

**BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
SUSIE HEDALEN
THE STATE OF MONTANA
Nos. OSPI 2025-01 and OSPI 2025-02 DP
([REDACTED] Public Schools and [REDACTED])**

**HEARING OFFICER'S
MEMORANDUM DECISION AND ORDER**

THIS MATTER arises on the Petitioners' consolidated First and Second Complaints for Due Process. For the following reasons, the First Complaint for Due Process is granted-in part, and the Second Complaint for Due Process is dismissed with prejudice.

PROCEDURAL BACKGROUND

Petitioners filed their First Complaint for Due Process as against [REDACTED] [REDACTED] and [REDACTED] School District [REDACTED] with the Superintendent of Public Instruction on August 21, 2025 (hereinafter Complaint 1). *See* Complaint 1, OSPI 2025-01 DP. On August 29, 2025 the Respondents filed their Response to Complaint for Due Process (hereinafter Response 1). *See* Response 1. This Hearing Officer was appointed on September 3, 2025. *See* Order Appointing Hearing Officer, September 3, 2025. Then, on September 10, 2025, a second due process request was filed by Petitioners against [REDACTED] School District No. 2. *See* Complaint for Due Process, September 10, 2025, OSPI 2025-02 DP (hereinafter Complaint 2). However, a Notice of Hearing regarding Complaint 1 was entered on September 12, 2025. *See* Notice of Hearing, September 12, 2025. On September 16, 2025 a Notice of Filing of Due Process Complaint (DP-02) was entered. *See* Notice of Filing of Due Process Complaint, September 16, 2025. A Motion to Extend Deadline

was filed by Respondents on September 18, 2025. *See Respondents' Unopposed Motion to Extend Deadlines, September 18, 2025.* Also on September 8, 2025, there was an email request to extend the Hearing Officers' decision due date. *See Email Request to Extend IHO Decision and Findings and Conclusions Due Dates, September 18, 2026.* An order revising the notice of hearing was also entered on September 18, 2026. *See First Revision to Notice of Hearing, September 18, 2025.*

The Respondents responded to Complaint 2 on September 22, 2025. *See Respondents' Response to Complaint for Due Process, September 22, 2025 (hereinafter Response 2).* This Hearing Officer was appointed on September 23, 2025 to hear the action, as well, regarding Complaint 2. *See Order Appointing Hearing Officer, September 23, 2025.* On September 25, 2025 both cases (Complaint 1, OSPI 2025-01 DP, and Complaint 2, OSPI 2025-02 DP) were consolidated to be heard in one due process hearing. *See Consolidation Order, September 25, 2025.*

Respondents filed their Statement of Issues on October 6, 2025, *see Respondents' Joint Statement of Issues, October 6, 2025,* as did the Petitioners. *See Petitioners' Statement of Issues, October 6, 2026.* Respondents then moved to extend their expert disclosure dates, *see Respondents' Unopposed Motion for Extension of Expert Disclosure Deadline, October 13, 2025,* with a resulting order entered on October 14, 2025. *Order Expert Disclosure Revision, October 14, 2025.* A letter order was entered on October 17, 2025 regarding discovery filings and exhibit submissions. *See Letter Order Discovery Filings and Exhibit Submissions, October 17, 2025.*

Into November 2025, Respondents moved to compel discovery and extend all deadlines. *See Respondents' Motion to Compel Discovery and Motion for Extension of*

All Deadlines and Hearing, and Brief in Support of Motions, November 6, 2025.

Petitioners opposed that motion. *See* Petitioners' Response in Opposition to Motion to Compel, November 7, 2025. A resulting order compelling discovery in-part was entered on November 11, 2025. *See* Order Compelling Discovery In-Part, November 11, 2025.

Also on November 11, 2025 the Petitioners moved for a protective order regarding depositions. *See* Petitioners' Motion for Protective Order Depositions, November 11, 2025. Respondents' sought clarity, through an email, as to deadlines on November 11, 2025. *See* Email Request, Respondents, Clarity as to Deadlines, November 12, 2025. On the 13th of November 2025 the Respondents filed their joint responses to the Petitioners' request for a protective order. *See* Respondents' Joint Response to Petitioners' Motion for Protective Order, November 13, 2026. A supplemental order regarding discovery was then issued. *See* First Supplement to Order Compelling Discovery In-Part, November 14, 2025.

Petitioners filed their consolidated pretrial motions on November 14, 2025. *See* Petitioners' Consolidated Pretrial Motions, November 14, 2025. Respondents moved to dismiss the second complaint on November 14, 2025. *See* Respondents' Motion to Dismiss Second Complaint and Brief in Support, November 14, 2025. On November 17, 2025 an order was entered addressing the Petitioners' request for a protective order. *See* Order on Petitioners' Motion for Protective Order, November 17, 2025. Petitioners sought a revision and extension of dates on November 17, 2025. *See* Email, Petitioners, Proposed Revised Schedule of Dates, Extension, November 17, 2025. Also on November 17, 2025 the Respondents proposed an extension of dates with an extension request. *See* Email Respondents' Proposed Schedule of Dates, Extension, Date Certain, November 17,

2025. A second revision notice of hearing order was entered on November 18, 2025. *See* Second Revision to Notice of Hearing and Hearing Officer Decision Extension Order, November 18, 2025.

Petitioners' responded to the Respondents' request to dismiss the second complaint on November 18, 2025. *See* Petitioners' Response in Opposition to Respondents' Motion to Dismiss Second Complaint, November 18, 2025. On November 19, 2025 an amended second revision to the notice of hearing was entered. *See* Amended Second Revision to Notice of Hearing and Hearing Officer Decision Extension Order, November 19, 2025. Also on November 19, 2025, an order was entered denying the Respondents' Motion to Dismiss as to Complaint 2. *See* Order Denying Respondents' Motion to Dismiss (DP-02), November 19, 2025.

The Respondents responded to the Petitioners consolidated pretrial motions on November 21, 2025. *See* Respondents' Joint Response to Complainants' Consolidated Pre-Trial Motions, November 21, 2025. On November 24, 2025, the Respondents filed a correction notice to their joint response regarding Petitioners' consolidated pretrial motions. *See* Respondents' Notice of Correction of Joint Response to Complainants' Consolidated Pretrial Motions, November 24, 2025. An order was entered on November 24, 2025 addressing the Petitioners' consolidated pre-trial motions. *See* Order Addressing Petitioners' Consolidated Pre-Trial Motions, November 26, 2025.

Discovery issues arose in December 2025.¹ On December 11, 2025 Respondents filed a Second Motion to Compel Discovery. *Id.* On December 12, 2025 the Petitioners

¹ There were a number of subpoenas issued, revised, requests to quash, as well as orders, between January 5, 2026 and January 23, 2026, which will not be detailed here.

filed their Response to Respondents' Second Motion to Compel. *Id.* On December 12, 2025 the Respondents filed a Motion for Clarification. *Id.* On December 12, 2025 an Order on the Motion to Clarify was entered. *Id.* A Cautionary Order to Petitioners was entered on December 17, 2026. *See* Cautionary Order, December 17, 2025. On December 19, 2025 a Notice of Compliance by Petitioners was filed, noting citations were not valid. *Id.* On December 30, 2025 the Petitioners filed a Motion to Enforce and Clarify the November 26, 2025 Discovery Order. *Id.* On December 31, 2025 the Petitioners filed a Motion for Clarification Regarding 2022 Internal Staff Emails. *Id.* Also on December 31, 2025 the Respondents filed their Response to Complainants' Motion to Enforce and Clarify Discovery Order; Motion for Clarification of Discovery Scope; and Motion for Protective Order. *Id.*

The case moved forward into 2026. An order addressing the request to enforce, scope, and response was entered on January 5, 2026. *See* Order Addressing Motion to Enforce, Motion to Scope, and Response, January 5, 2026. On January 9, 2026 the Petitioners moved for a protective order, *see* Petitioners' Motion for Protective Order, Exclusion and Destruction or Return of Medical Records, January 9, 2026, to which Respondents responded on January 10, 2026, *see* Respondents' Objection to Motion for Protective Order, Exclusion, and Destruction or Return of Medical Records, January 10, 2026, with an order entered addressing the issues on January 12, 2026. *See* Order on Motion for Protection, January 12, 2026. An order on the request to quash subpoenas was also entered on January 12, 2026. *See* Order on Motion to Quash, January 12, 2026. The PreHearing Order was entered on January 12, 2026. *See* PreHearing Order, January 12, 2026.

Respondents filed their Joint Witness and Exhibit List on January 16, 2026. *See* Respondents' Joint Exhibit and Witness List, January 16, 2026. On January 19, 2026 Respondents filed an Amended Witness List. *See* Respondents' Amended Witness List, January 19, 2026. The Petitioners filed their Witness and Exhibit List on January 19, 2026. *See* Petitioners' Witness and Exhibit List, January 19, 2026. Petitioners filed a supplemental list of exhibits on January 21, 2026. *See* Petitioners' Supplemental Exhibit List, January 21, 2026. Petitioners filed an amendment to their witness list on January 21, 2026. *See* Petitioners' Amended Witness List, January 21, 2026.

Motions in Limine were filed by Respondents on January 21, 2026. *See* Respondents' Joint Motions in Limine, Objections to Evidence, and Brief in Support, January 21, 2026. Petitioners responded to Respondents' Motions in Limine on January 22, 2026. *See* Petitioners' Response to Respondents' Motions in Limine and Objections to Evidence, January 22, 2026. Also on January 22, 2026 the Petitioners filed their Motion in Limine. *See* Petitioners' Motion in Limine Regarding Respondents' ██████ Clinic Exhibits, January 22, 2026. On January 23, 2026 the Respondents filed their response to Petitioners's Motion in Limine. *See* Respondents' Joint Response to Petitioners' Motion in Limine, January 23, 2026. Respondents filed an amended redline version of its Exhibit List on January 23, 2026. *See* Amended Redline Exhibit List, January 23, 2026. An administrative order was entered on January 23, 2026, *see* Administrative Hearing Order, January 23, 2026.

The evidentiary phase of the Due Process Hearing commenced on January 26, 2026, *see* tr. vol. 1, and continued through January 30, 2026. *See* Tr. Vols. 2, 3, 4, and

5. After the close of the first day of hearing an order was entered addressing the Motions in Limine. *See Orders Addressing Motions in Limine, January 26, 2025.*

Respondents were well-represented by their respective trial counsel. *Pro se* Parent was well-versed, and due process was provided. Proposed Findings of Fact and Conclusions of Law, with written argument, were ordered due on or before March 27, 2026. Tr. Vol. 5, p. 117. A joint request by the parties was made to extend the decision date to April 27, 2026, tr. vol. 5, p. 117, which was granted. *Id.* Another request by Respondents was made on March 26, 2027, for an extension of the proposed Findings and Conclusions and the briefing schedule, to be due on April 3, 2026, as well as for the Hearing Officer's Decision to be due on May 4, 2026. *See Respondents' Joint Motion for Extension of All Deadlines, March 26, 2026.* The Motion was granted on March 26, 2026. *See Briefing, Proposed Findings and Conclusions, and Extension Order, March 26, 2026.*

The Respondents filed their Joint Proposed Findings of Fact and Conclusions of Law on April 4, 2026. Respondents' Joint Proposed Findings of Fact and Conclusions of Law, April 4, 2026 (Rs' F&C). Their Post Hearing Brief was filed on April 4, 2026. Respondents' Post Hearing Brief, April 4, 2026. The Petitioners filed proposed Post Findings of Fact and Conclusions of Law on April 4, 2026. Petitioners' Post Findings of Fact and Conclusions of Law, April 4, 2026 (Ps' F&C). The Petitioners did not file a separate closing brief or argument.

This decision is due on or before May 4, 2026. *See Briefing, Proposed Findings and Conclusions, and Extension Order, March 26, 2026.*

ISSUES PRESENTED BY THE PARTIES

1. Whether Respondents engaged in substantive violations of FAPE by failing to design an IEP that was reasonably calculated to provide Student a Free Appropriate Public Education and enable him to make meaningful progress based on his diagnostic realities and how these realities negatively impact his educational performance areas of academics, communication, social/ emotional development, and functional/independent living skills by relying on inaccurate present levels of performance, failing to include individualized, evidence-based goals, supports or accommodations, failing to address all disability-related needs, failing to integrate evidence-based interventions or sufficient service intensity, or failing to provide needed accommodations or supports tied to those needs.
2. Whether Respondents engaged in procedural and substantive violations of FAPE by materially failing to implement key provisions of Student's IEP, including related services, behavioral supports, or Extended School Year (ESY) services, and whether they used unqualified personnel or improperly employed seclusion.
3. Whether Respondents engaged in procedural and consequential substantive violations of FAPE by failing to review and revise Student's IEP when his lack of expected progress or regression was evident, by adjusting goals, supports, or services.
4. Whether Respondents engaged in procedural with consequential substantive violations of FAPE by failing to conduct comprehensive evaluations in all areas of suspected disability (including Autism, communication/speech, occupational therapy, and behavior), even after

diagnostic evidence and parental requests, thereby impeding appropriate programming.

5. Whether Respondents engaged in procedural and substantive violations of FAPE by failing to conduct an adequate Functional Behavior Assessment (FBA) or to develop and implement a Behavior Intervention Plan (BIP) tailored to Student's disability-related behavior, or instead employed punitive discipline without addressing functional behavior needs.

6. Whether Respondents engaged in procedural with consequential substantive violations of FAPE by violating procedural safeguards by predetermining or unilaterally changing Student's placement, failing to provide prior written notice when refusing or proposing changes or before making placement changes, suppressing parental advocacy, ignoring or discounting parental input or advocacy, denying meaningful participation or review of threat assessments, refusing to correct factual errors, or otherwise interfering with meaningful parental participation, such that those violations impeded Student's right to FAPE or the parents' opportunity to meaningfully participate.

7. Whether Respondents engaged in procedural and substantive violations of FAPE by not properly conducting a manifestation determination, considered whether misconduct resulted from failure to implement the IEP, developed or revised a BIP if needed, provided compensatory or interim services during removals, and returned Student to his prior placement unless agreed otherwise.

Respondents positions as to allegations in OSPI DP-01 are:

8. Respondents provided an IEP that was reasonably calculated to provide Student with a Free Appropriate Public Education.
9. Respondents did not violate the IDEA by not including an ASD diagnosis within Student's IEP.
10. Respondents adequately considered parental concerns.
11. Respondents considered Student's potential need for additional services and supports in implementing his IEP.
12. Respondents provided a Functional Behavior Assessment and/or Behavioral Intervention Plan through therapeutic supports and ongoing assessment in the special day school. Respondents were following the continuum of services. Respondents were assessing and addressing Student's behaviors through the therapeutic support he was receiving. Upon return to ■■■, ■■■ was conducting daily assessment of Student in the specialized learning environment in an effort to develop appropriate supports for his placement in the Base classroom. This process was incomplete due to his disenrollment from ■■■ by his parents.
13. Respondents utilized reasonable behavioral interventions and disciplinary measures.
14. Student's placement with a regular education teacher with oversight by a licensed special education teacher, in a special day school setting, provided for best practices for service delivery.
15. Respondents adequately provided an Extended School Year.

16. Respondents correctly reviewed, developed, and implemented Student's IEP.
17. ■■■ placement of Student within a different classroom did not amount to a "change in placement" but rather a change in location.
18. ■■■ discharge of Student and his return to ■■■ was in line with the contract between the Respondents, and ■■■ agreement with Complainants and was addressed by ■■■ appropriately.
19. Respondents adequately addressed Student's social, emotional, and behavioral services, including social communication.
20. Student did not meet therapeutic goals or have school attendance sufficient for the Respondents to adequately consider academic, IEP, or social/emotional progress.
21. The Hearing Officer does not have jurisdiction to consider any issues other than issues related to Respondents' provision and offer of a FAPE under the IDEA, its regulations, and the Montana special education regulations.

Respondents positions as to allegations in OSPI DP-02 are:

22. Complainant's Second Due Process Complaint cannot continue as all allegations in the Complaint relate to issues occurring more than two years prior to the filing of the Due Process Complaint.
23. ■■■ properly filed an expedited due process complaint, and Complainants ultimately consented to placement, which does not amount to a violation of the IDEA.

See Statements of Issues, Petitioners and Respondents, October 6, 2025.

Note that only those issues preserved in the Findings and Conclusions and Arguments of the parties will be addressed; otherwise they are abandoned. *See* PreHearing Order, January 12, 2026.

RELEVANT LEGAL OVERVIEW

The burden of proof rests with the party challenging the IEP. *See Schaffer v. Weast*, 546 U.S. 49 (2005); *Johnson v. Indep. Sch. Dist. No. 4*, 921 F.2d 1022 (10th Cir. 1990). Once a subject-matter jurisdictional challenge is made, the responding party has the burden to establish jurisdiction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 2136, 119 L.Ed. 2d 351 (1992). In this action, the burdens rest, therefore, with the Petitioners.

A twofold inquiry is demanded to determine if a child has been provided with a free appropriate public education. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 207 (1982). The initial inquiry is whether the State has complied with the procedures set forth in the Act. The second inquiry is whether the individualized educational program developed through the procedures of the Act is reasonably calculated to enable the child to receive educational benefits. *Id.*, 458 U.S. at 207. “[A] child is entitled to ‘meaningful’ access to education based on her individual needs.” *Fry v. Napoleon Cmty. Sch.*, 580 U.S.154, 137 S. Ct. 743, 753-754 (2017). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999 (2017).

The educational program offered by the IEP must be “appropriately ambitious in light of [the child’s] circumstances.” *Andrew F*, 137 S. Ct. at 1000. The “unique

circumstances” of the child for whom the IEP was created determine the adequacy of the offered IEP. *Andrew F*, 137 S. Ct. at 1001. Deference is given to the expertise and exercise of judgment by the school authorities, with parents and school representatives to be given the opportunity to fully air their opinions regarding how an IEP should progress. *Andrew F*, 137 S.Ct. at 1001. The issue for review is to determine if the IEP is reasonable, not whether it is regarded as ideal. *Andrew F*, 137 S. Ct. at 999.

All children with disabilities who are in need of special education and related services are to be identified, located, and evaluated. **See** 20 U.S.C. § 1412(a)(3); 34 CFR § 300.111(a)(i) (“child find”). All children residing in the local educational agency’s (LEA) jurisdiction must be identified, located and evaluated. **See** 20 U.S.C. § 1412(a)(3)(A); 34 CFR § 300.111(a)(1). This “child find” obligation is imposed on the LEA for a child suspected of a disability and in need of special education, even though the child may advance from grade to grade. *See* 34 CFR § 300.111(c)(1). The responsibility for the evaluation lies with the LEA. **See** *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1310 (D. Utah 2002). The identification and evaluation must be made within a reasonable time once school officials are placed on notice of behavior likely to indicate a disability. **See** *Id.* at 1311. That is, there must be a suspicion of disability, rather than actual knowledge of the underlying qualifying disability. **See** *Regional Sch. Dist. No. 9 v. Mr. and Mrs. M.*, 53 IDELR 8, 109 LRP 51058 (D.C. Conn. 2009). An LEA’s failure to meet its “child find” obligation is a cognizable claim. **See** *Compton Unified Sch. Dist. v. Addison, et al.*, 598 F.3d 1181, 1183-84 (9th Cir. 2010). Eligibility for special education benefits may be considered, as well. **See** *Hansen v. Republic R-III Sch. Dist.*, 632 F.3d 1024, 1026 (8th Cir. 2011). A “difficult and sensitive” analysis can be required

with these issues. *Mr. I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1,4 (1st Cir. 2007)(quoting *Greenland Sch. Dist. v. Amy*, 358 F3d. 150, 162 (1st Cir. 2004).

A disability is suspected when the district is put on notice that symptoms of disability are displayed by the child. **See** *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1120 (9th Cir. 2016). Notice may come in the form of expressed parental concerns about a child’s symptoms, expressed opinions by informed professionals, or less formal indicators, like the behaviors in and out of the classroom. *Id.* at 1121.

A “child with a disability” is defined as a child evaluated and determined to be eligible for, among other things, Autism, and other health impairment. **See** 34 CFR § 300.8(a). To be qualified, the child must be in need of special education and related services. *Id.*

A Hearing Officer’s determination must generally be based on substantive grounds as to whether a child received a free appropriate public education. **See** 34 CFR § 300.513(a). If a procedural violation occurs, then it results in a denial of a free appropriate public education only if the procedural inadequacies: (1) impeded a child’s right to a free appropriate public education, (2) significantly impeded the parent’s opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. *Id.* at (a)(2). A Hearing Officer may order an LEA to comply with procedural requirements. **See** 34 CFR § 300.513(a)(3). “The only relief that an IDEA officer can give . . . is relief for the denial of a FAPE.” *Fry*, 137 S. Ct. at 753.

Failure of the LEA to meet its child find duty to locate, identify, and evaluate a student with a disability amounts to a procedural violation. **See** *Timothy O.*, 822 F.3d at

1124. Similarly, improper implementation of an IEP can run afoul of the procedural requirements demanded by the IDEA. **See** *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 432 (9th Cir. 2010)(citations omitted). An IEP meeting must be conducted within 30 days from a determination that the student needs special education and related services. **See** 34 CFR § 300.323(c)(1).

Written notice is required regarding issues for the identification, evaluation or placement of a child. **See** 34 CFR § 300.503. Parents are afforded an opportunity to participate in the IEP meetings by ensuring the district provides them with a notice of the meeting, which is to include, among other things, the purpose, time, and location of the meeting, as well as who will be present. **See** 34 CFR § 300.345(a). The IDEA requires notice of a proposed change before the change is made – not notice of the proposed change prior to commencement of the IEP meeting where the change will be discussed. **See** *Masar v. Bd. of Educ. of the Fruitport Cmty. Schs.*, 39 IDELR 239, 103 LRP 37950 (W.D. Mich. 2003). **See also** *Tenn. Dep't. of Mental Health and Mental Retardation v. Paul B.*, 88 F.3d 1466, 1481 (6th Cir. 1996) (failure to provide notice of “stay-put” not prejudicial for summary judgment proceedings). Nonetheless, a predetermination by the district of the student’s placement and services does not allow the student’s parents to meaningfully participate in the process and results in substantive harm to the student. **See** *Deal v. Hamilton Cnty. Bd. of Ed.*, 42 IDELR 109, 104 LRP 59544 (6th Cir. 2004).

A school district must give prior written notice whenever it proposes to change, or it refuses to change, any aspect of a child’s education. 20 U.S.C. § 1415(b)(3).

The IEP team for a child with a disability includes: the parents of the child, not less than one general education teacher of the child (if the child is or may be participating in

the general education environment), not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child, a district representative who: (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) is knowledgeable about the general education curriculum; and (iii) is knowledgeable about the availability of district resources, an individual who can interpret the instructional implications of evaluation results, at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, included related services personnel as appropriate, and, whenever appropriate, the child. **See** 34 CFR § 300.321.

An appropriate plan considers the (1) strengths of the child; (2) the concerns of the parents for enhancing the education of their child; (3) the results of the initial or most recent evaluation of the child; and (4) the academic, developmental, and functional needs of the child. **See** 34 CFR § 300.324(a). Communication needs and the use of assistive technology must be considered, as well. *Id.* Related services are 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). **See also** *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 891 (1984)(services to aid student to benefit from special education).

As articulated in *Tatro, id.*, to be a related service, the child must have a disability to require special education services under the IDEA, the service must be necessary to aid the child with the disability to benefit from the special education, and the service must be performed by a non-physician. *Id.*

Among other things, when the child's behavior impedes his learning or that of others, then positive behavioral interventions, supports, and other strategies must be considered by the IEP team to address that behavior. 34 CFR § 300.24(a)(2)(I). A student may be removed from his regular classroom if necessary to protect his or her safety or the safety of other students. *See* 20 U.S.C. § 1412(a)(5); *Rowley*, 458 U.S. at 181, n.4.

The IEP is to be implemented as soon as possible after the IEP meeting. 34 CFR § 300.323(c)(2).

The reimbursement test to employ for unilateral parental placement in a private school is generally described as the Burlington-Carter test, that is: (1) whether the school district provided a FAPE, and, if not, (2) whether private placement is appropriate, with (3) a consideration of the equities. ***See*** *Sch. Comm. of Burlington v. Mass. Dept. of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). ***See also*** 34 C.F.R. § 300.148(c) .

Hearing Officers have authority to grant relief as deemed appropriate based on their findings. ***See*** 20 U.S.C. § 1415(e)(2). Equitable factors are considered in fashioning a remedy, with broad discretion allowed. ***See*** *Florence Cnty. Sch. Dist. v. Carter ex rel. Carter*, 510 U.S. 7, 16 (1993). The form of compensatory education as a remedy is intended to cure the deprivation of the student's rights while reviewing the length of the inappropriate placement. ***See*** *Murphy v. Timberlane*, 973 F.2d 13 (1st Cir. 1992). As to the compensatory education component of the remedy, under persuasive authority for a qualitative approach, compensatory education awards should be reasonably calculated to provide the student with the education benefits which the student should have received had the district provided the services in the first place. ***See*** *Reid ex rel. Reid v. Dist. of*

Columbia, 401 F.3d 516 (D.C. Cir. 2005). Indeed, even with a free appropriate public education denial, subsequent placement may remedy the prior violation. *Wheaten v. Dist. of Columbia*, 55 IDELR 12 (D.D.C. 2010). Wide discretion to fashion equitable relief includes the ability to decline to award any equitable relief at all, due, for instance, to insufficient evidence to adequately catalogue services and expenses, and particularly if the proposed relief would have no effect on the student's education. *See Chavez v. N.M. Pub. Educ. Dep't.*, 621 F.3d 1275, 1284 (10th Cir. 2010)(persuasive). Procedural defects must amount to substantive harm for compensatory services. *Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.*, 520 F.3d 1116 (10th Cir. 2008)(persuasive).²

FINDINGS OF FACT

1. Student is currently 14 years of age. *See* P-21 (noting birth date at time, now adding years from then).
2. Student is being home-schooled in Montana. P-141.
3. Student began home-school after removal by Parent on about March 17, 2025. P-141.
4. Student is not receiving special education services through Montana's educational system. P-141.
5. As of at least March 17, 2025, [REDACTED] Public Schools stated it would provide a FAPE to Student should Student enroll 100% of the time in the public school. R-21.
6. In September of 2022 Student had been provided a medical diagnosis of Autism, through a psychiatric neuropsychological evaluation. P-91.

² Any citation to case law outside of the Ninth Circuit will be as persuasive only.

7. In relevant part, Student was enrolled as a student at [REDACTED] as of September 10, 2023, with services arising under the August 25, 2023 IEP, although not finalized and signed until September 29, 2023 (hereinafter the August 25, 2023 IEP). P-91.

8. [REDACTED] is a public therapeutic day school program setting for students who qualify for special education services, providing educational services while embedding a therapeutic component throughout the day, including individual and group therapy intended to create an environment to address the students' education and behavioral issues. Tr. Vol. 3, pp. 18-23.

9. [REDACTED] services are provided throughout the day, integrated throughout the school, allowing for continuous coaching and skill development. P-19; Tr. Vol. 3, pp. 19-23, 53-55.

10. [REDACTED] educators were aware of the medical diagnosis of Autism. Tr. Vol. 3, pp. 213- 216.

11. [REDACTED] held an agreement with Student's home district, [REDACTED] Public Schools, to provide education services to Student. P-19; Tr. Vol. 3, pp. 18-23, 92.

12. [REDACTED] and [REDACTED] held a contract between themselves to provide therapeutic special education to the Student, conditioned on either party having the option at will to terminate the contract and educational service implementation to then revert to [REDACTED] Public Schools, with that language contained in the Student's relevant IEPs. P-19, P-20, P-21; Tr. Vol. 3, p. 92.

13. Student had an IEP in effect as of September 10, 2023. P-19.

14. The disability category was as "Other Health Impaired." P-19.

15. Parent expressed her concern in the August 25, 2023 IEP meeting, that in addition to Student's diagnoses of Tourette Syndrome, ADHD, and PTSD, that Student should be evaluated for Autism. P-19.

16. Expert T opines that in addition to the medical diagnosis of Autism, there is a behavioral educational connection requiring the need for an evaluation due to Student's significant difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests for an educational need. P-91. Tr. Vol. 1, pp. 163-168.

17. Weight is given to Expert T's opinion on this subject.

18. Student's significant difficulties comport with Montana's noted educational characteristics, *see* ARM § 10.16.3011, for a student to be identified as having Autism arise when comprehensively evaluated due to social communication; social interaction; and in restricted and repetitive behaviors and interests.

19. ██████████ did not conduct a comprehensive evaluation for Autism. Tr. Vol. 3, pp. 213-214.

20. Parent stated that she did not want a comprehensive evaluation at that time, waiting instead for another type of independent educational evaluation, although that evaluation is not part of the record, if it did arise. P-19; P-30.

21. The August 25, 2023 IEP did not include occupational therapy and language services. P-19.

22. Social communication and restrictive or repetitive behaviors are associated with Autism. P-91.

23. A Functional Behavioral Assessment had not been conducted. Tr. Vol. 3, pp. 218-220.

24. Behavior approaches for the Student did not document functions of behavior, with ongoing daily discussion being the behavior technique, based on personal observation without a data driven system, and without measurable baselines, function-based interventions, quantifiable behavioral data, and data-driven monitoring. Tr. Vol. 1, pp. 195-202, 212-213; Vol. 4, pp. 79-80.

25. Weight is given to Expert T opinions on the lack of appropriate behavioral assessments for the Student, as well as her opinion that the lack of behavioral supports contributed to Student's escalating behaviors. Tr. Vol. 1, pp. 201-207.

26. Under this IEP, Student was in the 6th grade, with regular education teacher K-8 teacher, with oversight and coordination with a special education teacher, with services including a therapist, behavioral specialist, and paraprofessionals. P-19; Tr. Vol. 3, p. 52.

27. The regular education teacher received oversight from a special education teacher, and had not received training specific to Autism or Tourette syndrome. Tr. Vol. 2, pp. 162-164, 173, 219.

28. Student's lead therapist spent 3 to 5 hours per week with the students in class. Tr. Vol. 4, pp. 85, 105-106.

29. The special education teacher oversaw about 17 to 18 students, with about 8-10 in a class, and was in the class about 1.5 to 2 hours per day. Tr. Vol. 2, pp. 207-208. Tr. Vol. 3, p. 150.

30. Student had engaged in behavior episodes, including sleeping in class, aggression on staff and peers, choking, punching, self-harm, spitting, absenteeism, and refusals. Tr. Vol. 2, pp. 168, 176.

31. Student engaged in escalating behaviors, including aggression toward peers, and inciting other peers to aggress. P-77, P-79, P-88; Tr. Vol. 3, p. 248; Vol. 4, pp. 106-107.

32. Student had spent a substantial amount of time in a time out room, tr. vol. 2, p. 207, and was absent about 30-40% of the days after August 2023. Tr. Vol. 3, p. 198.

33. The Present Levels of Academic Achievement and Functional Performance noted in the August 25, 2023 IEP described poor communication, verbal threats, and work refusals, which interfered with learning. P-19.

34. The August 25, 2023 IEP provided for 1,805 minutes per week of special education services in a regular setting, 100 minutes per week of group counseling, 50 minutes per week of individual counseling, transportation services, and ESY eligibility. P-19; Tr. Vol 3, pp. 53-55.

35. Student's special education teacher was not employed during the summer, although she was available. Tr. Vol. 3, p. 153.

36. Student, then in the 6th grade, was functioning at the fifth grade level in reading and the fourth grade level in math. P-19.

37. The Student's therapeutic treatment plan was reviewed on 90-day intervals, and discussed with Parent and an outside therapist, which Parent approved. P-70. Tr. Vol 4, pp. 50-54, 67-70.

38. Student's therapist could not force Student to participate in therapy, and Student frequently refused to participate in individual therapy. Tr. Vol. 4, pp. 44-47, 65-67.

39. The IEP states that Student would never be kept in a room with door shut unless Student chose it, with use of a restraint as the intervention. P-19.

40. Except for behavioral issues, and the need for a comprehensive Autism, occupational therapy, communication and behavioral evaluation, and other matters concluded hereafter to be a violation of FAPE, such as implementation, predetermination, and placement, among other things, weight is given to Expert Dr. G's opinion that staff were appropriately trained, under an educational team approach. R-69.

41. An IEP amendment meeting was held on January 26, 2024, with a Parental request to change transportation services, due to anxiety, and a request to review avoidance behaviors, and the use of time out rooms due to maladaptive behaviors. P-20. Tr. Vol. 3, pp. 106-116.

42. An IEP amendment meeting was held, addressing transportation, with concern raised about avoidance by Parent, with the resulting IEP amendment containing the same goals, yet with a change in transportation. P-20. Tr. Vol. 3, p. 107.

43. The disability category remained as "Other Health Impaired." P-20.

44. Autism is not noted as an eligibility. P-20.

45. There is no FBA/BIP. P-20.

46. Just as with the prior IEP, weight is given to Expert T's opinion that in addition to the medical diagnosis of Autism, there is an educational behavioral connection requiring the need for an evaluation due to Student's significant difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests for an educational need. P-91. Tr. Vol. 1, pp. 201-207.

47. Student's significant difficulties comport with Montana's noted educational characteristics, **see** ARM § 10.16.3011, for a student to be identified as having Autism arise when comprehensively evaluated due to social communication; social interaction; and in restricted and repetitive behaviors and interests.

48. [REDACTED] did not conduct a comprehensive evaluation for Autism. P-20.

49. Parent stated that she did not want a comprehensive evaluation at that time, waiting instead for another type of independent educational evaluation, although that evaluation is not part of the record, if it did arise. P-20.

50. The January 26, 2024 IEP did not include occupational therapy and language services. P-20.

51. Social communication and restrictive or repetitive behaviors are associated with Autism. P-91.

52. The IEP states that Student would never be kept in a room with door shut unless Student chose it, with use of a restraint as the intervention. P-20.

53. The IEP states that Student would never be kept in a room with door shut unless Student chose it, with use of a restraint as the intervention. P-20.

54. From January 26, 2024, through August 23, 2024 (when the next IEP was held), crisis therapy notes show the Student to create an unsafe and disrupted learning environment, verbally attacking others who seem vulnerable, over stimulated, unable to regulate, unstable with mood, unable to regulate, and self-harm that creates engagement with staff, among other things. P-79.

55. An IEP meeting was held on August 23, 2024, with a follow up on September 11, 2024, and finalized by signature on October 20, 2024. P-21.

56. Student was suspended soon after the August 23, 2024 meeting. P-32.

57. Issues raised by Parent at the meeting regarded peer interactions and PTSD triggers. P-32.

58. Student did not attend school from September 4, 2024 through September 11, 2024. P-32.

59. On September 5, 2024, Parent sent an email to [REDACTED] stating that she had concerns about Student's Autism, and how Student may mimic signs from gang members, and fear of violence, and noted availability for another meeting. P-32.

60. At this time Student was 12 years old, and now in the 7th grade. P-21.

61. A September 11, 2024 meeting was held, and at the meeting it was noted that over the last year Student had only completed school work at about 15%, although Student had "invested in spelling somewhat regularly and math occasionally." P-21.

62. A discussion was held about a classroom change, but it did not then occur. P-21.

63. The disability category remained as "Other Health Impaired." P-21.

64. Autism is not noted as an eligibility. P-21.

65. There is no FBA/BIP. P-21.

66. The IEP states that Student would never be kept in a room with door shut unless Student chose it, with use of a restraint as the intervention. P-21.

67. The August 23, 2024 IEP no longer reflects that Parent would await an IEE before an Autism evaluation, as did the prior two IEPs. P-21.

68. As of August 23, 2024, there is no language that Parent waives a comprehensive evaluation awaiting an IEE for Autism, with related matters in occupational therapy, communication, and behavior, as there was with the prior two IEP periods. P-21.

69. As of the August 23, 2024 IEP Parent did not waive a comprehensive evaluation for Autism, with related matters in occupational therapy, communication, and behavior.

70. Just as with the prior two IEPs, weight is given to Expert T's opinion that in addition to the medical diagnosis of Autism, there is an educational behavioral connection requiring the need for an evaluation due to Student's significant difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests for an educational need. P-91. Tr. Vol. 1, pp. 201-207.

71. Similarly, Student's significant difficulties comport with Montana's noted educational characteristics, *see* ARM § 10.16.3011, for a student to be identified as having Autism arise when comprehensively evaluated due to social communication; social interaction; and in restricted and repetitive behaviors and interests.

72. [REDACTED] did not conduct a comprehensive evaluation for Autism. P-21.

73. The August 23, 2024 IEP did not include occupational therapy and language services. P-21.

74. Social communication and restrictive or repetitive behaviors are associated with Autism. P-91.

75. In September 2022, Student was assessed through a psychiatric neuropsychological evaluation as resulting in a medical finding that Student met criteria for Autism Spectrum Disorder, Level 1, P-91, of which [REDACTED] was aware. Tr. Vol. 3, pp. 213- 216.

76. Behavioral goals in the August 23, 2024 IEP had fluid behavioral approaches, and these goals did not structure plans considering, for instance, the antecedents, that is, the triggers for the underlying behaviors, or by a plan or structure, and how to approach them, and they failed to describe what is used, and how to use them, or something to be followed by all, or to develop a concise plan capable of being implemented. P-21.

77. The August 23, 2024 IEP reflects Student's difficulty in maintaining focus and engaging in learning activities, seasonal trauma issues, increased negative behaviors so that Student cannot maintain supportive relationships, feeling unsafe, increasing anxiety to manage conflicts, patterns of refusal to attend school, motivation struggles, refusal to read, participation limited to one-on-one or small group, inappropriate drawings, ripping up work, cursing, walking out of class, verbal aggression toward staff and peers, shutting down, refusals, putting head down, being tired, sleeping for 2-3 hours for three out of five days in summer school, feelings of being overwhelmed, confused, anxious, verbal disrespect, physical aggression, making demeaning and off-handed comments to peers, avoiding participation, isolation, and difficulty with navigating skills real compared with perceived threats. P-21.

78. The August 23, 2024 stated that [REDACTED] could terminate the contract to provide services, with implementation of the IEP to revert to [REDACTED] Public Schools. P-21.

79. The August 23, 2024 IEP did not contain a plan to transition Student to another placement should Student be removed. P-21.

80. The August 23, 2024 IEP (which is the operative IEP for services through the eventual disenrollment by Parent from ██████ Public Schools) contains 225 minutes of math per week in the regular education setting, 225 minutes per week of reading in the regular education setting, 945 minutes per week for social/emotional/behavioral services in the special education setting, 225 hours a week in self-help and independence in the regular education setting, and 225 minutes per week in written expression in the regular education setting, for a total of 1845 minutes per week of education services, along with 150 hours in counseling services. P-21.

81. Prior to the August 23, 2024 IEP being finalized on October 20, 2024, a change in classrooms arose.

82. Student was first relocated from the ██████ building to the High School building on ██████ campus. Tr. Vol 3, pp. 173, 176.

83. The IEP services proposed during the August 23, 2024 IEP remained the same, except for a change of the classroom from the ██████ building to the High School building, which was about 30 seconds away. Tr. Vol. 3, pp. 174-178.

84. The new classroom in the High School building held 7th, 8th, and a couple of 9th graders. Tr. Vol. 3, pp. 174-178.

85. The change was discussed at the September 11, 2024 IEP meeting. P-21.

86. Parent approved the IEP on October 20, 2024. P-21.

87. The classroom in the ██████ building held students in the 6th, 7th, and 8th grades. Tr. Vol. 3, pp. 172-173.

88. Student was a 7th grader. Tr. Vol. 3, p. 175.

89. This was a change in location, not a change in placement.

90. While at the High School building, Student's behaviors escalated, with cussing, threats, and an assault on a peer, by hitting the peer in the back of the head. R-31. Tr. Vol. 3, p. 208; Vol. 4, p. 21.

91. Staff met with the Superintendent outside of an IEP process or without Parent, and concluded that Student's classroom had gone from safe to very unsafe from July through December 4, 2024, and determined that Student had reached the "max" of benefits [REDACTED] could provide. Tr. Vol. 3, pp. 206-208.

92. The Student was unilaterally discharged from [REDACTED] beginning on December 5, 2024, P-34 & 35, after notifying Parent of its unilateral decision on December 4, 2024. Tr. Vol. 3, pp. 208-209.

93. There was no new IEP meeting prior to the discharge from [REDACTED].

94. After attending school in the [REDACTED] therapeutic environment during the three relevant IEP periods, Student was transferred for educational services to [REDACTED] Public Schools. Tr. Vol. 3, p. 209.

95. While in a therapeutic day school setting, it is common for students to experience periods of regression. Tr. Vol. 4, pp. 10-11.

96. Student was frequently absent from school. Tr. Vol. 3, pp. 197-199.

97. After the discharge from [REDACTED], Student was observed by Student's therapist to have increased rigid thinking, paranoid thinking, confusion, and a

deceased frustration tolerance and ability to engage interactions. P-34; Tr. Vol. 1, pp. 123-128.

98. ██████ Public Schools placed Student at the BASE program at ██████ Middle School. Tr. Vol. 5, pp. 8-10.

99. The BASE program was a program for students with behavioral, social, and education issues, at a new campus in a large public middle school with a different school structure, a different student population, and expectations. Tr. Vol. 5, pp. 11-12, 59-60, 68.

100. The public school setting was difficult for the Student, it was a new setting, a new experience, a public middle school in a classroom with other students who followed along and accomplished academic tasks. Tr. Vol. 5, pp. 33-34.

101. It was a significantly different environment from a therapeutic day school, tr. vol. 5, p.60, with the new school having a number of children in the hallways, and with cafeteria noise, and a difference in implementing academics. Tr. Vol. 5, p. 68.

102. Student refused to eat lunch; it had taken a year before Student began to eat lunch while at ██████. Tr. Vol. 5, p. 29.

103. The transition occurred quickly. Tr. Vol. 5, pp. 38-39.

104. On December 6, 2024 ██████ Public Schools notified Parent that Student would begin services in the new program at the new school through Prior Written Notice. R-17; Tr. Vol. 5, pp. 9-10.

105. Although this arose on December 6, 2024, educational and related services were not provided to the Student until ██████ Public Schools held a transition meeting with the Parent, which did not arise until after the holiday season. Tr. Vol. 5, p.10.

106. Student started school on January 8, 2025. Tr. Vol. 5, p. 8.

107. Student had not attended any school from December 6, 2024 through January 7, 2025, which was a bit over a month.

108. Soon after Student began at [REDACTED] Middle School in the new [REDACTED] Public Schools' setting Student was absent due to illness for over a week before returning. Tr. Vol. 5, pp. 7-8, 10-11, 54.

109. An FBA was not conducted at [REDACTED] Middle School. Tr. Vol. 5, p. 79.

110. However, antecedents, and functions of behavior were now being incorporated into Student's behavioral program at [REDACTED] Public Schools. Tr. Vol. 5, pp.14-16.

111. On February 11, 2025 an IEP amendment meeting was held with [REDACTED] Public Schools, tr. vol. 5, pp. 25-27, with a draft IEP proposed. R-18.

112. The draft IEP document was only a working instrument for the meeting, which only becomes locked in when all members approve and sign it. Tr. Vol. 5, p. 48.

113. The team also considered behaviors as manifestations, referred to as a MDR, yet they were only discussions as to bad behavior, looking back at behavior logs. Tr. Vol. 5, pp. 31 -32, 110.

114. The draft IEP was never approved and signed by Parent. Tr. Vol. 5, p. 49.

115. The relevant IEP remained the August 23, 2024 IEP.

116. On February 20, 2024 Student became aggressive, and agitated, and engaged in misbehavior, tr. vol. 5, pp. 32-36, such as punching staff in face, hurting self by attempting to cut off arm circulation, banging hook on glass, threatening staff, derogatory

comments to other students, and derogatory comments to staff about mothers, wives, sisters, and making suicidal comments. *See* Tr. Vol. 5, pp. 17-18, 22, 31, 32-34.

117. Student was placed in two rooms with a shut doors, by himself, and was being watched by staff, with the rooms serving as a time out room, measured by a timer. Tr. Vol. 5, pp. 32-36.

118. In the first room, Student began to bang on a lock, removing a metal hook, and hitting the door with the hinge, tr. vol. 5, pp. 32-26, and during transfer to the second room Student punched an educator in the cheek with a closed fist. Tr. Vol. 5, p. 34.

119. In the second room, Student used the tie chord on his hoodie to wrap around his wrists, which turned the writs reddish purple, and then Student took the plastic part of the hoodie string and pushed it into his wrist. Tr. Vol 5, pp. 33-36.

120. Law enforcement was called after this incident. P-68.

121. After Student struck a staff member on the face on about February 20, 2025, Parent asked whether Student was suspended, with [REDACTED] Public Schools replying that Student was not suspended. *See* P-138, Email Feb. 21, 2025.

122. From February 20, 2025, to March 12, 2025, Parent kept Student out of school. Tr. Vol. 2, pp. 111-112.

123. Parent had been notified that Student could return to school. *See* P-138, Email Feb. 20, 2025.

124. A March 11, 2025 meeting was held. R-18.

125. Among other things, virtual academics or 1:1 instruction were considered. R-

126. On March 13, 2025 [REDACTED] Public Schools proposed three 30-minute homebound sessions per week, and online instruction. P-141.

127. On March 17, 2025 Parent sent a letter to [REDACTED] Public Schools stating that Student would be withdrawn from the school within 10 days, and home-schooled, because Parent alleged that FAPE was not being provided, with the caveat that should Student make progress through home-schooling and private education tutoring and therapy then reimbursement would be sought for educational costs such as curriculum, tutoring, and therapy expenses. P-141.

128. After 10 days, Parent filed a notice of intent to home-school Student with the County Superintendent. P-141.

129. Student's home-school grades between July 30, 2025 and October 31, 2025 reflect a C in reading comprehension level D, an F in reading comprehension level E, a C- in math level D, an F in US government, an A- in middle school life skills, and an A+ in Bible basics. R-117.

130. Student's academic performance does not appear to have improved during time being home-schooled. Tr. Vol. 2, pp. 155-157.

131. There is no evidence of suggested home-school costs.

132. These Findings of Fact are supplemented by the more detailed findings to the extent applicable made in the Analysis section, below.

133. All witnesses are generally found to be credible for truthfulness. Parent's testimony is credible, that is, Parent is found to be truthful, yet little weight is given to her interpretation and analysis of data and events which she then advanced as facts. Parent is a parent - not an educational expert, so Parent's testimony is viewed through the lens of a

parent. Parent acted *pro se* and while doing so the combination of questions as a representative do not become factual elements. This has been weighed accordingly. Both Expert Dr. G, Ph.D., and Expert Analyst T, are credible, truthful, with extensive educational qualifications and experiences. Weight is given to Expert Analyst T's opinions particularly to Student's educational behaviors, educational behavioral needs, and documentation about those behaviors in school records, and lack of educational behavioral plans, reviewing as a BCBA, behavioral analyst, and with ABA expertise, with more weight given to her independent review than to the schools' providers, whom held some self-serving interests. Expert Dr. G. Ph.D. was presented in an educational overview of the services provided throughout the relevant years, with an ultimate opinion on their appropriateness. While her opinion is respected, the ultimate issues are based on the evidence at the Due Process Hearing, although weight is given to some matters, as noted in this order. Therapist CA was an outpatient therapist, testifying as such, rather than an expert witness in education, and weight is given accordingly; she was truthful, credible. Educator VS is credible; truthful, up front with testimony, and to what happened, at [REDACTED], and as an educator, and weight is given to his factual elements rather than to any ultimate opinions as to procedures and appropriateness. Similar credibility is given to Educator JS and as to facts at the [REDACTED] program, although credible, that is truthful, weight is given to her factual testimony, rather than the ultimate opinions as to procedures and appropriateness. All other school witnesses (MG, NK, TR) were truthful, that is, credible, and held up well under examination, with weight given to factual elements rather than to any ultimate opinions as to procedures and appropriateness. The facts in many ways speak for themselves, with the question being

how the facts were interpreted in light of FAPE, which is the Hearing Officer's determination. Ultimately, weight is given to what was written in the IEPs acting as the foundational plans for the Student's education.

134. Should a Finding be more applicable as a Conclusion, or *vice versa*, then it is to be interpreted under the proper classification.

ANALYSIS AND LEGAL CONCLUSIONS

Jurisdiction

There is no jurisdiction to determine if the Respondents engaged in gross educational negligence and flagrant disregard for the law, as alleged in both Complaints 1 and 2. **See** 34 C.F.R. § 300.507(a). Otherwise, unless otherwise found, jurisdiction properly lies over the parties and over the subject-matter for matters coming under the umbrella of the IDEA. 34 C.F.R. § 300.507(a).

Hearing Held Virtually

The Petitioners requested that the hearing be held virtually. Such a hearing must ensure the parent's right to an impartial due process hearing consistent with the requirements in 34 C.F.R. §§ 300.511 through 300.515. **See** United States Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, IDEA Part B Dispute Resolution Procedures (June 22, 2020). There is nothing prohibiting virtual due process hearings under the Montana.

Therefore, it is concluded that the Due Process Hearing held virtually was in accord with the State and Federal directives, that the hearing afforded all parties the rights contained under 34 C.F.R. §§ 300.511 through 300.515, that credibility could be assessed, and that holding the hearing virtually was not inconsistent with State rules.

Burden

The burden is on the Petitioners to prove their claim. *See Schaffer v. Weast*, 546 U.S. 49. The burden will be by a preponderance of the evidence. *Id.*

Complaint 2, OSPI 2025-02, Statute of Limitations

In Montana, the statute of limitations period to bring an IDEA request for due process is two years. 34 C.F.R. § 300.507(a)(2) and § 300.511(e). The underlying federal enabling legislation provides that the period begins when the parent knew or should have known about the alleged action forming the basis of their complaint. 20 U.S.C. § 1415(f)(3)(C). That is, two years from when they knew or should have known that the complained educational program was inadequate. *See Avila v. Spokane Sch. Dist.* 81, 852 F.3d 936 (9th Cir. 2017). The exceptions to the limitations time period is where the LEA made specific representations that the problem had been resolved, or where the LEA withheld information which was required to be provided to the parent. 20 U.S.C. § 1415(f)(3)(C). With this legal backdrop, Complaint 2 will be examined.

Petitioners filed Complaint 2 on September 10, 2025, only against [REDACTED] [REDACTED] School District [REDACTED]. *See* Complaint 2. Thus, the limitations period began on September 10, 2023. From the face of the Complaint, the complained inadequate education program against the LEA is based on factual allegations arising prior to September 10, 2023, generally regarding alleged violations of FAPE in September 2022. *See* Complaint 2. Petitioners, however, claimed that an exception to the limitations period allowed them to have Complaint 2 heard because they discovered, apparently through mistake or inadvertence of the LEA or counsel, that a confidential communication

between counsel and LEA may have suggested either that the problem had been resolved, or that required information may have been withheld. *Id.*

At the Due Process Hearing Petitioners sought to introduce the privileged attorney-client communication, and otherwise explain how at that time they came to have knowledge of possible alleged FAPE denials. The communication (and the Petitioners' knowledge thereafter) between LEA attorney and client, which should not have been disclosed, yet was done so by inadvertence or mistake, was found to be inadmissible, with the attorney-client privilege remaining paramount.

Therefore, there being no further development for the exceptions³, it is concluded that the statute of limitations bars all allegations in Complaint 2, and it is, therefore, dismissed with prejudice.

This addresses Issues 22 and 23.

Complaint 1, OSPI 2025-01, Evaluations (Issue 4, among others)

By way of background, in September 2022 Student was assessed through a psychiatric neuropsychological evaluation as resulting in a medical finding that Student met criteria for Autism Spectrum Disorder, Level 1. *See* P-91 (T Report). While noting that a medical diagnosis does not equate with an educational need, Expert T noted Student's behaviors include: difficulty in engaging in reciprocal dialogue or interaction, propensity to follow own train of thought; difficult with modulating eye contact, decreased gestural communication; routinized behaviors including reorganizing patterns with rigidity in creative sequences and play; leads not followed by evaluator communicator for

³ Petitioners did not brief the issue in post-hearing submissions.

conversation; no inquiry into evaluator's thoughts or feelings; vocal and motor tics; excessive interests in sensory tools and activities; occasional withdrawal behaviors, like putting head on desk; impulsive actions like grabbing at stimulus before directions; a difficulty with tolerating changes, and with relating to peers and adults, and not using appropriate verbal and nonverbal communication for social contact; the use of atypical language; stereotypy; sensory processing difficulties; over fixation on topics, objects, or parts of objects; use of strange and repetitive speech; and repeated physical movements.

P-91. Educator VS was aware of the Student's medical diagnosis of Autism. Tr. Vol. 3, pp. 213- 216.

There are three relevant IEPs (or amendment) at issue: IEP with a meeting date of August 25, 2023 (P-19), IEP Amendment with a meeting date of January 26, 2024 (P-20), and IEP with a meeting date of August 23, 2024 (P-21). Each of these three IEP documents contained the same disability category, which was other health impairment. *See* Ps-19,20, and 21. The August 25, 2023 IEP noted the last re-evaluation to have been on November 22, 2021. P-19. The IEP Amendment of January 26, 2024 also noted the last evaluation to have been on November 22, 2021. P-20. The August 23, 2024 IEP noted, however, that the then last re-evaluation for that time period was June 29, 2023. P-21. There is no evidence in the record that there was a re-evaluation on June 29, 2023. Tr. Vol. 3, pp. 214-215.

While Petitioners argue that evaluations should have arisen including with occupational therapy and speech-language services, *see* Ps' F&C, Proposed Conclusion 4, the primary focus is as to Autism. *Id.* Given the nature of Autism, the speech-language and occupational therapy will be deemed connected. Generally, Respondents's position is

that an Autism medical diagnosis did not require Autism to be contained in an IEP. *See* Issue 9. Respondents also contend that a failure to conduct an Autism assessment, if any, must have a material impact on the educational program, which they contend did not arise. ***See*** Respondents' F&C, Proposed Conclusions 31 -35. Respondents contend, as well, that Petitioners waived any evaluation requirement because of IEP notations stating they concurred with no reevaluation, supported by ongoing email communications in September 2023 that Petitioners wanted more information from an IEE being conducted before further discussing an Autism evaluation, OT services, and SLP services with the IEP Team. *See* Rs' Argument, p. 6 (as to P-30). Petitioners reflect that notwithstanding that at one point in 2023 they were seeking to gain more information, the requirement for a Autism evaluation did not forever disappear, because it remained continuing and ongoing thereafter, with the duty remaining on the LEA. *See* Ps' F&C, Proposed Conclusion 4. The record does not reflect that a discussed IEE had occurred.

In the August 25, 2023 IEP it is noted that the Petitioners expressed their concerns that Autism affected Student in the educational environment more than the other diagnoses of Tourette, ADHD, and PTSD. *See* Ex. P-19. They explained the reasons for their concerns. *Id.* However, there is a note that Petitioners would wait for an IEE is completed before moving forward. *Id.* A box is checked stating that a reevaluation was not necessary at that time. On September 14, 2023 in an email between Petitioners and Educator VS, Parent stated she wanted to wait until an IEE was complete prior to Team discussion of an educational Autism evaluation, OT services, and SLP services. P-30.

Also on August 25, 2023, a Present Levels of Academic Achievement and Functional Performance (PLAAFP) analysis showed poor communication, verbals threats by the Student, and Student's refusal to work, which interfered with learning. P-19.

On December 11, 2023, a medical diagnostic note established that Student was placed on medications for ADHD, PTSD, and for Autistic Disorder (Lurasidore).

With the IEP Amendment on January 26, 2024, the same concerns are noted as raised by Petitioners seeking an Autism assessment, yet also noting again awaiting an IEE, with a box checked that a reevaluation was not necessary. See P-20.

The IEP of August 23, 2024 no longer had the language that Petitioners were awaiting results of an IEE. See P-21. Petitioners noted that there were concerns about gang culture and activity. Id. There was only a box checked noting the parents and district agreed a reevaluation was unnecessary. See P-21, p. 16.

The issue at hand, however, is not about the Student's eventual requested placement in an educational setting for services under the Autism spectrum, but rather whether there was a suspicion of Autism in this Student to order an evaluation. See 20 U.S.C. § 1414(b)(3)(B). 34 CFR § 300.111(c)(1) (child find, suspicion). A "suspicion" requires a "difficult and sensitive" analysis. *Mr. I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1,4 (1st Cir. 2007)(quoting *Greenland Sch. Dist. v. Amy*, 358 F3d. 150, 162 (1st Cir. 2004). The responsibility for the evaluation lies with the LEA. See *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1310 (D. Utah 2002). A suspicion of disability, rather than actual knowledge of the underlying qualifying disability, is the key. See *Regional Sch. Dist. No. 9 v. Mr. and Mrs. M.*, 53 IDELR 8, 109 LRP 51058 (D.C. Conn. 2009). A suspicion arises when the LEA "has notice that the child has displayed

symptoms of that disability.” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016).

“Autism” is defined as a developmental disability which affects verbal and nonverbal communication and social interaction and adversely affects educational performance. 34 CFR § 300.8(c)(1)(i). Characteristics include engagement in repetitive activities and stereotyped movements, a resistance to environmental or daily routine changes, and unusual responses to sensory experiences. *Id.* The disability is generally evident before age three, *Id.*, yet the same characteristics may be manifest after age three. *Id.* at § 300.8(c)(1)(iii). Autism is inapplicable if the child’s educational performance is adversely affected because, primarily, the child has an emotional disturbance. *Id.* at § 300.8(c)(1)(ii). An “emotional disturbance” is defined as a condition where over a long period of time and to a marked degree the child’s educational performance is affected by an inability to learn not explained by intellectual, sensory, or health factors, or an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, or inappropriate types of behaviors or feelings under normal circumstances, or a general mood of unhappiness or depression, or a tendency to develop physical symptoms or fears associated with personal or school problems. *Id.* at § 300.8(c)(1)(4)(i). There has been no contention that the Student held an emotional disturbance; rather, the diagnostic criteria was as Other Health Impaired, with Tourette, ADHD and PTSD.

In Montana, educational characteristics for a student to be identified as having Autism arise when a comprehensive evaluation results in significant difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests. **See** ARM § 10.16.3011. The student must exhibit at least one characteristic in

each of the three areas, with a total of eight or more characteristics to identify a student with Autism. Id. The characteristics are those which most frequently occur, but not in every situation. Id. There characteristics are:

(a) Significant difficulties in social communication must be documented for at least one of the following characteristics:

- (i) initiating or maintaining eye contact while interacting with others;
- (ii) use of facial expressions to communicate with others;
- (iii) identifying and/or understanding the communicative intent of another person's facial expressions;
- (iv) using gestures to direct attention to an object (for example, showing, bringing, or pointing out objects of interest);
- (v) using gestures for communication;
- (vi) responding to or interpreting other's use of gestures;
- (vii) noticing or interpreting other's use of body language;
- (viii) use of own body language for communication;
- (ix) expressive verbal or alternative communication;
- (x) receptive verbal communication or;
- (xi) interpretation of other's verbal communication (often concrete and literal; for example: does not understand idioms or sarcasm).

(b) Significant difficulties in social interaction must be documented for at least one of the following characteristics:

- (i) seeking to share enjoyment, interests, or achievements with others;
- (ii) initiating social interaction unless seeking preferred items or help;
- (iii) responding to social interactions initiated by others;
- (iv) initiating a conversation on non-preferred topics;
- (v) sustaining a conversation on non-preferred topics;
- (vi) explaining another person's perspective. (for example, what other people are thinking or feeling);
- (vii) joining play activities of others (solitary play preferred);
- (viii) play lacks elements of make-believe (for example, using blocks or other objects as food, a car, a phone or an animal);
- (ix) participating in make-believe play with others;
- (x) engaging in social imitative play (for example, playacting, fantasy characters, animals, pretending adult role).

(c) Significant difficulties resulting from restricted and repetitive behaviors and interests must be documented for at least one of the following characteristics:

- (i) makes repeated vocalizations or verbalizations (for example, repeats same word, phrase, or sound);
- (ii) persistent preoccupation with specific objects or parts of objects;
- (iii) engages in repeated, repetitive movements with objects such as sticks or string, lining up toys, flipping objects, spinning objects;

- (iv) preoccupation with particular interests causes difficulties in social interaction and/or academic performance;
- (v) resists when asked to discontinue preferred or special interest activity;
- (vi) prefers consistency and resists expected and/or unexpected changes (for example: changing activities, leaving activity unfinished, changes in routine or daily schedule);
- or
- (vii) engages in repetitive physical behaviors such as body rocking, spinning self, finger flicking, and/or hand flapping.

Id.

As early as September 2022 Student had been provided a medical diagnosis of Autism, through a psychiatric neuropsychological evaluation. Those characteristics, as reflected in Expert T's report, not only provide for support for a medical diagnosis of Autism, but connect with Montana's rule showing significant difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests for an educational need. **See** ARM § 10.16.3011. Notwithstanding the waiver concepts in the relevant August 25, 2023 and amended January 26, 2024 IEPs, the LEA continued to remain aware of the medical diagnosis of Autism.

Without restating in detail the exact performances and goals of the August 24, 2024 IEP, suffice to note that this IEP, in which it is found not have a parental waiver of a request for an Autism evaluation (as explained below), shows continued and numerous examples of significant difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests. These include difficulty in maintaining focus and engaging in learning activities, seasonal trauma issues, increased negative behaviors so that Student cannot maintain supportive relationships, feeling unsafe, increasing anxiety to manage conflicts, patterns of refusal to attend school, motivation struggles, refusal to read, participation limited to one-on-one or small group,

inappropriate drawings, ripping up work, cursing, walking out of class, verbal aggression toward staff and peers, shutting down, refusals, putting head down, being tired, sleeping for 2-3 hours for three out of five days in summer school, feelings of being overwhelmed, confused, anxious, verbal disrespect, physical aggression, making demeaning and off-handed comments to peers, avoiding participation, isolation, and difficulty with navigating skills real compared with perceived threats. **See** P-21. These difficulties in social communication; social interaction; and in restricted and repetitive behaviors and interests exhibited themselves in behavioral escalations, escalation, and time-outs. **See** P-88, P-77, P-79. Moreover, during the relevant statutory periods in question, the Student exhibited aggression, sleeping, choke holds, bloodying face, spitting, refusal behaviors, significant time in a time out room, escalating behaviors, and physical aggression toward peers. Tr. Vol 2, pp. 176, 193, 207, Vol 3, p. 248; Vol. 4, pp. 106-107.

Given this backdrop of factual elements, above, and legal application, it is concluded that a suspicion of Autism arose for an educational assessment or evaluation to be performed by the LEA. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1119. The first step is a required comprehensive evaluation, based on a suspicion. Given the Autism suspicion characteristics, the comprehensive evaluation would include Autism, as well as Autism connected communication/speech, occupational therapy, and behavior. A suspicion that the Student may have characteristics associated with Autism therefore arose, and the LEA was on sufficient notice of the Student's suspected Autism for a timely formal assessment.

Although Petitioners reflected that they stated, during some points in time, that they awaited an IEE, which the record does not show to have occurred, the question is

whether by waiting for a possible IEE for informational sharing purposes forever waives the LEA from otherwise acting on a suspicion of disability and the need for an evaluation. The answer lies on whom, or what, the duty lies. The “child find” duty is on the LEA, not the parents. 34 CFR § 300.111(c)(1) . While parental consent may be required for a reevaluation, *see* 34 CFR § 300.300 (c), that does not mean the LEA’s duty is forever waived. Indeed, a parental override process may even arise. *Id.* In this case, although the Petitioners initially stated they wanted to await another IEE (the record does not reflect an IEE, if there was one), then at least as of the August 23, 2024 IEP it is found that the Petitioners did not waive a request for an evaluation, since the only indication is a checked box on page 16 of P-21, compared with the actual statements made by Petitioners in P-19 and P-20 in their concerns that they would await information from an IEE to bring to the Team before moving forward with the Autism evaluation request. ***Compare P-21 with P-19 and P-20.*** Indeed, the language in the IEP form itself, on which the box is checked, does not state that the Petitioners waive an evaluation for Autism, but rather that a reevaluation (presumably for all prior eligibility) is unnecessary. ***See*** P-21, p. 16. Given the knowledge the LEA had of the Autism concerns raised by the Parent, medical diagnosis, as well as the Student’s ongoing behavioral and education malfunctions, along with the changes in language in IEPs, it is found and concluded that the Petitioners did not waive an evaluation for Autism under the August 23, 2024 IEP, and related Autism areas in communication/speech, occupational therapy, and behavior. ⁴

⁴ This is consistent with the general understanding that a school district cannot put the blame on a parent for its failure to ensure meaningful compliance with the IDEA. ***See Doug C v. Hawaii Dep’t of Educ.***, 720 F.3d 1038 (9th Cir. 2013).

The failure to conduct the assessment is deemed a procedural violation. *See Timothy O, Id.* Thus, the next step is to determine if it if the Student was denied a FAPE because of the violation. *See* 34 CFR § 300.513(a). That is, whether the procedural inadequacies: (1) impeded a child’s right to a free appropriate public education, (2) significantly impeded the parent’s opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. 34 CFR § 300.513(a)(2).

The failure to assess in this case is due in part to preconceived notions on the part of staff and educators. *Id.* In this present action, Expert Dr. G, Ph.D., discloses as much in comparing overlap with the Student’s diagnostic features compared with all students with similar diagnoses, establishing universal recommendations, *see* R-69, G Report (unnumbered pages, last paragraph under subsection 4), rather than the specific needs for this individual Student. In other words, the staff and educators may have substituted their judgments on what they consider to be a subjective determination of eligibility, rather than noting suspicions so to ensure that an Autism assessment be performed. *See, e.g.,* 20 U.S.C. § 1414(a)(1)(E)(a screening by teachers or specialists to determine instruction is not an evaluation for services).

Respondents’ position is that even if the lack of an Autism evaluation is found to be a procedural error, the error is harmless. This argument is not persuasive. While it true that children are not required to be classified by their disabilities, as long as they receive appropriate special education and related services, *see* 34 CFR § 300.111(d), this does not impact the current issue of suspicion of Autism, and an Autism and related SLP and OT evaluation. Even Respondents’ own expert, Dr. G, opines that it is only “possible” that had

the LEA considered an ASD diagnosis “that [Student’s] IEP may not have changed at all.” See R-69, Dr. G Report (unnumbered pages, last paragraph under subsection 4). Indeed, one might consider the Student’s exceptionality as a unique characteristic of the Student. See *Endrew*, 137 S. Ct. at 1001 (“unique circumstances” of the child, adequacy of IEP).

Following the analysis in *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016), the Petitioners need not definitely show that absent the error educational placement would have been different. *Id.* While it is now found that the LEA in this case has not acted deliberately in refusing an assessment, as in *Timothy O.*, *id.*, Educator VS admitted an awareness that escalated dysregulation in behaviors may raise concerns for further evaluation. Tr. Vol. 3, p. 213. Educator VS was also aware that behaviors as evinced in the PLAAFP of August 25, 2023, could raise concerns about Autism. Tr. Vol. 3, pp. 217-218. The LEA had been well aware of the Parent’s concerns for some time, along with a Student whose behaviors were becoming consistently worse as Student approached and then began adolescence, yet failed to act on an Autism evaluation as of the IEP on August 23, 2024.

Commencing with the IEP of August 23, 2024, P-21, and onward through the filing of the Petitioners’ Request for Due Process, without the sufficient evaluative information which an assessment can provide, the Student’s right to a free appropriate public education is impeded, and he is deprived educational benefit. 34 CFR § 300.513(a)(2). This is a potentially Autistic Student, and there is no evaluative information that an assessment for Autism could have provided, thus resulting in his August 23, 2024 IEP goals likely inappropriate knowing not what needs actually consisted of so to allow a draft of an appropriate Plan. Given the IEP Teams’ inability to create appropriate Plans absent

an assessment, it is concluded that this amounted to substantive harm to the Student, by impeding the Student's right to a free appropriate public education, and causing deprivation of educational benefit. 34 CFR § 300.513(a)(2) (procedural harm into substantive violation). This procedural error resulted in an effective **denial of FAPE**.

The August 25, 2023 and amended January 26, 2024 IEPs neither proposed action, nor refused to initiate or change action, on the issue of an Autism evaluation. Parent had waived that issue. Thus, there is no procedural requirement for it to be placed in a prior written notice regarding Autism action. 34 CFR § 300.503(a). Similarly, while the August 23, 2024 IEP remains ripe for what should have been required as to an Autism evaluation, the IEP itself did not address it as either to initiate or change action regarding an evaluation. As such, there is no procedural requirement for it to be placed in a prior written notice regarding Autism action. 34 CFR § 300.503(a). There was no violation of FAPE for the prior written notice arguments.

It is concluded that the Petitioners have met their burden of proof by a preponderance of evidence, *see Schaffer v. Weast*, 546 U.S. 49 (2005), that there was a procedural violation of the IDEA by the LEA's failure to assess or evaluate the Student on or after August 23, 2024, based on a suspicion of Autism, and that it resulted in a substantive denial of FAPE because it impeded the Student's right to a free appropriate public education, and deprived the Student of educational benefit. 34 CFR § 300.513(a)(2).⁵

⁵ As a closing remark, it is noted that Petitioners have not made a stand-alone claim that Autism should be included in the IEPs; rather, the issue is that an evaluation for Autism had not been conducted, which is concluded to have violated FAPE.

This addresses in context Issues 1, 4, 8, 9, 10, 16, 19, & 20.

Complaint 1, OSPI 2025-01, Placement, Predetermination (Issue 6, among others)

In overview, during the relevant periods, as a 7th grade student, Student attended [REDACTED], in two different buildings on campus, one under a classroom with 6th, 7th, and 8th graders, which was in the elementary or [REDACTED] building, and the second in a classroom with 7th, 8th, and 9th graders, which was the High School building. P-21, P-33, R 114; Tr. Vol. 3, pp. 173-181, p. 255. [REDACTED] was a public therapeutic behavioral day school, with Student enrolled through coordination, agreement, and oversight with the Student's home district, [REDACTED] Public Schools. P-19; Tr. Vol. 3, pp. 18-23, 92. Student was discharged from [REDACTED] due to behavioral safety concerns. R-31; Tr. Vol 3, pp.207-211, Tr. Vol. 4, pp. 19-23.

[REDACTED] held a contract with [REDACTED] Public Schools allowing unilateral student termination by [REDACTED] at any time. P-36, pp. RESP 4731. The termination condition was contained in the relevant IEPs. See P-19, P-20, P-21. If removed from [REDACTED], Student's IEPs noted he would be returned to [REDACTED] Public Schools for special education services. P-19, P-20, P-21. [REDACTED] Public Schools proposed that Student attend Student's home-school, [REDACTED] Middle School, in its Behavioral Academic Social Emotional (BASE) classroom, which Student subsequently attended. R 17; Tr. Vol 5, pp. 7-8, 9-11, 54. Thus, Petitioners raise placement and predetermination issues for both the [REDACTED] move from the [REDACTED] Grade School building to the High School building, and then to the subsequent

██████████ disenrollment and move to the ██████████ Public Schools' BASE classroom at ██████████ Middle School.

From ██████████ Building to High School Building

A change in location alone does not arise to the level of a change of placement. **See** *Oliver C. by and through Nicole C. v. Dep't of Educ.*, 762 F.App'x 413, 415 (9th Cir. 2019). Placement refers to changes in the student's general education program, rather than a change in the physical location of the student. **See** *Rachel H. v. Dep't of Educ. Hawaii*, 868 F.3d 1085, 1091 (9th Cir. 2017). Movement from one type of educational program to another type of program, such as from a regular classroom to home instruction, may result in a change of placement. *Id.* Moreover, a change of placement may occur even in the same setting, if there is a significant shift in the educational program. *Id.*

Predetermination arises when the LEA is unwilling to consider other alternatives offered, and prior to the IEP meeting, predetermines the outcome. **See** *Deal v. Hamilton Cnty. Bd. Of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004). The LEA must retain an open mind, so that it might possibly be swayed by parental opinion. **See** *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). There can be no "take it or leave" it LEA offer. **See** *Ms. S. ex rel G. v. Vashon Island Sch. Dist.*, 337 F.3d 11156, 1131 (9th Cir. 2003)(superceded on other grounds).

In relevant part to this issue, an IEP meeting was held on August 23, 2024. P-21. Parent attended. *Id.* Educator VS attended, as well as others. Tr. Vol. 3, pp. 173-181. Program changes were discussed from the prior IEP, in present levels of functionality, and goals in all categorical areas of special education and related services. P-21; Tr. Vol 3, pp.

116-130, 181. The meeting was held open pending review by others, including Parent. *See* P-21. The IEP changes reflected the changes as of the meeting date on August 23, 2024. *Id.* The IEP school at the time of the changes was [REDACTED], with the services as contained in this August 23, 2024 IEP to be at the [REDACTED] building. This is where the services were thus to be provided as of August 23, 2024. The IEP, however, stayed open through October 20, 2024, where Parent signed the document noting approval of the IEP, and it was finalized. P-21.

The period between August 23, 2024, and finalization on October 20, 2024, held several other aspects. While the IEP was still open, due to escalating behaviors it was proposed that Student's classroom be changed to the High School building. P-21, R-114. Importantly, despite the future actions in the time window changing classrooms, the IEP services proposed during the August 23, 2024 IEP remained the same, except for a change of the classroom from the [REDACTED] building to the High School building, which was about 30 seconds away. Tr. Vol 3, pp. 173, 176. The new classroom in the High School building held 7th, 8th, and a couple of 9th graders. Tr. Vol 3, 172-173. The classroom in the [REDACTED] building, which was Ms. G's classroom, held students in the 6th, 7th, and 8th grades. Tr. 172-173. Student was a 7th grader. Tr. 172-173. It was a change in location, with new staff, new students, and new schedules. P-21. There was no new meeting prior to the classroom transfer action, yet Parent agreed with the IEP plan thereafter on October 20, 2024. P-21. While escalating behaviors were a voiced concern for the classroom change, they did not amount to disciplinary action procedures under 34 CFR § 300.536.

As a result, it is concluded that Petitioners did not meet their burden of proof by a preponderance of evidence, *see Schaffer v. Weast*, 546 U.S. 49 (2005), to prove the

classroom change from [REDACTED] building to the High School building was a predetermination, *Deal v. Hamilton Cnty. Bd. Of Educ.*, 392 F.3d at 858, or a “change of placement.” *Rachel H. v. Dep’t of Educ. Hawaii*, 868 F.3d at 1091. There was a change in locations, rather than a change in educational programs. There **is not** a violation of FAPE.

From High School Building to the [REDACTED] BASE Program

The [REDACTED] therapeutic day school was a unique school, utilizing a hybrid model where the special education and regular teachers worked together. P-19; Tr. Vol 3, p. 52. Under its educational model, direct instruction occurs in the classroom, yet social/emotional and behavioral needs are integrated throughout the day, due to continuous coaching and skills development. P-19; Tr. Vol. 3, pp. 53-55.

While in the High School building at [REDACTED] therapeutic school, Student’s behaviors became more disconcerting. Student would give non-verbal cues and then attack a peer by punching peer’s head from behind, give verbal threats to a younger peer saying “you don’t claim to be a cripp, n*****”, tell others that they could not beat him in fight, try to convince others to fight on Student’s behalf, threatening behavior saying that peer would be next, cussing at peers in morning and at lunch, cursing at staff, dumping a desk, refusing to work or participate in activities and academics, yelling and arguing with staff, seeking to instigate a fight, sleeping until lunch, leaving class, using the F word, threatening peers, putting peer in headlock, saying things about peer’s mother, and bullying peers. *See* R 31 (encounters during July 30, 2024 through December 4, 2024, with the assault on December 4, 2024 being the punch in the head from behind). Student was

told he would be suspended, *see* tr. vol. 3, p. 206, based on the back of head assault on December 4, 2024. *Id.*

However, staff met with the Superintendent outside of an IEP process or without Parent, and concluded that Student's classroom had gone from safe to very unsafe from July through December 4, 2024, and determined that Student had reached the "max" of benefits ██████████ could provide. Tr. Vol. 3, p. 206. The Student was fully discharged from ██████████ on after December 5, 2024, P-34 & 35, after notifying Parent on December 6, 2024. R-17; Tr. Vol. 5, pp. 9-10. Student's IEP of August 23, 2024 contained language that ██████████ could terminate the contract to provide services, and then the implementation of the IEP would to revert to ██████ Public Schools. P-21.

██████████ did not hold an IEP meeting prior to the discharge. There was no manifestation determination meeting held. There was no transition plan. However, all three relevant IEPs in this case were written by ██████████, which includes that last one coming into effect on October 20, 2024. *See* P-19, 20, 21.

On December 6, 2024 A Prior Written Notice was sent to Parent from ██████ Public Schools, stating that Student had been discharged from ██████████ and ██████ Public Schools "stands ready to provide special education and related services at [Student's home-school], ██████████ Middle School" in the BASE program. R-17. ██████ Public Schools explained that it had a contract with ██████████ which allowed it to terminate the contract if either party determines the placement is no longer appropriate. R-17. The underlying reason provided by the Prior Written Notice from ██████ Public

Schools (there was no Prior Written Notice from ██████████)⁶ was the attack on a peer on December 4, 2024, hitting the peer on the back of the head, along with another prior suspension for an unprovoked attack, and after a change in classrooms. R-37.

████████ Public Schools notified Parent that an IEP would be convened prior to Student attending ██████████. R-37. However, an IEP was scheduled for, and began on, February 11, 2024. Tr. Vol 5, p. 23. Before that, on about January 6, 2025, Parent and Educator S met to discuss a transition plan into ██████████. Tr. Vol. 5, pp. 7, 55, 102. Student did not begin school again, after leaving ██████████, until January 8, 2025. Tr. Vol. 5, p. 8. Thus, Student was not attending any school from December 5, 2024 through January 7, 2025, which is bit over a month. When Student went back to school it was for a short time, but was soon in trouble for continued aggressive and disruptive behaviors, similar to those while at ██████████. See Tr. Vol. 5, pp. 17-18, 22, 31, 32-34, (punching staff in face, hurting self by attempting to cut off arm circulation, banging hook on glass, threatening staff, derogatory comments to other students, derogatory comments to staff about mothers, wives, sisters).

This aspect of the case presents facts similar to facts considered by the Fifth Circuit Court of Appeals in *Boone v. Rankin Co. Pub. Sch. Dist.*, 104 F. 4th 697 (5th Cir. 2025), which is persuasive. In *Boone, supra*, a Mississippi school district was concluded to have violated FAPE when it moved a severely autistic student with disruptive behavior problems

⁶ Notice of a proposed change is to be provided before the change is made – not notice of the proposed change prior to commencement of the IEP meeting where the change will be discussed. See *Masar v. Bd. of Educ. of the Fruitport Cmty. Schs.*, 39 IDELR 239, 103 LRP 37950 (W.D. Mich. 2003). In this case there was no IEP Team consideration of a change; moreover, notice was given after the fact by ██████████ Public Schools.

from a therapeutic school to the school district's home-school zone. *Id.* A meeting was held, in which parent was present, and where parent was informed that the student would be transitioned immediately to the home-school zone. *Id.* Parent objected, noting the student's elopement issues were not being addressed in a transition plan. *Id.* The Fifth Circuit affirmed the district court, which had found a FAPE predetermination violation. *Id.*

Unlike *Boone, supra*, which even had a meeting where parent was present prior to action taken, in this case there was no IEP or other coordinated meeting in which Parent was in attendance. There was no transition plan required in an IEP. Parent simply received a telephone call informing her of its decision to end services at [REDACTED] [REDACTED] Tr. Vol. 3, pp. 207-211. [REDACTED] emailed [REDACTED] Public Schools that, pursuant to their contract agreement, they were ending services. P 34. [REDACTED] [REDACTED] simply unilaterally stepped away.

It is concluded that predetermination was made. *See Ms. S. ex rel G. v. Vashon Island Sch. Dist.*, 337 F.3d at 1131; *Deal v. Hamilton Cnty. Bd. Of Educ.*, 392 F.3d at 858; *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d at 1188. There was no IEP meeting. There was not even an offer. It was a unilateral decision by the [REDACTED] communicated to Parent. There was no keeping of an open mind by [REDACTED], because there was no meeting or discussion. Parent could not participate. The decision was simply made by [REDACTED] This amounts to a procedural violation of FAPE. 34 C.F.R. § 300.513 (a).

Similarly, it is concluded that there was a change of placement. *See Rachel H. v. Dep't of Educ. Hawaii*, 868 F.3d 1085 at 1091. Student was moved from one type of educational program to another type of program, from the therapeutic hybrid day program

model with social/emotional and behavioral needs delivered throughout the day, under a special program with similar students with behavioral issues and staff to support those issues, to an open and direct educational setting in the public schools' BASE program at [REDACTED]. Id. This amounts to a procedural violation of FAPE. 34 C.F.R. § 300.513 (a).

The next step is to determine if the procedural inadequacies: (1) impeded a child's right to a free appropriate public education, (2) significantly impeded the parent's opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. 34 CFR § 300.513 (a)(2). It is concluded that both the predetermination and the change of placement procedural violations impeded the student's right to a FAPE, significantly impeded the parent's decision-making process, *see Deal v. Hamilton Cnty. Bd. of Ed.*, 04 LRP 59544 (6th Cir. 2004), and caused a deprivation educational benefit, as explained above. As a result, it is concluded that **there is a violation of FAPE**. Petitioners have met their burdens of proof by a preponderance of evidence. *See Schaffer v. Weast*, 546 U.S. 49 (2005).

Student was unilaterally exited and without educational services for about a month, which Respondents contend is based on a contractual relationship, but there is more to the underlying discharge other than a contract. The Prior Written Notice from [REDACTED] Public Schools stated the underlying reason for discharge was due to the Student's behaviors, with the attack on a peer on December 4, 2024, and hitting the peer in the back of the head, along with another prior suspension for an unprovoked attack, and after a change in classrooms. R-37. [REDACTED] however, did not go through the procedures for a manifestation determination to exit the Student (the change of placement to [REDACTED] Public

Schools) because of the behaviors for more than 10 days. *See* 34 C.F.R. § 300.530. While [REDACTED] Public Schools notified Petitioners that it would step into the shoes for implementation of the IEP, the Student was not placed into the new school, as stated, for about a month, although there was some overlap of an unknown schedule due to winter holiday, and what “school days” consisted of. In any event, the underlying Student behaviors giving rise to a change of placement from [REDACTED] to [REDACTED] Public Schools, and the amount of time which transpired, may indicate a manifestation determination issue, if it was proved. The record, however, fails to show that the time frame was 10 or more school days, given the holidays. The burden is on Petitioners to prove the case. *See Schaffer v. Weast*, 546 U.S. 49 (2005). They failed to do so. It is concluded **there is no** FAPE violation. 34 C.F.R. § 300.513 (a).

This addresses Issues 1, 6, 7, 8, 10, 13, 16, 17, 18, 19, & 20.

Complaint 1, OSPI 2025-01, Other Manifestation Determination Matters, FBA, BIP (Issues 5 & 7, among others)

After Student moved to [REDACTED] school, on about January 8, 2024, the Student was absent due to sickness for a week. Tr. Vol 5, pp. 7-8, 10-11, 54. Petitioners apparently claim that a manifestation determination should have been held because of “repeated disciplinary removals, including suspensions, seclusion, and other responses to behavioral incidents.” *See* Petitioners’ Proposed Conclusion 7. Petitioners point to various parts of Parent’s testimony where she contends show 13 restraints in 80 hours, or recording suspensions as unexcused absences, and relies on her parental theory that those circumstances factually result in the need for a manifestation determination. For instance, they cite to voluminous documents, such as P-79 and P-88, without specific connection, for

various time periods. *See* Petitioners' Proposed F&C findings 67 and 73. Their theory is that these removals, and others, amounted to a need for a manifestation determination. *See* Petitioners' Proposed Conclusion 7. This is confusing, unpersuasive, and unsupported by the record. The Petitioners theories are not facts to meet their burden of proof that a manifestation determination was required because of their theories. ***See Schaffer v. Weast***, 546 U.S. 49 (2005)(burden on party contesting action).

If a child with a disability is removed due to disciplinary changes in placement exceeding 10 consecutive days then a manifestation determination is required within 10 school days of the decision to change placement. 34 C.F.R. § 300.530(b)(2), (e). The relevant IEP Team members, including the parent, must review all of the relevant information in the student's file, including the IEP, teachers' observations, and relevant parental information. 34 C.F.R. § 300.530(e). The team is to determine if the child's conduct "was caused by, or had a direct and substantial relationship to, the child's disability," or if the child's disciplinary conduct directly resulted from the LEA's failure to implement the IEP. *Id.* If the conduct is determined not to be a manifestation of the disability then the LEA may apply disciplinary action in the same manner and for the same duration as it would for a child without a disability, except that the child would still be entitled to a FAPE in the new setting and to receive behavioral intervention services and modifications addressing the behavior so that it does not recur. 34 C.F.R. § 300.530(d). If the behavior is determined to be a manifestation of the disability, then a behavioral assessment is to be conducted and behavioral plan implemented to address the child's behavior. 34 C.F.R. § 300.530(f).

When disciplinary issues arise, a child who has not been determined eligible for special education services may be afforded protections afforded a child who has been determined eligible for services when the parent expresses a written concern to an agent of the LEA that the child is in need of special education services, that an evaluation has been requested, and that a LEA agent has expressed concern to the LEA supervisory authorities about a pattern of the child's behavior. *See* 34 C.F.R. § 300.534(b). If the parent refuses an evaluation or services, then notice is not imputed to the LEA. *See* 34 C.F.R. § 300.534(c). A child is then treated as any other child without a disability for disciplinary measures. *See* 34 C.F.R. § 300.534(d).

A child is entitled to a FAPE in the new disciplinary setting when the conduct is determined not to be a manifestation of the disability. *See* 34 C.F.R. § 300.530(d). If properly alleged as a violation of FAPE then a remedy for denial of FAPE could exist despite a determination that it is not a manifestation of disability, including the appropriateness of the placement due to a disciplinary infraction. ***See Dist. of Columbia v. Doe***, 611 F.3d 888, 898 (D.C. Cir. 2010)(days in disciplinary alternative setting as inappropriate and denying FAPE due to minimal disciplinary issue).

What does arise is the Parent's testimony at the Due Process Hearing, which is that the Student had been suspended after his return to [REDACTED] Public Schools for only seven days. *See* Tr. Vol. 2, pp. 108-111. *See also* P-138, RESP 2753. After Student struck a staff member on the face on about February 20, 2025, Student's Parent specifically asked the LEA if the Student was being suspended. The reply was that the Student was not suspended. *See* P-138, Email Feb. 21, 2025. Parent had been notified that Student could return to school. *See* P-138, Email Feb. 20, 2025.

There being no 10-day trigger, the Petitioners' claim that a manifestation determination should have been held is not proved by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49 (2005). There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

What also arises is what is being referred to as a MDR, tr. vol. 5, p. 32, rather than a formal disciplinary manifestation determination, which occurred during the February 11, 2025 IEP amendment meeting, where bad behavior was reviewed for IEP considerations as behavior manifestations. R 18; Tr. Vol. 5, pp. 31, 110. The Petitioners' claim that this was a manifestation determination procedural error is not proved by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49 (2005). There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a)

There being no manifestation determination issue, then there is no compelled functional behavioral analysis, or behavior intervention plan. These are only mandatory in a manifestation determination procedure. *See* 34 CFR § 300.530(a) & (f). Therefore, it is concluded that the Petitioners' claim that a BIP/FBA were required is not proved by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49 (2005). There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

Petitioners also argue, under Issue 5, that positive behaviors and supports are nonetheless required, presumably even outside a required statutory or rule realm of a FBA/BIP. *See* Petitioners' Proposed Conclusion 5. The issue of the use of positive behaviors and supports apparently arises during the full statutory period, which would include the three IEPs and thereafter into [REDACTED] school. This is also connected with Issue 2.

An IEP Team must consider a number of special factors in the development of the IEP. *See* 34 C.F.R. § 300.324 (a) (2). In relevant part, “[i]n the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior[.]” *Id.* at § 300.324(a)(2)(i). An IEP must have measurable goals to meet the student’s educational needs resulting from a disability, and to advance appropriately toward attaining those goals. 34 C.F.R § 300.320 (a)(1)(2)(i)&(4)(i). For the IEP to substantively comply with FAPE, “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*, 137 S. Ct. 988, 999 (2017), which is “appropriately ambitious in light of [the child’s] circumstances.” *Endrew F*, 137 S. Ct. at 1000, considering the “unique circumstances” of the child. *Endrew F*, 137 S. Ct. at 1001.

In November 2024 the Office of Special Education and Rehabilitative Services issued guidance, which is found to be persuasive, finding that as rooted in evidence-based practices, FBAs should be used as a strategy support when a student’s behavior interferes with learning. *See Using Functional Behavioral Assessment to Create Supportive Learning Environment*, Office of Special Education and Rehabilitative Services, November 2024, p. 1. Petitioners’ argument is that the IEPs denied FAPE because of the insufficient behavior mechanisms, and that an FBA was not used, but should have been. Respondent’s argument is that an FBA was not required, because positive behavior supports and interventions were otherwise considered, which met the Student’s behavioral needs.

While the IEP need not have an FBA/BIP, the question arises as to whether the Student is making progress, or advancing toward those goals, or is remaining stagnant, or

regressing, absent an FBA/BIP. For the three IEPs (or amendment) at issue, noting that the first two are limited to the then-existing disability category of OHI, with the third being found to violate FAPE due to a lack of an Autism evaluation, analysis will be undertaken. Experts Dr. G for the Respondents, and Analyst T for the Petitioners, have differing views, with some consideration of materials outside of the limitations period. *Compare P-91 with R-69.* The behavioral portions IEPs will thus be explored.

The social/emotional/behavioral measurable annual goals in the August 25, 2023 IEP states that when the Student is presented with an overwhelming social setting or when around negative interactions, Student will maintain appropriate verbal behavior, such as having appropriate conversations, remaining on task, using kind and encouraging words, and engaging respectfully, when near those interactions in 4/5 social situations from 0/5 during a school week as measured by anecdotal notes, observations by staff, and behavioral data. The next goal is that Student will be given direct instruction and support for triggers for frustration or anxiety, and use self-created (with staff support) escalation cycle to identify and communicate the triggers, like when it happens, I feel this from 0/5 to 4/5 opportunities, measured by behavioral and observational data. The third measurable annual goal is that when given direct instruction and support in self-regulation strategies, the Student will implement a strategy like calmly expressing feelings and concerns, sensory support, deep breathing, a calming break, request for noise cancelling headphones, so to aid in regulating and verbally communicating in 4/5 situations measured by behavioral observation and data. *See P-19, p. 7.*

The social/emotional/behavioral measurable annual goals in the IEP amendment dated January 26, 2024 are exactly the same. *See P-20, p. 7.*

The social/emotional/behavioral measurable annual goals somewhat changed with the August 23, 2024 IEP. *See* P-21, pp. 9-10. These are that when faced with a challenging situation or near negative interaction, the Student will demonstrate appropriate verbal behavior through engaging in positive conversations or ignoring, like staying focused on tasks, using kind and encouraging language, and interacting respectfully, when near those interactions in 4/5 social situations, with progress measured by anecdotal notes, staff observations, and behavioral data. *Id.* The next goal expresses that given guidance in Student's emotional regulation strategies, with staff support, the Student will utilize regulation strategy, like expressing feelings calmly, using sensory tools, deep breathing, and taking calming steps, to help manage emotions and communicate effectively in 3 out of 5 situations, with progress measured through behavioral observations and data collections. *Id.* at p. 10. The next goal is that when given a frustrating situation, like social or academic, or unwanted expectation, Student will work on maintaining healthy relationships by being respectful, both verbally and physically, with positive communication, and by remaining engaged in conversation with staff in 3 out of 4 emotionally escalating or frustrating situations, with progress measured through behavioral observations and data collections. *Id.* The final goal is that given therapeutic sessions which emphasize understanding the distinction between real and perceived threats, the Student will accurately identify and differentiate between real threats and perceived threats in 4 out of 5 social scenarios, following staff-guided outcomes, with progress to be measured through behavioral observations and data collection. *Id.*

Note that these goals do not note the antecedents, that is, the triggers for the underlying behaviors, and how to approach them. That is, there is little about the cause for

the behaviors and how to try to fix them. *See* P-91 (Analyst T Report). While Dr. G concluded that the strategies at [REDACTED] might focus on finding the function, and to develop replacement behaviors, by the use of staff proximity, breaks, reinforcements, check in and check out, consistent daily schedules, staff proximity and decreased sensory stimuli, *see* P-69, unnumbered p. 3, the goals fail to describe what is used, and how to use them, and to develop a plan capable of being implemented. The measurable goals are vague and unclear to address the Student's behaviors.

In any event, the behavioral plans were not working. Student was cussing, breaking things, hitting people, hurting peers, hurting staff, and generally being out of control in a number of situations, with escalating behaviors, to where he was disenrolled from [REDACTED] and then eventually removed to home-schooling by Parent. The Student was not making progress, but was actually regressing. There was no data collection, no analysis of the data, then finding the antecedent or triggering event, then review of the interfering behaviors, and then the later events to develop what is triggering the behaviors, like an FBA could have provided. *See* Using Functional Behavioral Assessment to Create Supportive Learning Environment, Office of Special Education and Rehabilitative Services, November 2024, pp. 5-6. It is concluded that the IEPs as to social, emotional, and behavioral issues were not effective, that is, they were not appropriately ambitious in light Student's unique circumstances. *See* *Andrew F.* 137 S. Ct. at 999. Petitioners have met their burden. *See* *Schaffer v. Weast*, 546 U.S. 49 (2005). It is concluded this was **a substantive denial of FAPE**. 34 C.F.R. § 300.513 (a).

This address Issues 1, 3, 5, 7, 8, 10, 11, 12, 13, 19, & 20.

Complaint 1, OSPI 2025-01, Implementation (Issue 2, among others)

Petitioners complain that the IEPs within the relevant periods were not materially implemented, as to behavioral supports and seclusion, related services, ESY and unqualified personnel, among other things. The Respondents disagree.

For a failure to implement claim to be successful it must be a material failure. *See L.J. v. School Bd. of Broward Co.*, 927 F.3d 1203 (11th Cir. 2019). *See also Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(services fall significantly short of what is required in IEP).

The first matter to be addressed is Student's placement in closed rooms by himself after a behavioural incident. This occurred after he was placed in [REDACTED] Schools at the BASE program. The IEPs specifically said Student should not be placed in a closed setting. "Never keep him in the room with door shut unless he is choosing that. If he is unsafe or causing an unsafe environment, use a restraint as the intervention." P-19, P-20, P-21.

Student was put into two rooms with shut doors. Student is a child qualified for educational services under Other Health Impairment, with the then determined eligibilities based on Tourette syndrome, PTSD, and ADHD, with a request for an Autism evaluation. Id. Parent notes Student suffers from anxiety with PTSD leading him to respond preemptively. P-20, P-21. Yet Student was placed in the closed rooms, by himself. He was being watched by staff, with the room serving as a time out room, measured by a timer.

Student then began to bang on a lock, to such an extent that he removed a metal hook. He was hitting the door with the hinge. Student was moved to another closed room, and in the process punched an educator on the cheek with a closed fist. Student used the tie on the chord to his hoodie to wrap around his wrists to such an extent that the wrists

were turning reddish purple. Student then took the plastic part of the hoodie string and pushed it into his wrist. It was a dangerous situation, where the Student could hurt himself. Tr. Vol 5, pp. 33-36.

The IEP said not to put Student in a room with a shut door. As a behavioural technique, however, staff did put him into rooms with shut doors. Student reacted, to such an extent of engaging in self-harm. Although this happened only one time, given the unique nature of the Student and notice in the IEP, the failure to implement the provision prohibiting placing Student in a closed room with the doors shut was material. Specifically to the IEP of August 23, 2024, P-21, where Student was 12 years old, and in the 7th grade. Id. This is concluded to be a material failure to implement the IEP. *L.J. v. School Bd. of Broward Co.*, 927 F.3d 1203. Implementation is part of the procedural process of the IDEA. **See** 34 C.F.R. § 300.323(c)(2). Although a material failure shows a substantive violation by being material, nonetheless it is concluded that this procedural violation amounts **to a substantive violation of FAPE** by impeding the Student's right to a FAPE, and as a result causing a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

Petitioners argue that services were not consistently delivered and were not supported by reliable documentation. *See* Proposed Conclusion 2. This is unpersuasive. The evidence Petitioners use for support is that there were some type of informal checking and logs, tied together by Parent for the theory. It is concluded Petitioners did not meet their burden. **See** *Schaffer v. Weast*, 546 U.S. 49 (2005). There was not a material failure to implement proved. There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

Petitioners argue that therapy records show a substantial discrepancy between

counseling minutes and those provided, with unchanged treatment plans, and no educational services for about a month. *See* Proposed Conclusion 2. This is unpersuasive. The evidence Petitioners use for support is Parent’s review of documents and therapist testimony, tied together by Parent for the theory. It is concluded Petitioners did not meet their burden. ***See Schaffer v. Weast***, 546 U.S. 49 (2005). There was not a material failure to implement proved. There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

Petitioners argue that services were performed by unqualified personnel, not adequately qualified and available, with the assigned classroom teacher not being a special education teacher, and the assigned special education teacher having a large caseload. *See* Proposed Conclusion 2. This is unpersuasive. While the student’s regular education teacher may not have been a licensed special education teacher, and the special education teacher had a caseload of about 17-18 students, Petitioners have failed to prove that these factors resulted in a material failure to implement claim. It is concluded Petitioners did not meet their burden. ***See Schaffer v. Weast***, 546 U.S. 49 (2005). There was not a material failure to implement proved. There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

Petitioners argue that instruction was focused primarily on accommodations, not specialized instruction, and that the special education teacher did not work summers, thus a material failure to implement ESY. *See* Proposed Conclusion 2. This is unpersuasive.

Extended school year services must be “necessary” to comply with FAPE beyond the normal school year. 34 C.F.R. § 300.106(a)(2) & (b). “OSEP recognizes that a child’s IEP for ESY services will probably differ from the child’s regular IEP, since the purpose of the ESY program is to prevent regression and recoupment problems.” ***Letter to Myers***, Office of Special Education Programs, December 18, 1989, 16 IDELR 290. Petitioners have

failed to prove that the special education teacher not on contract during the summer, otherwise available for consult to the ESY teacher, is necessary for material implementation. It is concluded Petitioners did not meet their burden. *See Schaffer v. Weast*, 546 U.S. 49 (2005). There was not a material failure to implement proved. There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

Petitioners argue that instructions were reduced due to time outs, placements, and restraints, with an alleged 80 hours in time out, as well as use of seclusion, with alleged lack of staff training in interventions, with removals, and the absence of an escalation cycle not being used in practice, which, taken together, show a significant discrepancy with what was in the IEPs, compared to what was provided, thus resulting in a material failure to implement. *See Proposed Conclusion 2*. This is unpersuasive. Petitioners rely on documents and Parent's supposition that educational documents and the Student's educational program deny FAPE. It is concluded Petitioners did not meet their burden. *See Schaffer v. Weast*, 546 U.S. 49 (2005). There was not a material failure to implement proved. There is **no violation** of FAPE. 34 C.F.R. § 300.513 (a).

This address Issues 1, 2, 8, 10, 11, 13, 14, 15, 16, & 19.

Complaint 1, OSPI 2025-01, Regression or Progress (Issue 3, among others)

Analysis and conclusions in Issues 4, 6, 5, and 7, are incorporated with this issue. Regression was noted and progress was lacking. Goals and supports were lacking, as explained in those issues. However, this relationship is to the suspicion for Autism, with related communication, therapy, and behavioral needs. This apparently also reflects the Petitioners' argument in this regression or progress issue.

Thus, the lack of progress and regression noted due to behavioral concerns explained above are connected to the lack of an evaluation for Autism in the last IEP, as well as to placement at ██████ Public Schools. Nonetheless, has been concluded that regression and lack of progress raised a suspicion for an Autism evaluation during the August 23, 2024 IEP, which is the issue ripe for determination. Similarly, given the findings and conclusions under evaluations and placement, then it too is concluded that as of the August 23, 2024 IEP there was no review and revision of the IEP based on progress and regression, given the history and copying and similarities in the August 25, 2023 IEP and January 26, 2024 IEPs, then being revised with the August 23, 2024 IEP, although without an educational Autism evaluation. *See* 34 C.F.R. § 300.324 (b). This is concluded to be a procedural violation of FAPE. 34 C.F.R. § 300.513 (a). It is concluded that this procedural violation amounts **to a substantive violation of FAPE** by impeding the Student's right to a FAPE, and as a result causing a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

This addresses Issues 1, 3, 4, 5, 6, 8, 11, 12, 13, 16, & 17.

Complaint 1, OSPI 2025-01, IEP Reasonably Calculated to Enable Meaningful Progress (Issue 1, among others)

Petitioners argue that Respondents failed to develop an IEP reasonably calculated to enable Student to make meaningful progress, which appears to be a catch-all for all the other claimed violations of FAPE. *See* Proposed Conclusion 1. But generally Petitioners argue that behavior, communication, refusals, dysregulation, aggression, removal from instruction, and informal methods used for monitoring, with regression, did not amount to appropriate IEPs. *Id.* These matters have been considered before more specifically in this Order. *See* above.

It has already been concluded, among other things, that social, emotional, and behavioral aspects of IEPs were not effective, in a violation of FAPE. Moreover, it has been concluded that the lack of appropriate review and revision denied FAPE. Also, since there was a suspicion of Autism, yet no evaluation assessment, then that too was a violation of FAPE under the third IEP. A predetermination and change of placement resulted in a violation of FAPE, as well as the lack of an FBA/BIP, which also resulted in a FAPE violation. The violations were substantive as to the IEPs offered, or procedural resulting in substantive violations.

“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F*, 137 S. Ct. at 999. The educational program offered by the IEP must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* at 1000. The “unique circumstances” of the child for whom the IEP was created determine the adequacy of the offered IEP. *Id.* at 1001. The IEP must be reasonable, not ideal. *Id.* at 999.

The underlying argument is as to behaviors, and lack of an Autism evaluation, and how the resulting plans flowed thereafter. The appropriateness of the IEPs have been addressed in the other issues already, and are incorporated herein. To the extent otherwise concluded, for the reasons noted above, the IEPs were not reasonably ambitious, considering the unique characteristics of the Student, under a reasonableness standard, as well as under a procedural into substantive standard. Petitioners have met their burdens to prove a **violation of FAPE** for all three IEPs. It is so concluded. 34 C.F.R. § 300.513(a).⁷

⁷ It does not go unnoticed that Student was absent from school, and Respondents’ position has been considered that the absenteeism made assessing Student more

While [REDACTED] Public Schools was given the opportunity to educate the Student after Student was placed with them from [REDACTED], the transition for Student was very difficult, including not being able to eat in the cafeteria, and cussing and yelling (it is recognized that Student is atypical, diagnosed with Tourette' syndrome), and then became violent, and placed in closed rooms despite an IEP stating that was impermissible. Taking the Student where it finds the Student, [REDACTED] Public Schools still did not provide for a Autism evaluation, and although they began to use antecedents in behavior management, there was no consistent behavior plan for implementation. The offer eventually became a virtual setting, with counseling, although Student's social, emotional, and behavioral needs through that method were essentially delegated to the Parent. Simply put, for reasons stated before, Petitioners have **proved a violation of FAPE.** 34 C.F.R. § 300.513(a)

This addresses Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, & 20.

Complaint 1, OSPI 2025-01, Parental Unilateral Placement

Parent seeks to be reimbursed for the home-school program now being provided to the Student, using the home-school as a new unilateral placement, after giving a 10 day notice that she would do so, and citing *Sch. Comm. of Burlington v. Mass. Dept. of Educ.*, 471 U.S. 359 (1985), yet referring to it as compensatory education reimbursement for private providers. The Respondents argument is persuasive in that what Petitioners seek is reimbursement, and that they failed to meet the reimbursement test. It is concluded that

difficult than had Student been present in school. That argument is unpersuasive. What this case focuses on is a behaviorally challenged adolescent not evaluated for ASD although there were suspicious signs, and thus corresponding considerations of OT, communication, and behavior. The behavior interventions were not working. Student was acting up, getting worse as time went by, and [REDACTED] unilaterally disenrolled Student. This was all present while Student was in school.

Petitioners have not met their burden of proof on this issue, **see** *Schaffer v. Weast*, 546 U.S. 49 (2005), so the question of whether unilateral home-school placement using Montana’s home-schooling mechanisms is even available as a remedy need not be considered. The request is denied.

The reimbursement test to employ is generally described as the Burlington-Carter test, that is: (1) whether the school district provided a FAPE, and, if not, (2) whether private placement is appropriate, with (3) a consideration of the equities. **See** *Sch. Comm. of Burlington v. Mass. Dept. of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). **See also** 34 C.F.R. § 300.148(c) . Thus, the matter for determination is whether the School District provided FAPE, and if not, whether the Petitioners’ unilateral placement is appropriate. *Id.*⁸

The first part of the analysis begins with whether the School District provided FAPE to Student. It is concluded that as of the date Parent noticed the Respondents that Student was being removed (a 10-day type of notice, yet not discussing the purpose as a unilateral placement) FAPE had not been provided.

The second part of the analysis is to determine if private placement is appropriate. It is concluded that private placement by “home-schooling” in Montana is not appropriate for this special needs Student. 34 C.F.R. § 300.148(c) . Petitioners have not their burden to prove what tools they may use for Student’s accommodations based on the Student’s challenges. Petitioners have not met their burden to tie-in the new alleged private

⁸ Note that in Montana, when a child is home-schooled, the parent is responsible for the child’s education. **See** Frequently Asked Questions, Montana Office of Public Instruction, November 6, 2025, citing MCA 20-5-111.

placement costs. Indeed, even the curriculum is not established, presumably only as under Montana law for home-schooling. The Student's grades in home-school remain poor.⁹ Thus, the Student's home-school education is not found appropriate, and is not reimbursable. 34 C.F.R. § 300.148 (c) .

Remedies

Autism, Communication, OT, and Behavioral Evaluation

The Student will be independently evaluated by an expert in the area of Autism, and will also evaluate the connected areas of communication, occupational therapy, and behaviors, as may be associated with this Student and the Autism evaluation process. This is ordered as a form of compensatory relief to correct past errors. This will take place without unnecessary delay, to mean, to meet the goals of this decision, within 30 days from the entry of this Order. [REDACTED] Public Schools will give notice to the Petitioners of the independent evaluator. *See* 34 CFR § 300.502 (d).

To meet the goals of this decision, the Petitioners will respond to the [REDACTED] Public Schools regarding the independent evaluator process within 10 days of receipt of the evaluator notice. This evaluation is ordered by the Hearing Officer under the independent evaluation provisions. *Id.* at § 300.502(d). It is in the form, however, of compensatory relief.

The [REDACTED] Public Schools is to act in accord with the independent evaluation process in that it will, without unnecessary delay, provide the Petitioners information about where an independent educational evaluation will be obtained, *see* 34 CFR § 300.502 (a)(2),

⁹ The issue was not raised as to whether a Montana "home-school" is a school to which a change could occur within the meaning of the IDEA or Montana's rules.

and conducted by a qualified examiner not employed by them. *Id.* at (a)(3)(i). **See** *M.S. v. Utah Sch. for the Deaf and Blind*, 822 F.3d at 1130 (practice to send list of qualified evaluators). The ultimate evaluations should be performed within 90 days of the entry of this Order. In reviewing past data, the LEA is to act in accord with the criteria in 34 CFR §§ 300.304, 305, and 502. *See id.* at § 300.502(e). It is to be at public expense. *Id.* To meet the goals of this decision, on completion of the independent educational evaluation, a copy will be provided to all of the parties.

In the evaluator's professional judgment, discussions with Student and Parent in their current location as a home-schooled student may be explored, yet only in context of the matters relating back to between August 23, 2024 (the IEP suspicion without parental waiver date) and March 17, 2025 (parental notice of removal from school). The comprehensive evaluation remains ripe and is not a moot point, since it is ordered as a form of compensatory relief to correct for past errors, and is not prospective in nature, thus not becoming special education services for a Montana parentally placed home-school student.

Functional Behavioral Assessment

The Student will be independently assessed for functional behaviors under a Functional Behavior Assessment, conducted by a professional, not a member of the [REDACTED] Public Schools or [REDACTED], holding the necessary skills, training, and knowledge to identify, analyze, and address the interfering behaviors of Student and collaborate and actively engage Parents and Student in the process.

See Office of Special Education and Rehabilitative Services, Office of Elementary and Secondary Education, U.S. Department of Education, November, 2024.

<https://sites.ed.gov/idea/idea-files/using-functional-behavioral-assessments-to-create-sup>

portive-learning-environments/. This is to take place within 60 days from the date the Petitioners receive notice from the LEA of the independent evaluator process, as explained below. The LEA will act using due speed to develop and notify Petitioners of the process.

Expert T's expert report, P-91, will be made available to the independent assessor, as well as other educational records at [REDACTED] and [REDACTED] Public Schools. The FBA, and BIP noted below, will assess those behaviors which interfered with learning up to March 17, 2025 (when Parent noticed removal of Student from [REDACTED] Public Schools). In the assessor's professional judgment, discussions with Student and Parent in their current location may be explored, yet only in context of the matters relating back to before March 17, 2025.

A BIP will be drafted and forwarded to Petitioners and to the Respondents within 60 days thereafter. This is ordered as a form of equitable compensatory relief, based on a denial of FAPE.¹⁰

¹⁰ To assist with the assessor's review standards, OSEP guidance will be considered to the extent available within the Student's current home-school setting, as taken from the OSEP November 2024 Guidance letter. It is quoted as follows:

It is generally understood that the following characteristics are part of an FBA/BIP:

Description of Behavior:

An FBA should include a clear, specific, measurable, observable, and objective description of the behavior that interferes with learning. The description of the interfering behavior should be sensitive to cultural and linguistic differences and be written using objective observations free from bias and judgment. FBAs can be used to understand behaviors that interfere with learning, such as talking out, out-of-seat behavior, work avoidance/refusal, hitting, or throwing an object.

Data Collection:

An FBA should be individualized and provide insights into the environmental and behavioral factors impacting the student by using data sources that include observation and interviews to:

Common Characteristics of an FBA

Description of Behavior

Data Collection

Function-Based Behavior Review

Skill Development

Collect and analyze direct data (e.g., classroom observations) to record when the behavior happens and when it does not happen (referred to as occurrence and non-occurrence). Data collection methods may include conducting observations to collect data on the frequency (how often the behavior occurs), duration (how long the behavior lasts), conditions (environmental factors), location (where the behavior took place), and individuals present (other educators or students present) to inform an antecedent-behavior-consequences analysis, described below.

Collect and analyze indirect data (e.g., interviews with teachers) on when the behavior happens and when it does not happen. Data collection methods may include interviews with or anecdotal reports from educators, early childhood education providers, parents, and the student, if appropriate, that are focused on the interfering behavior; and

Review existing data in areas such as: attendance, academic performance, prior behavioral incidents, student health records, and previously implemented academic or behavioral interventions.

As described below, data collection for an FBA should be conducted by professionals who have the necessary skills, training, and knowledge to identify, analyze, and address the interfering behaviors of students and collaborate and actively engage parents and students in the process.

Function-Based Behavior Review:

Once data are collected, educators analyze the data related to:

the events that happen before the behavior occurs, known as triggering antecedents;

the interfering behavior; and

the events that happen immediately after the behavior occurs, known as consequences that maintain or reinforce the behavior.

By considering the antecedent-behavior-consequence relationship, the FBA documents the function, or purpose, an interfering behavior serves. Typically, the function or purpose of behavior is categorized as a student's effort to obtain something (e.g., peer or adult attention, access to a preferred activity, stimulation/sensory experiences), or to escape/avoid something (e.g., social experiences, a non-preferred activity, stimulation/sensory experiences).

Skill Development:

After analyzing the data, educators utilize the information to identify what social, emotional, or academic skills must be further developed to support the student in using the new skills at appropriate times. The development of such skills should address the function of the behavior (e.g., obtain a reaction from classmates or escape/avoid schoolwork) by applying those skills (e.g., new social skills or academic strategies to complete work) rather than utilizing the behavior that interfered with learning.

Following the completion of an FBA, often a behavioral support plan (BSP) or behavioral intervention plan (BIP) is created to support the student and assist educators in developing a learning environment that addresses the student's needs.

Following the completion of an FBA, often a behavioral support plan (BSP) or behavioral intervention plan (BIP) is created to support the student and assist educators in developing a learning environment that addresses the student's needs. Typically, the creation and

An FBA/BIP remains ripe and is not a moot point, since it is ordered as a form of compensatory relief to correct for past errors, and is not prospective in nature, thus not becoming special education services for a Montana parentally placed home-school student.

Other Compensatory Service Hours Education

The remedy for compensatory education service hours is equitable, and is qualitative, rather than quantitative. Given the qualitative approach, many factors are

implementation of a BSP or BIP is a collaborative effort which may include the student's teachers, specialized instructional support personnel, school leaders, school counselors, psychologists or other mental health personnel, parents and, if appropriate, the student. Some schools have student assistance or support teams that could assist with developing and monitoring such a plan. This plan includes strategies for redesigning the student's current learning environment, implementing behavioral and instructional supports and strategies, and focusing on educator decision-making and responses that can support inclusive educational environments. Each educator who is responsible for implementing the behavioral plan should have access to, and an understanding of, the behavioral plan to enable effective implementation. Components of a behavioral plan (BSP/BIP) generally include:

Describing the behavior that is interfering with the student's learning or interactions with peers/adults;

Examining the environmental factors such as lighting, seating arrangements, noise level, interactions with peers and/or adults, accessibility of the academic curriculum that may contribute to the behavior occurring/not occurring;

Explaining the function or purpose of the behavior examined while conducting the FBA and the environment before and after the behavior occurred;

Identifying behavior support strategies that prevent the interfering behavior from occurring, including addressing antecedent events and environmental factors that provoke the interfering behavior;

Teaching the student skills that will address the function of the interfering behavior through instructional strategies and interventions and recognizing when they use these skills;

Recognizing the student (e.g., providing specific positive feedback) for reducing behaviors that interfere with learning and/or for demonstrating the new skills that support academic and social progress;

Determining the school personnel responsible for implementing the plan and how the plan will be implemented with fidelity throughout the school or early childhood program;

Supporting educators through training and consultation to use strategies that prevent interfering behavior from occurring and responding appropriately should the interfering behavior occur; and
Evaluating the effectiveness of the plan including how student progress will be measured.

considered in this case, which will include some quantitative hours, as well as absenteeism. Although not complied in specific hours, Student's removal from schools, and suspensions for cause, among other things, and the reasons underlying the FAPE violations for the different time periods in this case are considered. Suffice to conclude that the first two IEP evaluation failures were based on waiver, and not in violation of FAPE.

The period thereafter, although not waived, is essentially based on a failure to seek an evaluation for Autism, so although there were suspicions to evaluate, there was never a finding of Autism and the lack of services due to Autism. Moreover, during these periods there was lack of attendance, making a remedy of compensatory service hours inequitable. This concept where an evaluation is at issue is similar to the compensatory education educational service hours remedy not being awarded as upheld in *Boone, supra*. Thus, service hours as a compensatory remedy due to the denial of FAPE for evaluations is not awarded.

However, the unilateral termination of [REDACTED]'s program and placement into [REDACTED] Public Schools shows this Student as unable to gain educational opportunities in the new setting. The Student was unable to comport in the new setting, and although Student was often out of school, it is noted that the Parent was trying to put the pieces together to gain education for her child after the Student experienced the excessive transition and unilateral termination, evinced by behaviors as a student in need of special education services.

Thus, from December 5, 2024 (when exited from [REDACTED]) through March 7, 2026 (when Parent noticed intent to disenroll from the public school system), compensatory education will be equitably awarded. It is not based on an hour for hour basis

of what was lost, since there are also time periods of holidays, and other factors not in the hour for hour test. It is an equitable working approach in which the quantity lost will assist in the number of hours to be awarded to compensate to put the Student in the place the Student should have been, absent the FAPE violation after termination from [REDACTED]

Generally, Student lost services for about three months. Even when in school, based on Student's behavioral disorders, Student was unable to appropriately engage in services offered. Reflecting on the last operating IEP for services, the March 23, 2024 IEP, then the weekly services that should have been provided were 225 minutes of math per week in the regular education setting, 225 minutes per week of reading in the regular education setting, 945 minutes per week for social/emotional/behavioral services in the special education setting, 225 hours a week in self-help and independence in the regular education setting, and 225 minutes per week in written expression in the regular education setting, for a total of 1845 minutes per week of education services, along with 150 minutes per week in counseling services.

Without using mathematical precision in this equitable formula, with a month deemed about four weeks, multiplied by three months, equals in a round figure of 12 weeks of services. It is noted, however, as stated earlier, that there was a holiday lapse of some sort when Student would not have been in school after termination, which will be equitably considered at about two weeks. Even though Student may have been absent, these periods will not be excluded, given Student's inability to regulate in the new setting. Thus, an equitable service period arises for about 10 weeks. This gives a working reference.

Compensatory education services are awarded as follows:

2,250 minutes in math services

2,250 minutes in reading services

9,450 minutes in social/emotional/behavioral services

2,250 minutes in self-help and independence services

2,250 minutes in written expression services

1,500 minutes in counseling

These services are to be provided by ██████ Public Schools in addition to, and not in place of, the Student's current home-school program. These compensatory minutes will be provided for the Student in Student's home setting, rather than in a public school setting, although if Student returns to the public school setting then they will be provided in the new setting. To not overwhelm the Student, who is already engaged in a home-school curriculum, they will be provided over a period of two years. At the option of Parent, they may be provided virtually, rather than in-person, or should emergency circumstances otherwise dictate (like a Covid pandemic).

These services are reasonably calculated to provide the Student with the educational benefits which the Student should have received had ██████ Public Schools appropriately provided the services in the first place. *See Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

Other Requested Matters

Any matters not addressed in this Order are denied.¹¹

¹¹ For State compliance, in summary, Complaint 2 was dismissed as being outside the statute of limitations. Complaint 1 found violations of FAPE: no evaluation suspicion of Autism, predetermination and placement, behavior management, material implementation, regression and progress under circumstances, and catch-all substantive

If Relief Not Accepted

Should Petitioners not accept any of the relief so ordered, that will not waive the other relief awarded which Petitioners may accept, or otherwise waive the terms of this Order.

ORDER

Therefore, for the foregoing reasons and under the foregoing terms, the Petitioners' Complaint for Due Process, filed on August 21, 2025 (Complaint 1), with requested relief, is granted in-part and denied in-part, and Petitioners' Complaint for Due Process, filed on September 10, 2025 (Complaint 2), is dismissed with prejudice, for the reasons noted herein. It is so administratively ordered.

REVIEW

Any party aggrieved by this decision has the right to bring a civil action in a court of competent jurisdiction pursuant to 20 U.S.C § 1415(i), 34 CFR § 300.516, and ARM § 10.16.3523 (4). Any such action must be filed within 90 days of receipt of the hearing officer's decision by the appealing party. The parties have agreed to service by email only, with the date of receipt now being the date of service reflected on the email transmission dated April 28, 2026.

FAPE under the circumstances.

/s/ electronic Morgan Lyman

MORGAN LYMAN
IMPARTIAL DUE PROCESS
HEARING OFFICER

Entered: April 28, 2026

CERTIFICATE OF SERVICE

I certify a true copy hereof was sent by email attachment transmission only, based on concurrence of the parties, to *pro se* Petitioners/Parent, [REDACTED], Esqs., for Respondents, and to A. Griner and M. Gibbs for the Superintendent of Public Instruction for the State of Montana on the 28th day of April, 2026.

/s/ electronic Morgan Lyman

MORGAN LYMAN