement addresses physical, emotional, psychological, or behavioral difficulties rather than or in addition to educational problems.” *Vander Malle v. Ambach*, 667 F. Supp. 1015, 1039 (S.D.N.Y. 1987).
39. When a student’s “social, emotional, medical, and educational problems [are] so intertwined ‘that realistically it is not possible for the court to perform the Solomon-like task of separating them,’” a residential academic program is necessary. *Kruelle v. New Castle Cnty. Sch. Dist.*, 642 F.2d 687, 694 (3d Cir. 1981) (quoting *North v. Dist. of Columbia Bd. of Educ.*, 471 F.Supp. 136, 141 (D.D.C. 1979)).
40. When the “consistency of programming and environment is critical to [the student’s] ability to learn,” there is a necessary “link between the supportive service or educational placement and the child’s learning needs.” *Id.* “[T]he unseverability of such needs is the very basis for holding that the services are an essential prerequisite for learning.” *Id.*
41. The Fourth, Sixth, and D.C. Circuits have adopted the “inextricably intertwined” standard set forth by the Third Circuit in *Kruelle*.
42. A residential placement is necessary “in those situations in which the educational need clearly stems from the same source as the disability, the issues resulting in the overall need for a residential placement may be so intertwined with other needs that they cannot be separated, and the school system is responsible for residential placement.” *Shaw v. Weast*, 2008 U.S. Dist. LEXIS 142635 at \*24 (MD D.C. March 31, 2008) (citing *North*, 471 F.Supp. at 141).
43. “[T]he Third Circuit has acknowledged that residential placement, although not preferred, is required once a court has concluded that it is the ‘only realistic option’ for a handicapped child’s learning improvement.” *S.C. ex rel. C.C. v. Deptford Twp. Bd. of Educ.*, 248 F. Supp. 2d 368, 375 (D.N.J. 2003) (quoting *Kruelle*, 642 F.2d at 695).
44. In addition to the traditional factors considered for mainstreaming, the S.C. court considered the following factors particular to the need for a residential placement:

- (1) whether the child was experiencing emotional conditions that fundamentally interfered with the child's ability to learn in local placement;
- (2) whether the child's behavior was so inadequate, or regression was occurring to such a degree, as to fundamentally interfere with the child's ability to learn in a local placement;
- (3) whether, before the dispute arose [between the parents and the local school board], any health or educational professionals actually working with the child concluded that the child needed residential placement;
- (4) whether the child had significant unrealized potential that could only be developed in residential placement;
- (5) whether past experience [with placing the child in a more restrictive environment] indicated a need for residential placement; and
- (6) whether the demand for residential placement was primarily to address educational needs.

*S.C.*, 248 F. Supp. 2d at 378 (quoting *D.B. v. Ocean Township Bd. Of Educ.*, 985 F.Supp. 457, 493–97 (D.N.J. 1997)). After considering the above-listed multiple factors, which courts often call “the *D.B.* factors,” the Court found “in order to receive a FAPE, *S.C.* requires placement in a residential program.” *S.C.*, 248 F. Supp. 2d at 380.

45. When analyzing the fourth *D.B.* factor of “unrealized potential that could only be developed in a residential placement,” the Court agreed the factor applied when “No witnesses have indicated that [the student] will not benefit from residential placement . . . . [N]o one has stated that [the student] does not have the ability to learn if his behaviors are stabilized.” *T.R. ex rel. J.R. v. Cherry Hill Twp. Bd. of Educ.*, 2012 U.S. Dist. LEXIS 54111, at \*47 (D.N.J. Apr. 17, 2012).
46. The Second Circuit held, when a student’s public-school history is marked by very limited academic progress and serious regression, placement of a student with emotional and educational disabilities in a private residential treatment facility is necessary for the child to make meaningful educational progress. *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1121 (2d Cir. 1997). “[T]he Act clearly contemplates the need for the support services provided by such programs as residential placements in some circumstances.” *Id.* at 1122.
47. The Second Circuit considered a variety of factors, such as when “over the course of three (3) years,” a student fails to advance “more than one grade level in any subject,” despite having average intelligence, the student is not making appropriate progress in the placement. *Id.* at 1121.
48. “The fact that a residential placement may be required to alter a child's regressive behavior at home as well as within the classroom, or is required due primarily to emotional problems, does not relieve the state of its obligation to pay for the program under federal law so long as it is necessary to insure [sic] that the child can be properly educated.” *Id.* at 1122.

49. The student’s local public school placement did not confer educational benefit where the student did not complete more than 10% of his work, chose not to attend significant portion of his class time, was failing most classes, and did not make progress in his goals and objectives. *Branford Bd. of Ed.*, 122 LRP 31722 (CT SEA 2022). The hearing officer noted “[w]here, as here, FAPE cannot be delivered in a mainstream setting, the Board is required to provide the program in a placement that can educate the student satisfactorily.” *Id.* (citing *P v. Newington Bd. of Educ.*, 546 F.3d 111 (2d Cir. 2008)). The hearing officer found the district appropriately reached the “conclusion that the Student requires a small, segregated, highly structured therapeutic school program in order to receive FAPE,” and “the Board does not have such a program and that it would not be feasible to create one,” the hearing officer ordered the district to place the student in an “out of district therapeutic school.” *Id.*
50. Despite the district positing the student “ha[d] been able to be successful in all of her school settings and [did] not require a residential placement to be educated,” “every program the [s]chool made available to [the student] has consistently failed to forward [the student]’s academic progress.” Ultimately, the court found the student did require a residential placement. *Linda E. v. Bristol Warren Reg’l Sch. Dist.*, 758 F. Supp. 2d 75, 91-92 (D.R.I. 2010).
51. “Students who require residential placement to obtain an educational benefit are often experiencing some acute health crisis at the time they are placed—the severity of their condition is precisely why they need residential treatment.” *Edmonds Sch. Dist. v. A. T.*, 780 F. App’x 491, 495 (9th Cir. 2019).
52. Where a student displayed most of his behaviors at home but still displayed serious problems at school, including truancy, failing classes, engaging in disruptive and non-compliant behavior, assaulting a teacher, and selling drugs at school, Student had become a danger to himself and others, required hospitalization, became a flight risk and at risk of committing a criminal act, he required a residential placement. *Corpus Christi Ind. Sch. Dist.*, 104 LRP 30644 (TX SEA 2004).
53. A student placed by the district in a residential facility was likely to regress without constant behavioral monitoring and assistance. The district attempted to recreate a non-residential program in the district, but the program lacked elements including implementation other than during the school day. *Greater Albany Sch. Dist.*, 107 LRP 64031 (OR SEA 2007). “Continuing residential placement is, more likely than not, necessary because of the frequency and intensity of Student’s socially unacceptable, aggressive, and self-injurious behaviors across all environments and because without it Student can not [sic] receive meaningful educational benefit.” *Id.*
54. A student required residential placement when his behavior problems at school and in the home resulted in two psychiatric hospitalizations, causing him to be removed from special education services, and resulting in a loss of educational opportunity. As the student’s behaviors are inextricably intertwined with his learning needs, the only way they can be

addressed is through “an around-the-clock residential educational placement.” *Agawam Public Schools*, 114 LRP 5016 (MA SEA 2014).

55. “[O]nce a court concludes that residential placement is the only realistic option for learning improvement, the question of ‘least restrictive’ environment is also resolved . . . If a day school cannot provide an appropriate education it is, by definition, not a possible alternative.” *Kruelle*, 642 F.2d at 695 (internal citation omitted).
56. As shown in the Findings of Fact *supra*, Residential School provided Student with specially designed instruction to address Student’s inextricably intertwined academic and functional needs through one-on-one academic support and a program designed to assist Student develop those skills. Additionally, Residential School provided Student the related services of counseling, psychological services, recreation, occupational therapy, and social work.
57. These services were designed and provided to Student by educators and therapists with the assistance in implementation by the residential staff including his one-to-one, twenty-four (24) hours each day.
58. Based on all the evidence in the record, the Undersigned finds Student’s educational needs are “inextricably intertwined” with Student’s mental health needs thus, a residential placement remains “necessary” for Student to receive specially designed instruction and related services to meet Student’s “unique needs.”
59. The program at Residential School continues to address Student’s educational and therapeutic needs on a daily basis. Having found Student’s educational needs are inextricably intertwined with Student’s disabilities, the Undersigned finds continued residential placement with the location of Residential School is appropriate.

#### ***IV. Appropriateness of IEPs***

##### *Present Levels, Identifying Areas of Need, and Related Services*

60. The IEP is the “centerpiece” of delivering FAPE for students with disabilities; 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).
61. When a school “completely ignor[es] the evidence” of a student’s deficit, “and ignor[es] the parent’s request” for the needed support to address the deficit, “the IEP created by [the school district] cannot ‘have reasonably been calculated to enable a child to make progress appropriate in light of the child’s circumstances.’” *Capistrano Unified School District v. S.W.*, 120 LRP 28361, (C.D. Cal., 2020).
62. The IEP must include the child’s full range of needs “whether they be academic, physical, emotional, or social.” *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1089 (1st Cir. 1993);

U.S. Dep't of Educ., Notice of Policy Guidance, 57 Fed. Reg. 49,275 (1992) (stating that an IEP must address “the full range of the child's needs”).

63. Specially designed instruction or “SDI” is defined by the IDEA as: “. . . adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—(i) To address the unique needs of the child that result from the child’s disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” 34 C.F.R. § 300.39(b)(3).
64. The Ninth Circuit Court of Appeals provided examples of Specially Designed Instruction that included: direction from a one-on-one educator, specially designed mental health services, extensive clinical interventions by a school district behavior specialist, “persistent teacher oversight, additional time to complete classwork or tests, shortened assignments, discretion to leave the classroom at will, or the option to complete classwork or tests in other rooms or with one-on-one support.” *L.J. v. Pittsburgh Unified District*, 835 F.3d 1168, 1177 (9th Cir., 2016).
65. Where an IEP team does not incorporate the evaluative materials and evidence of the student’s needs when drafting an IEP, the IEP is not designed to enable a student to make progress in light of her unique educational needs. *See S.B. v. New York City Dept. of Education*, 117 LRP 41952 (E.D.N.Y. 2017) (ignoring the student’s deficiencies relevant to her education needs outlined in a psychoeducational report when drafting the IEP).
66. The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 20 U.S.C. §1414(d)(1)(A)(i)(II)(III).
67. Related services under the IDEA means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 CFR 300.34(a).
68. Related services include “speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation . . . counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. *Id.*
69. Related services can also include school health services and school nurse services, social work services in schools, and parent counseling and training. *Id.*

70. Counseling services are services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. 34 CFR § 300.34 (c)(2).
71. Psychological counseling services include the following:
- a. Administering psychological and educational tests, and other assessment procedures;
  - b. Interpreting assessment results;
  - c. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  - d. Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
  - e. Planning and managing a program of psychological services, including psychological counseling for children and parents; and
  - f. Assisting in developing positive behavioral intervention strategies.

34 CFR § 300.34 (c)(10).

72. Psychological services must be provided when a student with a disability needs the services in order to receive a FAPE. *Burbank Unified Sch. Dist.*, 114 LRP 34255 (SEA CA 2014) (explaining a student’s clinically significant behavioral problems, caused by underlying anger and control issues, called for services offered at a proposed therapeutic program with psychiatric counseling, behavioral supports, and small group instruction. Additionally, the evidence showed that the student’s prior school was unable to manage or reduce escalating aggressive and sexualized behaviors, despite its adult-to-student ration and additional supports.)
73. “[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. 154, 158 (quoting 20 U.S.C. §§ 1401(9), (26), (29)).
74. The Undersigned finds the June 2025 IEP denies Student a FAPE as Student requires a residential placement to make educational, including both academic and functional, progress.

#### ***V. Publicly Placed Private School Students and Implementation***

75. Children with disabilities placed in, or referred to, private schools or facilities by the student’s school district, must be provided special education and related services, in accordance with an individualized education program. 20 U.S.C. § 1412(a)(10)(B).
76. Each state educational agency must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

- a. Is provided special education and related services:
  - 1) in conformance with an IEP that meets the requirements of 34 CFR 300.320 through 34 CFR 300.325; and
  - 2) at no cost to the parents;
- b. Is provided an education that meets the standards that apply to education provided by the SEA and local educational agencies, including the requirements of this part, except for 34 CFR 300.156 (c); and
- c. Has all of the rights of a child with a disability who is served by a public agency.

34 CFR § 300.146.

- 77. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324. 34 CFR § 300.325(a)(1).
- 78. The public agency referring the student must ensure that a representative of the private school or facility attends the meeting or otherwise include the private school representative in the IEP meeting. 34 C.F.R. § 300.325(a)(2).
- 79. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. 34 C.F.R. § 300.325 (c). *See*, 34 C.F.R. § 300.323(d)(1) (requiring each child's IEP to be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.)
- 80. The Fourth Circuit held in *Sumter County Sch. Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011), “the failure to perfectly execute an IEP does not necessarily amount to a denial of a free, appropriate public education.” Rather, “the failure to implement a material or significant portion or material portion of an IEP, can amount to a denial of FAPE.” (finding that the school district failed to implement a material portion of the student's IEP where the school failed to provide the 15 hours of ABA therapy required by the IEP and the staff did not understand or use proper ABA techniques).
- 81. The Undersigned finds Residential School materially implemented Student’s IEP. The concerns Respondent raised about Residential School’s implementation of Student’s IEP were created because of Respondent’s failure to provide the IEP timely and convene a BIP review meeting. The Undersigned faults Respondent for any failures of implementation of the BIP. Furthermore, Respondent’s staff’s complaints about the lack of production of data in charts and graphs is without merit. Residential School provided data, and Student continued making progress at Residential School.

**ISSUE - Whether Respondent provided Student a FAPE from July 10, 2024 to November 4, 2025?**

## **VI. Interim Placement – July 10, 2024 to November 4, 2024**

82. When a district is unable to maintain a student’s placement in a particular facility, the school district is required to provide the student with a similar placement which closely replicates the last placement. *K.K. v. William S. Hart Union High Sch. Dist.*, 2022 U.S. Dist. LEXIS 73451 at \*9-10 (C.D. Cal. Apr. 20, 2022).
83. “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007). However, “the materiality standard does not require the child to “suffer demonstrable educational harm in order to prevail.” *Id.*
84. The analysis of whether a school district failed to implement an IEP “focuse[s] on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.” *Wilson v. Dist. of D.C.*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011) (citations omitted); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (“[W]e cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education if there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit.”).
85. The Undersigned finds Respondent failed to implement Student’s IEPs as written from July 10, 2024 until November 4, 2024 when it placed Student at Residential School.
86. Respondent did not place Student at Residential School as soon as possible after Student’s August 9, 2024 acceptance into the school. The district did not even convene an IEP meeting until September 19, 2024, and did not implement the IEP in a residential setting on September 23, 2024 as the district indicated it would be.
87. Respondent collected minimal data to support implementation of Student’s August and September IEPs and did not refute Petitioner’s Expert #1’s testimony that Student was denied a FAPE from the time of Student’s discharge from Initial Residential School to November 4, 2024 as Student required a residential placement which was not provided at the time. T vol 4 p 519:16-21 (T of Petitioner’s Expert #1).

**ISSUE - Whether Respondent significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child?**

## **VII. Parental Participation and Predetermination**

88. The IDEA’s procedural requirements are purposefully designed to ensure that parents can meaningfully participate in the process of developing an IEP for their child. *See Rowley*, 458 U.S. at 205–06 (“It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians

a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.”); *see also* 34 C.F.R. § 300.322(a); N.C. Gen. Stat. § 115C-109.3(a) (guaranteeing the parent the right “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.”).

### Meaningful Participation

89. Parents must be afforded the opportunity to participate in IEP meetings. 34 C.F.R. § 300.322(a); N.C. Gen. Stat. § 115C-109.3(a).
90. Each LEA must “ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.” 20 U.S.C. § 1414(e). The IEP team is the primary group making decisions about the placement of students.
91. IEP meetings must be scheduled at a mutually agreed on time and place. 24 C.F.R. § 300.322(a)(2).
92. School districts must consider “information from a variety of sources, including aptitude and achievement tests, *parent input*, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior.” 34 C.F.R. § 300.306(c)(1)(i) (emphasis added).
93. “These procedures ‘which provide for meaningful parent participation are particularly important,’ and signal Congress's ‘effort to maximize parental involvement’ in each child's education.” *Forest Grove Sch. Dist. v. Student*, 2014 U.S. Dist. LEXIS 78571, at \*35 (D. Or. June 9, 2014), *aff'd*, 665 F. App'x 612 (9th Cir. 2016) (citing *Amanda J. ex rel. Annette J.V. Clark County Sch. Dist.*, 267 F.3d 877, 891 (9th Cir. 2001) and *Rowley*, 458 U.S. at 183 n. 6).
94. “Not only will parents fight for what is in their child's best interests, but because they observe their child in a multitude of different situations, they have unique perspective of their child's special needs.” *Id.* at \*34 (citing *Amanda J.*, 267 F.3d at 891).
95. During a meeting, an IEP team's responses to a parent's position “should be meaningful responses that make it clear that the state had an open mind about and actually considered the parents' points. This inquiry is inherently fact-intensive, but should identify those cases where parental participation is meaningful and those cases where it is a mere formality.” *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188-89 (11th Cir. 2014).
96. Parents are denied their right to meaningfully participate in the development of their child's IEP when a school district predetermines the child's placement, services, or educational programming decisions prior to an IEP meeting. *See Spielberg v. Henrico Cnty. Public Sch.*, 853 F.2d 256 (4th Cir. 1988) (finding the school district's decision to change a

student's placement before the IEP meeting violated the Education for All Handicapped Children Act, the predecessor to the IDEA); *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) ("Predetermination occurs when a state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team.").

97. Schools should give thought to the development of a student's IEP prior to the IEP meeting; however, "school officials must come to the IEP table with an open mind." *Doyle v. Arlington Cnty. Sch. Bd.*, 806 F.Supp. 1253, 1262 (E.D.Va. 1992), *aff'd* 39 F.3d 1176 (4th Cir. 1994).
98. "To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child." *R.L.*, 757 F.3d at 1188 (citing *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004)). When the school district "presents one placement option at the meeting and is unwilling to consider alternatives," its actions violate the IDEA. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 F. App'x 342, 344 (9th Cir. 2007); *see also R.L.*, 757 F.3d at 1189 (finding the school board predetermined the student's placement where it was "clear that 'there was no way that anything [the student's parents] said, or any data [they] produced, could have changed the [Board's] determination of' the appropriate placement").
99. "[A]ny pre-formed opinion the state might have must not obstruct the parents' participation in the planning process. Parental '[p]articipation must be more than a mere form; it must be *meaningful*.' It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *R.L.*, 757 F.3d at 1188 (*quoting Deal* 392 F.3d at 858) (emphasis in original).
100. As outlined *infra*, over the course of multiple IEP meetings, the actions by the school-based members of Student's IEP Team constituted substantive procedural violations that "seriously infringe[d] the parents' opportunity to participate in the IEP formulation process," *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992) (citations omitted).
101. The Undersigned finds the amalgamation of multiple denials of parental participation at each of the meetings amounts to a substantive violation as WSFCS deprived Student of educational benefits and interfered with the offer of and provision of a FAPE to Student. The WSFCS members of Student's IEP Team showed an unwillingness to consider any alternative besides a removal from the private placement during the June 2025 IEP meeting over parental objections.

### ***VIII. Procedural Violations***

102. The Supreme Court held in *Rowley* that "a court's inquiry" first requires the determination of whether the "[LEA] complied with the procedures set forth in the [IDEA], [a]nd second," whether the "[IEP] developed through the [IDEA's] procedures [is] reasonably

calculated to enable the child to receive educational benefits.” 458 U.S. 176, 206–07 (1982).

103. A procedural violation is a substantive denial of FAPE when it (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to the parents’ child; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).
104. A substantive procedural violation is one that “seriously infringe[s] the parents’ opportunity to participate in the IEP formulation process,” *W.G.*, 960 F.2d at 1484, or causes the child to lose any educational opportunity, *Burke Cnty. Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990).
105. In the Fourth Circuit, impeding a parents’ opportunity to participate in the decision-making process is not sufficient alone to create a substantive violation, the procedural violation must cause a deprivation of educational benefits or interfere with the provision of a free appropriate public education. *See, e.g., T.B. v. Prince George’s Cnty. Bd. of Educ.*, 897 F.3d 566, 575 (4th Cir. 2018) (upholding the ALJ and deciding “no type or amount of special education services would have helped T.B. achieve a FAPE” despite the district’s “inexcusable” child find violation because he “simply does not want to go to school”).
106. “Multiple procedural violations [] may cumulatively result in the denial of a FAPE even if the violations considered individually do not.” *L.O. v. N.Y.C. Dep’t of Educ.*, 822 F.3d 95, 109 (2d Cir. 2016) (internal quotation marks omitted) (quoting *R.E. v. N.Y.C. Dep’t of Educ.*, 694 F.3d 167, 190 (2012)).

## **IX. Remedies**

107. The IDEA confers “‘broad discretion’ on the court when fashioning an appropriate remedy.” *M.S. v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 325 (4th Cir. 2009) (quoting *Burlington v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369 (1996)).
108. “Courts fashioning discretionary equitable relief under the IDEA must consider all relevant factors . . . .” *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 16 (1993). “[O]nce a court holds that the public placement violated [the] IDEA, it is authorized to ‘grant such relief as the court determines is appropriate.’” *Id.* at 15-16. *See* 20 U.S.C. § 1415(i)(2)(C)(iii).
109. “The relief granted by courts under section 1415(i)(2)(C)(iii) is primarily compensatory education. Compensatory education, however, is not defined within the IDEA and is a judicially created remedy. It is intended as ‘a remedy to compensate [the student] for rights the district already denied . . . because the School District violated [the] statutory rights while [the student] was still entitled to them.’” *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717 (3d Cir. 2010) (citing *Lester H. v. Gilhool*, 916 F.2d 865, 872(3d Cir. 1990)).

110. Courts may also order the school district to take specific actions, such as requiring the school district to conduct evaluations, hire consultants, develop an IEP, and implement an IEP. *See, e.g., K.I. v. Montgomery Publ. Schs.*, 805 F. Supp. 2d 1283, 1299 (ordering the school district to evaluate the child and develop a new IEP); *P. v. Newington Bd. of Educ.*, 546 F.3d 111, 123 (2d Cir. 2008) (upholding the hearing officer’s mandate that the school district retain an inclusion consultant for a year and complete an FBA as the remedy appropriately addressed the problems with the IEP).
111. The Undersigned finds Student is entitled to relief for Respondent’s denying Student a FAPE. Student is entitled to ongoing, continued placement at a therapeutic, residential school, which is currently Residential School. Student is entitled to the services of an independent consultant, independent evaluations, and a new IEP. The Undersigned outlines the specifics of this relief to which Student is entitled *infra*.

### **FINAL DECISION**

**BASED** upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

1. Petitioners have met their burden of proof to show by a preponderance of the evidence that Respondent failed to comply with the procedural and substantive requirements of the IDEA resulting in a denial of FAPE to Student and meaningful participation of Parent in the development of appropriate IEPs for Student.

#### *Continued Residential Placement*

2. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes Student requires continued residential placement. Therefore, the Undersigned **ORDERS** Respondent to revise the location of all Student’s services within Student’s IEP to be in the “residential” setting.
3. The Undersigned **ORDERS** that Student’s IEP placement shall remain residential for a full academic year. *See* T vol 4 p 564:24-565:3 (T of Petitioner’s Expert #1). Therefore, Respondent must maintain Student’s placement as residential until at least the end of the 2025-2026 school year.
4. The Undersigned finds Residential School has made progress in providing for Student’s academic and functional needs. Therefore, the Undersigned **ORDERS** Respondent to continue the location of Student’s residential placement at Residential School until the end of the 2025-2026 school year.

#### *Comprehensive Independent Evaluations*

5. The Undersigned finds Student requires additional evaluations to assist Student’s IEP team with determining present levels and appropriate goals for implementation.

6. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes Petitioners are entitled to independent educational evaluations for the following evaluations by providers of Petitioner's choice: a comprehensive psychoeducational evaluation; an occupational therapy evaluation; and a functional behavior assessment.

Independent Consultant

7. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes Student is entitled to the ongoing services of an Independent Consultant.
8. The Undersigned ORDERS WSFCS to retain Petitioner's Expert #1 as an independent consultant within thirty (30) calendar days of the entry of this Final Decision. If Petitioner's Expert #1 is unable or unwilling to serve as an independent consultant, Petitioner shall give Respondent the choice of two (2) similarly qualified individuals to serve in that role who will be, at a minimum, a Board-Certified Behavior Analyst who specializes in special education at an advanced level and understands and has experience with children with autism spectrum disorders. The consultant will work with WSFCS and the residential placement for the entirety of the time Student remains in a residential placement.
9. The Undersigned ORDERS WSFCS to hire the independent consultant to draft an IEP for Student, to attend Student's IEP meetings, to observe Student as often as the consultant deems necessary, to provide coaching to the residential school on contributing to the IEP meetings as often as the consultant deems necessary, and to provide training to WSFCS staff and the residential school staff.
10. The Undersigned ORDERS WSFCS to hire the independent consultant to provide training to all staff who attended Student's IEP meetings since July 2024 on parental participation at IEP meetings, working with students placed at residential schools, working with students with significant trauma, appropriate data collection, and working with Student's residential placement to support Student. The Undersigned ORDERS WSFCS to complete this training no later than forty-five (45) days following the entry of this order.

New IEP

11. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes Student requires a new IEP to receive a FAPE.
12. The Undersigned ORDERS WSFCS to convene an IEP meeting where the Consultant creates an IEP with specific measurable, ambitious goals, appropriate service delivery and related services, to be delivered in the educational placement in Student's least restrictive environment, which is the residential setting. The new IEP shall incorporate findings from this Final Decision and the independent educational evaluations. The Undersigned ORDERS WSFCS to provide a draft, prepared by the Consultant, of this IEP to Petitioner

at least five (5) business days in advance of the IEP meeting to be held at a mutually agreeable time.

13. The Undersigned ORDERS WSFCS to convene an IEP meeting to revise Student's Behavior Intervention Plan to incorporate the recommendations in Petitioner's Expert #1's May 2023 FBA.
14. Petitioners are the prevailing party on the Issues identified for hearing.

### **NOTICE OF APPEAL RIGHTS**

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

**Any party aggrieved by the findings and decision of an Administrative Law Judge 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 the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.**

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

### **STAY OF FINAL DECISION**

This Final Decision is immediately enforceable by the State Board of Education and remains in effect until the party aggrieved moves the reviewing court for a Stay of the Final Decision and the reviewing court grants the Stay pursuant to N.C. Gen. Stat. § 150B-48.

**IT IS SO ORDERED.**

Original Final Decision Served on January 20, 2026.  
Redacted Final Decision For Publication Purposes Only.  
Served on the 1st day of April, 2026.



David F Sutton  
Administrative Law Judge