

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 EDC 03399

Student by and through his parents, Mother and Father Petitioner, v. Carteret County Board of Education Respondent.	FINAL DECISION REDACTED ¹
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THIS MATTER was heard before the undersigned Honorable Samuel K. Morris, Administrative Law Judge Presiding, on February 9 through 13, 2026, at the Carteret County Schools' Board of Education in Beaufort, North Carolina.

APPEARANCES

For Petitioner: Stacey M. Gahagan
Nataleigh N. Knaak
Gahagan Paradis, P.L.L.C.
3326 Durham Chapel Hill Boulevard, Suite 210-C
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For Respondent: Rachel B. Hitch
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ISSUES

The Final Prehearing Order in this matter filed February 5, 2026, contained three issues:

¹ Because Student's circumstances are sufficiently unique that it could permit his identification even after standard redactions of personally identifiable information (such as the student's and parents' names), this Redacted Final Decision also redacts the name of his current placement –Elementary School—as well as the names of certain staff. This additional redaction is necessary to ensure that Student cannot be indirectly identified through contextual details.

Joint Contested Issues

1. Whether Respondent impeded Student's parents' participation in the development of Student's IEP by predetermining his removal from the standard course of study and increased segregation from his non-disabled peers.

2. Whether Respondent developed a substantively appropriate IEP for Student on August 21, 2024, that was reasonably calculated to enable Student to make progress appropriate in light of his circumstances in his least restrictive environment (LRE).

Petitioner's Contested Issue

3. Whether Respondent violated the procedural requirements of the IDEA as alleged in the Amended Petition resulting in denial of parental participation, educational harm, or causing a loss of educational benefit from August 30, 2023 through August 30, 2024.

WITNESSES

For Petitioners:

Anita Boyd, Ed. D. – Exceptional Children Director, Carteret
County Public Schools

Debra Leach, Ed.D., BCBA – Expert Witness, Board-Certified
Behavior Analyst, Positive Behavior Supports Corporation

Dr. Kristin Burnette, Ph.D.– Expert Witness, Assistant Professor,
Literacy Studies and Special Education, College of
Education at East Carolina University

Mrs. Erin Mahaffey – Special Education Advocate

Mother– Mother of Student

For Respondent:

Dr. Jamie Pearson, Ph.D. – Expert Witness, Associate Professor of
Special Education and Educational Equity, North Carolina
State University

Mrs. Jessica Harrison – Expert Witness, Contracted Board
Certified Behavior Analyst, Director of Clinical
Operations, ENC Applied Behavior Analysis

Special Education Teacher – Expert Witness, Student's Special
Education Teacher, Carteret County Public Schools

General Education Teacher – Student’s General Education
Teacher, Carteret County Public Schools

Ms. Kristina Zangwill – School Psychologist, Carteret County
Public Schools

EXHIBITS

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the “bate stamped” numbers.

Stipulated Exhibits (“Stip. Ex.”): the Tribunal admitted into evidence Stipulated Exhibits numbers 1, 3, 7, 9-12, 14-20, 22, 23, 29-33, and 54.

Petitioners’ Exhibits (“Pet’r Ex.”): Petitioners’ Exhibits numbered 6 (p 22), 7 (pp 28, 152, 155, 157-160), 10 (p 208), 16, 20, 32 (pp 357-358), 36, 53, 60, 73 (pp 1359, 1362), 74, 75, 113, 166, 167, 212, were submitted as evidence in support of Petitioners’ case-in-chief. Petitioners’ Exhibit 125 was admitted for corroborative purposes only.

The Tribunal also admitted Petitioners’ Exhibit 97 for the limited purpose to show the respective evaluation was not conducted until 2026 and Petitioners’ Exhibit 121 for the limited purpose to show an observation did not occur until 2025.

The Tribunal took official notice of Petitioners’ Exhibit 164, the North Carolina Standard Course of Study K-8 Mathematics Standards.

Respondent’s Exhibits (“Resp’t Ex.”): Respondent’s Exhibits numbered 48, 87, 95, 116 (pg. 1583), 116 (pg. 1586), 116 (pg. 1592), 134, 162, 163, 165, 214, 215, 220, 221, 222, 223, 226, 227, 232, 233, 237, 242, and 243 were submitted as evidence in support of Respondent’s case-in-chief.

In addition, the Tribunal reserved ruling on Respondent’s Exhibits numbered 164, 166, 167, 168, 169, 170, 171, and 172. Although the Tribunal finds sufficient foundation to admit these exhibits, the witness could not explain the substantive edits appearing within them, identify who made those changes, or establish a specific date of creation and/or alteration of these documents. These deficiencies substantially diminish the reliability and probative value of said exhibits. Accordingly, the Tribunal receives Respondent’s Exhibits numbered 164, 166, 167, 168, 169, 170, 171, and 172 but affords them minimal weight.

Transcript volumes 1, 2, 3, 4, and 5 were received into evidence, consisting of 1397 pages, and are referenced as T vol # [page]:[line] (e.g., T vol 1 p 205:3-23).

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

WRITTEN STIPULATIONS OF FACT

At the start of the hearing in this matter, the Parties agreed to jurisdiction, party, legal, and factual stipulations in the Proposed Prehearing Orders, which were approved and filed in the Office of Administrative Hearings. These stipulations are incorporated by reference even if not specifically cited herein.

GLOSSARY OF TERMS

Because special education law is full of acronyms, a glossary of terms is provided to aid in understanding this terminology in this Final Decision.

Glossary of Commonly Used Acronyms and Terms

AAC – Assistive and Augmentative Communication

AT – Assistive Technology

BIP – Behavior Intervention Plan

CCS/CCPS – Carteret County Public Schools

CSN/ESN – Complex Support Needs/Extensive Support Needs; used interchangeably

DIBELS – Dynamic Indicators of Basic Early Literacy Skills

EC – Exceptional Children

ECS – Extended Content Standards

ESY – Extended School Year

EXTEND-1 – NC Alternate Assessment for students on the ECS

FAPE – Free Appropriate Public Education

FBA – Functional Behavior Assessment

IDEA – Individuals with Disabilities Education Improvement Act

IDMI – Intellectual Disability – Mild

IDMO – Intellectual Disability – Moderate

IEP – Individualized Education Program

LRE – Least Restrictive Environment

mClass – North Carolina statewide DIBELS mandated K-3 literacy assessment

NC DPI – North Carolina Department of Public Instruction

OAH – Office of Administrative Hearings

OHI – Other Health Impaired

PLOP – Present Levels of Performance

SDI – Specially Designed Instruction

SOL – Statute of Limitations

SPIRE – Specialized Program Individualizing Reading Excellence

UDL – Universal Design for Learning

BURDEN OF PROOF

Petitioners bear the burden of proof in North Carolina. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof “lies where it usually falls, upon the party seeking relief.” *Id.* at 57-58. The standard of proof is by a preponderance of the evidence. *Id.*; N.C. Gen. Stat. § 150B34(a).

Deference to Educators

Due regard in administrative cases is given “to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.” N.C. Gen. Stat. § 150B-34(a). Courts give educators “deference . . . based on the application of expertise and the exercise of judgment by school authorities.” *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 US. 386, 404 (2017). “By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement,” and a “reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Id.*

Nonetheless, the required deference to the opinions of the professional educators does not somehow relieve the hearing officer or the district court of the obligation to determine as a factual matter whether a given IEP is appropriate. That is, the fact finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate. *L.H. v. Hamilton Cntt. Dep’t of Educ.*, 900 F.3d 779, 794 (6th Cir. 2018).

“If the law were that a court must defer to the opinion of those who spend the most time with the student, and presumably know him best, then there would be no place for experts. Moreover, parents could never prevail because the student’s teacher will always spend more time with the student or know the student better than the parents’ hired experts. On the other hand, parents spend more time with the student and know the student better than any teacher. Taking [this] argument to this ultimate end, the district court would actually defer to the student’s parents, who surely know the student best, regardless of any expertise.” *L.H. v. Hamilton Cnty. Dep’t of Educ.*, 900 F.3d 779, 794 (6th Cir. 2018).

When school employees are unable to offer a “cogent and responsive explanation for their decisions,” or the evidence presented does not support their decisions, they are not entitled to deference. *Smith v. Dist. of Columbia*, 2018 WL 4680208, at *7 (D. D.C. Sept. 28, 2018) (finding “DCPS failed to offer the ‘cogent and responsive explanation for its placement decision’ that would entitle it to deference); accord *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 526 (D.C. Cir. 2018) (noting the absence of evidence “on what grounds DCPS may have reasonably concluded that the IEP was tailored to Z.B.’s needs at that time”).

The Undersigned afforded appropriate deference to the Board’s school witnesses regarding educational decisions for Student where they “demonstrated knowledge and expertise.” However, little deference was afforded to witnesses who were unable to justify the decisions made with a cogent or responsive explanation, or where the documentary evidence did not support their testimony.

EVIDENTIARY ISSUES DURING THE HEARING

Motions in Limine

Inclusion of transcripts from 25 EDC 2864 – T vol 1 pp 11-26

1. On the first day of hearing, Petitioners made a motion in limine to move transcripts from the hearing in 25 EDC 2864 into evidence.
2. Respondent objected to admission of the transcripts.
3. After hearing arguments from both Parties, the Undersigned denied Petitioners' motion.

Exclusion of evidence outside of contested time period – T vol 1 pp 26-37; 52-78; T vol 2 pp 530-540

4. Following argument on Petitioners' motion, Respondent made a motion in limine to exclude all evidence outside of the contested time period, to which Petitioners objected.
5. After hearing argument from both Parties, the Undersigned granted Respondent's motion, excluding any evidence or testimony outside of the contested time period except as otherwise provided herein.

Evidence Relating to the 2023 Settlement Agreement

6. Consistent with the Undersigned's determination on November 25, 2025, that this Tribunal lacked jurisdiction to hear claims regarding an alleged breach of the 2023 Settlement Agreement, the Undersigned limited the purpose for which information regarding the 2023 Settlement Agreement could be introduced. Specifically, the Parties were advised during the hearing on February 9, 2026, that evidence intended to show that Respondent failed to perform specific terms of the settlement agreement would not be admitted for purposes of proving a breach of the settlement agreement, however, the Parties could reference terms of the settlement and the performance of certain terms to the extent that such information was relevant to what was required to provide FAPE to Student T vol 1 pp 115:20-116:6.

Documentary Evidence

7. The North Carolina Rules of Evidence govern all contested cases in this Tribunal except as otherwise provided in the administrative rules and N.C. Gen. Stat. § 150-29. 26 NCAC 03 .0122. "Evidence in a contested case including records and documents must be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted by G.S. 150B-30 [official notice]." N.C. Gen. Stat. § 150-29(b).

8. “All evidence to be considered in the case, including all records and documents or a true and accurate copy, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.” 26 NCAC 03.0122(3).

9. Respondent’s witnesses referenced training and guidance from DPI that was not admitted in the record. “To the extent most of this ‘alluded to’ documentary evidence was not made a part of the record, it cannot be considered.” *L.P. v. Wake Cnty. Bd. of Educ.*, (NC OAH No. 20 EDC 00832). Order dated July 20, 2021 (Bawtinhimer, ALJ). The testimonies of Respondent’s witnesses about the illusory evidence will be given proper weight and to the extent that no supporting documentary evidence is available for consideration, it will have no weight. *Id.*

RULE 41(b) MOTION

At the hearing, Respondent moved for Rule 41(b) dismissal of Petitioners’ claims for procedural violations. The Undersigned heard arguments from both parties. The Undersigned denied Respondent’s Rule 41(b) motion.

PROCEDURAL HISTORY

1. On August 30, 2024, Petitioners filed the present Petition for a Contested Case Hearing (“Petition”).

2. Respondent filed its response to the Petition on September 13, 2024.

3. On October 4, 2024, Respondent filed a Motion for Partial Dismissal or, in the Alternative, Motion for Partial Summary Judgment asserting waiver of certain claims related to the Settlement Agreement.

4. On October 10, 2024, a Notice of Hearing on Motion was entered, setting a hearing on Respondent’s Motion to Dismiss for October 14, 2024.

5. That same day, Petitioners filed for leave to amend the Petition.

6. The Parties convened for a motion hearing on October 14, 2024. Petitioners sought to amend the Petition to add claims of breach of a settlement agreement entered into between the Parties on August 28, 2023 (“2023 Settlement Agreement”).

7. The Tribunal granted Petitioners leave to amend the Petition on October 14, 2024.

8. Petitioners filed an Amended Petition on October 21, 2024.

9. The hearing on the Amended Petition was set for November 25-27 and December 2-6, 2024.

10. On November 15, 2024, Petitioners' moved to Bifurcate Hearing. Petitioners' Motion sought to have two hearings: one on the alleged denial of a free appropriate public education ("FAPE") and one on the allegations that Respondent breached the 2023 Settlement Agreement.

11. On November 18, 2024, Respondent filed a Motion to Dismiss, seeking dismissal of claims in the Amended Petition that related to any alleged breach of the 2023 Settlement Agreement.

12. On November 25, 2025, the Parties convened to be heard on Respondent's Motion to Dismiss and Petitioners' Motion to Bifurcate Hearing.

13. That same day, this Tribunal granted Respondent's Motion to Dismiss and determined that the Office of Administrative Hearings ("OAH") lacks jurisdiction to hear claims related to the breach of a mediated settlement agreement reached through an ALJ settlement conference. Petitioners promptly notified the Tribunal that they would be seeking an appeal of this decision.

14. The hearing in this matter was continued to December 4, 2024, pending Petitioners' appeal to federal court.

Federal Appeal

15. On December 2, 2024, Petitioners filed a Notice of Interlocutory Appeal of Final Decision. That same day, Petitioners filed a complaint with the United States District Court, Eastern District of North Carolina.

16. On December 3, 2024, this Tribunal issued an Order Imposing an Automatic Stay and for Status Report based upon Petitioner's appeal.

17. On October 24, 2025, upon granting Respondent's Motion to Dismiss in part, the District Court further ordered that the action in the Eastern District of North Carolina be stayed for ninety (90) days so that the above-captioned due process case may proceed in the Office of Administrative Hearings.

Dissolution of Administrative Stay

18. On October 28, 2025, Petitioners filed a Motion to Enforce Stay Put, requesting that this Tribunal issue an order directing that no IEP meetings be convened during the pendency of this action, and that any proposed revisions or modifications to Student's IEP be made in writing, outside the context of a formal IEP meeting and by mutual agreement of the Parties.

19. On October 31, 2025, the Parties filed a Joint Status Report, informing the Tribunal of the partial disposition of the federal appeal and that the federal action would be stayed to allow the due process case to proceed.

20. On November 13, 2025, Respondent filed an Objection to Petitioners' Motion to Enforce Stay Put and a Motion for Emergency Relief from Stay Put.

21. Petitioners' and Respondent's respective motions were heard during a Prehearing Conference on December 4, 2025.

22. On December 8, 2025, this Tribunal issued an Order Denying Petitioners' Motion to Enforce Stay Put, and an Order Denying Respondent's Motion for Emergency Relief from Stay Put and Dissolving Stay, Notice of Rescheduled Hearing, and Amended Scheduling Order, which set this matter to be heard on February 9-13, 2026, after consultation with the parties.

23. On February 2, 2026, Petitioners filed a Notice of Voluntary Dismissal of Petitioners' claims regarding Respondent's alleged failure to implement the related services consistent with the service delivery in Student's IEP.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the ten (10) witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, Stipulated Facts, and the Proposed Final Decisions, the undersigned administrative law judge ("ALJ") makes the following Findings of Fact.

In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witnesses to see, hear, know, and remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in this case including, but not limited to verbal statements at IEP meetings, IEP meeting documents, prior evaluations, and all other competent and admissible evidence. Even though this Final Decision may incorporate language from the Parties' respective Proposed Final Decisions, credibility determinations are made independently from any proposals by the Parties. The Undersigned notes that legal counsel of both Parties also heard and/or observed each witness testify. The Undersigned found all witnesses in this hearing to be credible but awarded more weight to the testimony of some based on the factors identified above.

Stipulations of Fact

1. At the start of the hearing in this matter, the Parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in the proposed Pre-Hearing Order, which was approved and filed in the OAH on February 6, 2026. During the hearing, the Parties stipulated a functional listening evaluation was not conducted during the relevant time period of this case. T vol 3 p 544:17-23. To

the extent the Stipulations are not specifically stated herein, the Stipulations of Fact in the Orders on the Pre-Trial Conference as well as other stipulations later filed in the record are incorporated fully herein by reference.

Prior Orders

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

3. To the extent that the foregoing Conclusions of Law contain Findings of Fact or that the Findings of Fact are conclusions of Law, they are intended to be considered without regard to their given labels.

Student – Minor Petitioner

4. Student is a twelve (12) year old, fifth-grade student whose date of birth is [Redacted]. He and his parents, Mother (“Mother”) and Father (“Father”) (collectively “Petitioners”) resided in Carteret County, North Carolina, at all times relevant to the Amended Petition (“Petition”). When the Petition was filed, Student was a third-grade student at Elementary School in the Carteret County Public Schools. Stip. 8. Student received his first IEP in March 2017 as a preschool student, eligible under the category of Developmental Delay (DD).

5. Student “is a delightful, funny, caring, loving little boy who is God’s greatest gift to [his parents].” T vol 3 p 670:6-8 (T of Mother). Student’s special education teacher likewise described him as a sweet and loving child with a good sense of humor. T vol 4 p 1156:10-13 (T of Special Education Teacher).

Student’s Unique Circumstances

6. Student has been diagnosed with Down Syndrome, Autism Spectrum Disorder, Type-1 Diabetes, conductive hearing loss, obstructive sleep apnea, attention deficit disorder, and Hashimoto’s hypothyroidism. Stip. 9.; T vol 3 pp 670:14-20, 722:4-7 (T of Mother). Student’s primary area of eligibility is Autism (AU) with a secondary disability category of Other Health Impaired (OHI). Stip. 12.

7. The evidence establishes that these conditions adversely affect his educational performance, impacting strength, vitality, alertness, learning, speech and communication, and motor development...” T vol 3 pp 674:21-7, 675:7-9 (T of Mother); 675:9-18 (T of Mother); 675:2224 (T of Mother).

8. Student is a student with complex support needs because students with complex support needs “have challenges across various domains such as communication, social interaction, cognitive and academic performance and require intensive systematic interventions often throughout the life span.” T vol 2 pp 341:23-342:1;-4 (T of Leach). Student has deficits in reading,

math, written expression, social skills, and communication, extensive needs, and behaviors that impede his learning. T vol 4 p 1156:14-19 (T of Special Education Teacher).

9. During the entire relevant period. Student has been developmentally delayed and academically below grade level in reading, writing, and math. According to his third-grade General Education Teacher, Student presented with “a lot of needs when it came to heavily modified assignments, many, many resources and related services to help him.” T vol 5 p 1233:7-9 (T of General Education Teacher).

10. In addition to his academic deficits, Student has behaviors which impede his learning and requires behavior and social emotional goals. Student requires extensive behavioral support, which is provided by a Registered Behavior Technician (“RBT”), who is supervised by a Board Certified Behavior Analyst (“BCBA”). At times during the 2023-2024 school year, Student required the support of two RBTs. T vol 4 p 1038:14-23).

11. Despite his behaviors and deficits throughout his third-grade school year, Student has met or progressed to meet his academic and behavioral goals.

12. In sum, based on his unique needs, Student is a student who has and could continue to make academic and functional progress on his IEP goals in the general education classroom, given appropriate instruction and accommodation for his complex support needs.

WITNESSES

Petitioner’s Witnesses

13. Petitioners’ first-called witness in their case in-chief was Respondent’s local educational agency (“LEA”) representative, Anita Boyd, Ed.D., as a fact witness, and was permitted to examine Dr. Boyd as an adverse party pursuant to 26 NCAC 03 .0122(6). In addition, Petitioners presented two expert witnesses: Debra Leach, Ed.d, and Kristin Burnette, Ph.D., and two fact witnesses, Mother and Erin Mahaffey. Dr. Leach was also re-called as a rebuttal witness for Petitioners.

Dr. Anita Boyd (T vols 1 and 2)

14. Dr. Boyd has served as Respondent’s Exceptional Children’s Program Director since 2022. T vol 1 p 81:1-8; Resp’t Ex. 215. Dr. Boyd was present at all of Student’s in-person IEP meetings during the 2023-2024 school year and served as the LEA representative who made the final decision if there was disagreement. T vol 1 pp 82:14-18, 94:10-13 (T of Boyd).

15. Dr. Boyd has a Bachelor’s Degree in Social Science, a Master’s Degree in School Administration, and a Doctorate in Instructional Programming/Educational Leadership. Dr. Boyd holds approximately eight licenses in North Carolina, including licenses for EC Program Advisor, Exceptional Children—Learning Disabled (K-12), Exceptional Children—Mentally Disabled (K12), and Exceptional Children—Math, Social Studies, and Science (K-6). T vol 1 pp 257-1-258:6; Resp’t Ex. 214.

16. While her testimony is generally credited, the Tribunal notes that with respect to direct questioning on what would constitute “sufficient progress” for Student, a critical issue in this case, Dr. Boyd’s testimony was often unresponsive, conclusory, or unhelpful and generalized without reference to Student’s unique circumstances. T vol 1 pp 84:15-21 (stating “I can’t tell you what the sufficient amount of progress is because that depends on who you ask . . . the progress that we are seeing currently is not appropriate and not adequate to what we’d expect to see from him; 83:1-18 (noting that sufficient progress is “[m]ore than what we’re seeing now” and that “[i]t’s always a moving target, but it depends on your perspective of progress”). In weighing this evidence, her testimony was considered in light of the broader record documenting Student’s progress and capabilities in inclusive settings.

Dr. Debra Leach (T vol 2)

17. Debra Leach, Ed.D., was qualified as an expert in “functional behavior assessments; behavior intervention plans; coteaching for students with complex support needs as it relates to the functional performance in academics; appropriate use of Registered Behavior Technicians (“RBTs”) and implementation of ABA services in the school setting; informal assessments for students with complex support needs; parent rights and participation in the IEP process; teacher training and support; special education related to students with autism and other developmental disabilities; evidence-based practices and supports for students with autism and other developmental disabilities; and IEP development and progress monitoring.” T vol 2 pp 354:3-17 (T of Leach). Her “expertise and reputation” were acknowledged as “very well-respected in the field.” T vol 2 p 348:13-16 (T of Leach).

18. Dr. Leach holds bachelor and master’s degrees in Exceptional Student Education (Emotional Disturbance and Intellectual Disabilities) from the University of Florida, and a Doctor of Education in Exceptional Student Education (Inclusion, Autism Spectrum Disorders, Early Intervention) from Florida Atlantic University. She is also a Board Certified Behavior Analyst (BCBA). Pet’r Ex. 75 p 1377; T vol 2 p 340:11-16 (T of Leach). She previously worked as a special education teacher in an inclusive setting, Pet’r Ex. 75 p 1379; T vol 2 pp 348:16-349:8 (T of Leach), an inclusion consultant, associate director of a center for students with autism, and a faculty member at Winthrop University, where she worked for twelve years focusing on autism and intellectual disabilities.

19. With approximately thirty (30) years of professional experience, Dr. Leach has worked extensively with students with complex support needs, including those with autism and Down Syndrome, and has supervised RBTs in school settings. Her work includes consulting with school districts, providing ABA services, and supporting teams in developing meaningful, contextually appropriate IEP goals and informal assessments that address skills not captured by standardized measures and improve students’ quality of life beyond the classroom.

20. Dr. Leach testified that her opinions are informed by decades of experience working with hundreds of students, families, and school, and by a thorough review of Student’s records, including IEPs, evaluations, communications, and behavioral data, as well as interviews, observations, and recordings of IEP meetings. Although Respondent raised potential bias based on her prior expert testimony, the Tribunal found her analysis independent, well founded, and

supported by the record. Given her depth of experience, particularly in conducting FBAs, developing BIPs, and analyzing behaviors similar to Student's, the Tribunal accorded her opinions significant weight.

21. Dr. Leach explained that student success exists on a continuum, defined by progress toward IEP goals while also advancing through the general education curriculum at a developmentally appropriate pace. T vol 2 pp441:18-23; 442:6-9 (T of Leach). She emphasized that success does not require mastery of grade-level standards, but rather meaningful, individualized progress. Applying this framework, she concluded that Student was making documented progress, including gains in reading, and that focusing on performance as "significantly below grade level" reflects flawed reasoning. T vol 2 p 442:10-14 (T of Leach).

22. Dr. Leach further testified that inclusion is not intended to "close the gap" between Student and nondisabled peers, but to minimize that gap and maximize Student's learning opportunities. 1353:15-16 (T of Leach). She explained that "as long as he's achieving his IEP goals and making progress along the continuum of the gen ed curriculum at his developmental level, we shouldn't be comparing him to gen ed peers at all." T vol 5 p 1353:16-22 (T of Leach). Student's ability to make progress on his IEP goals is the crux of the case.

23. Regarding eligibility for ECS, Dr. Leach opined that a cognitive evaluation is required to determine whether a student has a significant cognitive disability, and that placement on such standards cannot occur without it. She noted, however, that traditional cognitive assessments are not designed or normed for students with Student's complex profile. She also testified that parental consent is required before moving a student to ECS.

24. Finally, Dr. Leach agreed that the concerns raised about Student's absences and gaps in services were valid and directly impacted the ability to accurately measure Student's progress. She testified that excessive absences and service interruptions can hinder progress, and she noted that these factors were not adequately considered by the school-based IEP team.

Dr. Kristin Burnette (T vol 3)

25. Kristin Burnette, Ph.D. was qualified as an expert "expert in special education, inclusion of students with complex support needs; special education teacher training, preparation, and support; special education programming for children with complex support needs; specially designed instruction; and IEP development for students with complex support needs; evidence based practices with respect to the inclusion and instruction of students with complex support needs in academic and nonacademic settings; assistive technology; and formal and informal assessments in the school setting for children with complex support needs; and parent participation in the IEP process." T vol 2 p 489:3-15 (T of Burnette). She holds a National Board Certification as Exceptional Needs Specialist, Pet'r Ex. 74 p 1369, and has an extensive publication and presentation record in special education and inclusive practices. Pet. Ex. 74, 1370 (published thirteen (13) peer-reviewed journal articles); Pet'r Ex. 74 pp 1373-74 (presented over forty (40) conferences and workshops on the provision of special education services).

26. Dr. Burnette reviewed all of the documents, Student's educational record, met with the family, observed Student in the school setting, had direct contact with Student, and listened to the recordings of IEP meetings, to form the basis of her opinion to testify on Student's behalf. T vol 2 p 482:9-16 (T of Burnette). Dr. Burnette's testimony was credible and persuasive to the Undersigned. In particular, her testimony regarding programing and placement for students with complex support needs was detailed and well supported by the documentary record and is accorded significant weight.

Mother (T vol 3)

27. Mother is the Mother of Student and a devoted advocate for her son. T vol 3 p 670:3-4. She attended and testified at the evidentiary hearing.

28. The Undersigned observed her demeanor throughout her testimony and found her to be forthright and credible, recognizing that, as Student's mother, she has an inherent bias toward his best interests. By way of example, Mother conceded that she is not opposed to the ECS per se, but that Student has not received appropriate support and services for a sufficient time in order to make that decision. She likewise seeks assistance in IEP meetings from others who research and follow "evidence-based practice" and expects them to act "on the best interest of Student," regardless of her personal preferences. As Mother was a credible witness, her testimony will be given weight throughout the Final Decision.

Erin Mahaffey (T vol 3)

29. Ms. Mahaffey has a Bachelor of Art Degree in Psychology from the University of Maryland, and a Master of Education in School Psychology and an Education Specialist degree in School Psychology from The College of William & Mary. Pet'r Ex. 36 p 382; T vol 3 p 626:1519 (T of Mahaffey). She also holds a certificate of special education advocacy from William & Mary Law School. Pet'r Ex. 36 p 382. Ms. Mahaffey is a nationally certified school psychologist with licenses in Arizona and Virginia. Pet'r Ex. 36 p 382; T vol 3 p 659:10-12 (T of Mahaffey). Ms. Mahaffey worked as a school psychologist for five (5) years before transitioning to advocacy. T vol 3 p 626:22-25; Pet'r Ex. 36 p 382. In her role as a school psychologist and as a parent advocate, Ms. Mahaffey testified she has attended approximately 700 IEP meetings. T vol 3 p 627:9-14 (T of Mahaffey).

30. Ms. Mahaffey has attended five (5) IEP meetings with Mother, including the August 2024 IEP. T vol 3 p 627:15-19 (T of Mahaffey). Ms. Mahaffey testified to prepare for the meeting she reviewed the May 2024 IEP, the proposed IEP for the August meeting, any evaluation data, progress notes, or any data that was available. T vol 3 p 627:18-21 (T of Mahaffey).

31. Ms. Mahaffey testified she is employed by Petitioners' counsel and that her North Carolina clients are clients of the Gahagan Paradis Law Firm. In addition to doing contracted advocacy work for Gahagan Paradis, Ms. Mahaffey also maintains her own advocacy company outside of North Carolina. T vol 3 p 627:1-8 (T of Mahaffey). Ms. Mahaffey further testified that she receives referrals from that Gahagan Paradis and a portion of her work depends on maintaining that professional relationship. T vol 3 p 656:12-24 (T of Mahaffey). Ms. Mahaffey testified her

role as a parent advocate is a neutral role and confirmed she advocates for what is in the best interest of the student. T vol 3 pp 657:23-658:4 (T of Mahaffey).

32. Although Ms. Mahaffey has a professional relationship with Petitioner's counsel, and that relationship may bear on the weight afforded to her testimony, the Tribunal does not find that it renders her testimony unreliable. She testified in a manner that was generally consistent, measured, and grounded in her experience, supported by the record, and was not generally contradicted by other evidence. Accordingly, while the Tribunal considers her professional relationship in assessing bias, it finds her testimony credible and affords it appropriate weight based on its constancy with the evidentiary record.

Respondents' Witnesses

33. Respondent called three (3) expert witnesses: Dr. Jamie Pearson, Jessica Harrison, and Special Education Teacher and two (2) fact witnesses: Kristina Zangwill and General Education Teacher. Both Ms. Harrison and Special Education Teacher also testified as fact witnesses.

Dr. Jamie Pearson (T vol 3)

34. Dr. Jamie Pearson was received as an expert in the areas of parents' rights and participation in the IEP process, special education teacher training, special education relating to students with autism and extensive support needs, evidence-based practices and supports for students with autism and extensive support needs, procedural requirements under the IDEA, educational programming for students with disabilities. T vol 3 pp 843:22-844:5 (T of Pearson). She holds a Bachelor of Arts in Psychology and Sociology from the University of North Carolina at Chapel Hill, a Master of Arts in Psychology from North Carolina Central University, and a Doctor of Philosophy in Special Education from the University of Illinois at Urbana-Champaign. T vol 3 p 796:18-23 (T of Pearson); Resp't Ex 237 p 3546.

35. Dr. Pearson had not met Student. T vol 3 p 833:4 (T of Pearson). She also testified that her formal coursework related to IDEA legal requirements was limited. T vol 3 pp 798:25-799:2 (T of Pearson). During her testimony, she made certain assumptions about Student that were not supported by the record, including references to "Level 3 autism," and later acknowledged on cross-examination that Student does not have that diagnosis. T vol 3 pp 830:19, 893:10; 897:6-8 (T of Pearson).

36. The persuasiveness of Dr. Pearson's opinions was reduced by the limited scope of her review. She acknowledged that she did not review all exhibits, did not listen to all recordings, reviewed selected work samples not admitted into evidence, and did not review Student's stay-put IEP. See T vol 3 pp 896:17-19 (testifying she did not review all of the exhibits); 896:21-23 (testifying she did not listen to all the recordings); 907:19 (testifying she only reviewed work samples from R-33 through R-34, none of which were admitted into evidence); 917:1-6 (testifying she only listened to a portion of one of the recordings from the February 26, 2024 IEP meeting and no others); 922:20-23 (testifying she did not review Student's stay-put IEP) (T of Pearson).

37. Additionally, several of Dr. Pearson’s opinions were conclusory and lacked a clear explanation of methodology or analysis. For example, when asked “what is your opinion regarding the appropriateness of the goals in the August 21, 2024, IEP for Student” Dr. Pearson responded, “[b]ased on my review of the records, the goals in the ’23-’24 IEP seem appropriate for Student” T vol 3 p 875:20-24 (T of Pearson).

38. Dr. Pearson also testified regarding a purported “divide in the field” on inclusion and referenced research to support a “tipping point” for more restrictive placements. T vol 3 pp 852:18-853:13; 854:7-17; 857:1-858:3 (T of Pearson). On cross-examination, however, she was unable to identify the specific sources she relied upon and acknowledged that her characterization was not directly drawn from the cited research. These factors undermined the reliability of her testimony. When comparing the more specialized expertise of Petitioners’ experts against Dr. Pearson’s more generalized expertise, Dr. Pearson’s expert opinions were less persuasive and given less weight throughout the Final Decision.

Special Education Teacher (T vols 4 and 5)

39. Special Education Teacher is a special education (“EC”) teacher at Elementary School. T vol 4 p 1140:8-12. She has nine years of experience as an EC teacher, including four years with Respondent. T vol 4 p 1140:13-17 (T of Special Education Teacher). She holds a Bachelor of Arts in Sociology from CUNY Queens College and a Masters degree in Special Education and General Education 1-6 from Touro College, Resp’t Ex. 233 p 3540; T vol 4 p 1142:16-18 (T of Special Education Teacher), and is licensed to teach in both general and special education, K-6. Resp’t Ex. 233 p 3541.

40. The Tribunal received Special Education Teacher as an expert in the areas of inclusion of students with disabilities, special education, specially designed instruction and IEP development for students with disabilities, evidence-based practice with respect to the education of students with disabilities, and procedures for IEP development and parent rights. Special Education Teacher was not proffered as an expert in students with complex support needs. T vol 4 p 1155:11-19 (T of Special Education Teacher).

41. The Undersigned found Special Education Teacher’s expert testimony to be of limited value for the purposes of determining the issues in this case. Her opinions that the ECS and the IEP team’s decision were appropriate were largely conclusory. For example, when asked whether she had formed an opinion with regard to whether the ECS were appropriate for Student, she answered “Yes” without explanation. The absence of such explanation diminishes the reliability and persuasive value of her opinion. T vol 4 pp 1193:6-12 1193:13-16 (T of Special Education Teacher). Moreover, there was no specific testimony regarding what materials Special Education Teacher reviewed or relied upon in preparation for her testimony as both an expert and a fact witness on behalf of her employer.

42. Collectively, these deficiencies do not render her testimony inadmissible, but they limit the weight the Undersigned affords her expert opinions, and her expert and factual testimony will be given the appropriate weight throughout the Final Decision.

Jessica Harrison (T vol 4)

43. Jessica Harrison, BCBA, is the Owner and Director of Clinical Operations of ENC Family Services, LLC (“ENC ABA”). T vol 4 p 942:11-17 (T of Harrison); Stip. Ex. 3 p 27; Resp’t Ex. 222. Ms. Harrison has a Bachelor of Science in Speech and Hearing Sciences and a Master of Arts in Education in Special Education: Behavioral/Emotional Disabilities from East Carolina University, a graduate certificate in Autism Spectrum Disorders from East Carolina University, and a graduate certificate in Applied Behavior Analysis from Arizona State University. Resp’t Ex. 222.

44. The Tribunal received Jessica Harrison as an expert in FBAs, BIPs, teaching students with autism, the use of RBTs in implementation of ABA services in a school setting, informal assessment for behavior needs, parents' rights and participation in the IEP process. T vol 4 p 969:6-10 (T of Harrison).

45. Ms. Harrison has been a BCBA since October 2021, so during the contested time period in this case, had only been a BCBA for two (2) years. Resp’t Ex. 220. Student was the first student she provided support to in a public school as the BCBA. T vol 4 p 960:3-5 (T of Harrison). Before becoming a BCBA, Ms. Harrison was a special education teacher for eleven (11) years. She maintains her teaching licensure, which she obtained through the lateral entry process. T vol 4 pp 944:2-3, 956:9-11; Resp’t Ex. 222 and 223. To prepare for her testimony, Ms. Harrison indicated she “reviewed documents” and “consult[ed]” with Respondent’s counsel. T vol 4 pp 1099:23-1100:3 (T of Harrison).

46. The Undersigned found Ms. Harrison’s testimony to be of limited value for the purposes of determining the issues in this case. Several of the opinions offered by Ms. Harrison were conclusory without a clear explanation of her analysis. For example, when asked “was there any educational harm to Student because and additional FBA was not done,” Ms. Harrison responded, “I don’t believe so.” No testimony was elicited identifying why Ms. Harrison did not believe the failure to conduct an FBA did not cause Student educational harm or how she formed that opinion. The absence of such explanation diminishes the reliability and persuasive value of her opinion. T vol 4 p 1014:3-6 (T of Harrison).

47. When comparing the more specialized expertise of Dr. Leach against Ms. Harrison, Ms. Harrison’s expert opinions were less persuasive and given less weight throughout the Final Decision.

General Education Teacher (T vol 5)

48. General Education Teacher was Student’s third-grade general education teacher during the 2023-2024 school year. T vol 4 p 1233:2-3. General Education Teacher has been a

general education teacher at Elementary School since 2017. T vol 5 p 1230:11; Resp't Ex. 243 p 3586.

49. General Education Teacher was the only witness who offered no favorable observations of Student. Her testimony evinced frustration with Student's presence in class, which appeared to influence her characterization of the alleged disruptions she documented and attributed to him. T vol 5 p 1233:412; Stip. Ex. 22.

50. The Tribunal finds that portions of General Education Teacher's testimony appeared rehearsed or inconsistent and reduces the weight afforded her testimony accordingly. By way of example, General Education Teacher offered specific assertions regarding the time it would take Student to reach proficiency on the EOG given Student's rate of growth; however, she was not referencing the correct exhibit when making those statements, and she had not been asked to provide an opinion on the EOG scores. T vol 4 pp 1264:1-1266:1 (T of General Education Teacher). This inconsistency suggests her testimony on these points was memorized rather than grounded in the actual records before her, which diminishes the weight the Tribunal affords to those portions of her testimony in light of the broader record documenting Student's progress in inclusive settings.

Kristina Zangwill (T vol 5)

51. Kristina Zangwill is a school psychologist for Carteret County Schools. Resp't Ex. 227; T vol 5 p 1314:24-25. Ms. Zangwill testified as a fact witness on behalf of her employer.

52. Ms. Zangwill earned her Bachelor of Arts in Psychology from the University of Tennessee and her Master of Arts in School Psychology with a Certificate of Advanced Study from Towson University. Resp't Ex. 227; T vol 5 p 1316:5-8. Ms. Zangwill has worked as a school psychologist for fifteen (15) years and is licensed by the North Carolina Department of Public Instruction as a school psychologist through June 30, 2028. Resp't Ex. 226, 227.

53. The Undersigned found Ms. Zangwill's testimony to be of limited value for purposes of determining the issues in this case as the majority of the testimony Respondent's counsel attempted to elicit from Ms. Zangwill was hearsay, of which objection was properly made and preserved for the record and upon which the Undersigned now rules and strikes from the record.

SCHOOL HISTORY AND ATTENDANCE

54. Student received his first IEP in March 2017 as a preschool student, eligible under the category of Developmental Delay (DD).

55. From August 2019 through June 2023, Student attended White Oak Elementary School (WOES) for kindergarten through third grade. Stip. 11.

56. During that period, Student did not have a consistent special education teacher and assistant for multiple years, T vol 3 p 698:5-12 (T of Mother), including at the beginning of the 2022-23 school year. Pet'r. Ex. 6 p 16. Ultimately, Heather Luna was hired to work with Student in person as a substitute EC teacher, and Student began "thriving." Pet'r. Ex. 6 p 17; T vol 2 p 324:2-7 (T of Boyd). With Ms. Luna's support, Student was "working hard, transitioning smoothly, and on a schedule" resulting in "completely different days." Pet'r. Ex. 6 p 17.

57. During the 2022-2023 school year, at the December 2022 IEP meeting, Student's placement changed to general education. T vol 1 p 92:18-22 (T of Boyd); Stip. Ex. 11 p 106 ("EC services will continue to remain the same as the 12/21/22 IEP and will be provided in the Gen ed classroom").

58. On January 12, 2023, Student was restrained by a newly assigned EC teacher in a staff restroom. T vol 1 p 101:6-9, 16 (T of Boyd). Thereafter, Student's IEP Team convened on January 31, 2023. Pet'r. Ex. 113. Mother shared her concerns, particularly regarding the restraint, and requested a different certified special education teacher, collaboration with the inclusion consultant, training, and behavior support for Student *Id.* pp 1642-43. Dr. Boyd reminded the IEP Team "personnel will not be discussed through an IEP meeting." *Id.* p 1643. Mother ended the meeting and acknowledged Student's IEP would expire the following day. *Id.*

59. On February 6, 2023, Mother filed a *pro se* Petition for Contested Case Hearing, invoking stay-put. 23 EDC 00557. During the pendency of that proceeding, Student did not attend school. T vol 1 pp 109:23-110:2 (T of Boyd); T vol 3 p 682:12-20 (T of Mother) (testifying to keeping Student "home for safety concerns" following the restraint).

60. Mother frequently emailed expressing concerns for Student's safety while being provided instruction with his then assigned EC teacher. During this time, Respondent refused to assign Student a new EC teacher for the 2022-23 school year, T vol 1 pp 109:14-16, 113:18-20 (T of Boyd); Pet'r. Ex. 6 p 22, though Mother indicated that if Respondent could provide [Student] with another EC teacher to provide [Student]'s EC SDI, he will return to school tomorrow." Pet'r. Ex. 6 p 22; 113:18-20 (T of Boyd).

61. The Parties ultimately settled this case, resulting in the execution of a settlement agreement ("2023 Settlement Agreement"). As part of the 2023 Settlement Agreement between the Parties, Student was retained in third grade and transferred to Elementary School for the 2023-2024 school year, Pet'r. Ex. 16 ¶¶ 3, 9(a), which he began on a modified day of three (3) hours per day on September 5, 2023. Adjustments to Student's modified day were determined by a Transition Team. Stip. 15; Stip. Ex. 54. On November 27, 2023, Student began to attend school for a full day following a weeklong break from school for the Thanksgiving holiday. Stip. Ex. 16.

**STUDENT MADE PROGRESS TOWARDS ACHIEVING HIS IEP GOALS DURING THE 2023-2024
SCHOOL YEAR**

62. According to Respondent's EC Director, the duty of the IEP team is to determine whether a student is making sufficient progress. T vol 2 p 304:4-6 (T of Boyd).

63. Student made progress during the 2023-24 school year. *See, e.g.*, T vol 3 p 845:14-22 (T of Pearson) (noting the IEP Team's discussion of Student's progress); T vol 4 pp 1187:24-1188:3 (T of Special Education Teacher) (discussing Student's progress in written expression and subsequent shift to typing skills); T vol 1 pp 203:3-4, 237:6-10 (T of Boyd) (testifying to Student's progress on his IEP goals); T vol 2 p 549:23 (T of Burnette) (testifying to Student's progress on his IEP goals during the 202324 school year).

64. Respondent contends that while Student made "progress," that the amount of his progress was not "sufficient." *See, e.g.*, T vol 4 p 1188:22 23 (T of Special Education Teacher). School staff, however, defined "sufficient progress" in a manner that was fundamentally misaligned with Student's disability related needs. School staff defined "sufficient progress" differently but commonly expressed they expected Student's "rate of improvement" to exceed that of his nondisabled peers so that he could "close the gap." *See, e.g.*, T vol 4 pp 1188:25 1189:12 (T of Special Education Teacher).

65. When asked "what rate of improvement" would have been sufficient, Dr. Boyd was unable to provide a clear answer, stating "a rate of improvement that we would get for any student." T vol 1 p 242:23-25 (T of Boyd). Likewise, when asked "what is sufficient progress for Student," Dr. Boyd initially struggled to articulate an answer but ultimately testified that it is "more than what we're seeing right now" admitting it was "a moving target." T vol 1 p 83:6-15 (T of Boyd).

66. Notably, Student's educational records do not identify a target for sufficient progress. Dr. Pearson, Respondent's expert, agreed that if the target for what sufficient progress is not identified, it could continue to be moved, and it is possible the student could never make sufficient progress. T vol 3 pp 914:16-915:12 (T of Pearson).

67. In contrast, according to Dr. Boyd, "[Student's] rate of improvement would need to be . . . triple, quadruple rate of improvement of a typically developing child." T vol 2 p 321:21-25 (T of Boyd). Dr. Pearson opined that expecting Student's rate of progress to be triple or quadruple that of his non-disabled peers would not be appropriate, and it would be based on Student's present level not "that level of comparison to his nondisabled peers." T vol 3 p 915:13-22 (T of Pearson); T vol 5 pp 1352:7-14, 1354:1 (T of Leach) (testifying an expectation for Student to show greater progress than his nondisabled peers was unreasonable).

68. Rather than a rate of improvement that would exceed that of his peers or a rate indicating "significant gains," Dr. Leach convincingly explained success should be viewed on a continuum, where the student is both "making progress within their IEP objectives" and progressing along the general education curriculum at an appropriate pace. T vol 2 p 442:6-9 (T

of Leach). She emphasized that success does not require mastery of grade-level standards, but rather meaningful progress at the student's level. Applying this framework, Dr. Leach stated that Student was, in fact, making documented progress, including learning to read. T vol 2 p 442:10-14 (T of Leach); T vol 2 p 465:2-9 (T of Leach). T vol 5 p 1353:16-22 (T of Leach). Dr. Leach explained expectations of closing the gap with nondisabled peers may be relevant for "students with mild disabilities," such as those with learning or emotional disabilities, where strategies, interventions, and accommodations may allow them to "close[] the gap or significantly minimiz[e] the gap" but "Student is not within that group." T vol 5 pp 1354:16-1355:3 (T of Leach).

69. Student's IEP team did not define what sufficient progress or success should look like for Student in the general education setting, which left staff feeling ineffective despite evidence of progress. T vol 2 p 440:7-11 (T of Leach). Dr. Leach referenced information from her interview with General Education Teacher and the record supporting her testimony that, although Student was making progress, staff focused heavily on the fact that he was "significantly below grade level" as justification for more restrictive placement. T vol 2 p 441:8-17 (T of Leach). Dr. Leach opined this reasoning was flawed, explaining that "a student can be as far below grade-level standards and still be successfully included and make progress on their IEP goals" while accessing the general education curriculum at a developmentally appropriate level. T vol 2 p 441:18-23 (T of Leach).

70. Although the IEP Team acknowledged Student's progress at the August 21, 2024, IEP meeting, they did not identify any benchmark or threshold of progress that would have been sufficient to maintain his placement on the standard course of study or increase his access to general education. T vol 3 p 643:8-17 (T of Mahaffey). There was "never. . . a discussion" of a specific "data point," percentage, or level of progress that would have changed the team's position, and that "there was never. . . a target discussed." T vol 3 p 643:17-21 (T of Mahaffey)

71. The IEP team's "close the gap" expectation is objectively unreasonable for a student with Student's profile of disabilities. By definition, a student with significant learning impairments will not—and cannot—be expected to outpace nondisabled peers in rate of skill acquisition. Expecting a disabled student to progress faster than nondisabled peers in order to be deemed successful is not only inconsistent with educational reality, it directly contradicts the IDEA's requirement that progress be measured in light of the child's circumstances, not in comparison to nondisabled students.

72. The district's standard effectively set Student up to fail. Many students with similar disabilities struggle to maintain even a steady rate of growth, let alone surpass the developmental trajectory of nondisabled peers. Requiring Student to "close the gap" by outperforming students without disabilities imposes a benchmark that no similarly situated student could reasonably meet. It transforms the IDEA's individualized progress standard into an unattainable race—one in which Student was judged not on his own growth, but on his inability to outpace children who do not share his disabilities.

73. In short, the District's definition of "sufficient progress" was not merely inappropriate; it was incompatible with the IDEA's core principles and with the educational realities faced by students with disabilities like Student

INCLUSION

74. Respondent asserts that Student's purportedly "insufficient" progress warranted removing him from the general education environment, a position fundamentally inconsistent with the IDEA's core principals of inclusion and least restrictive environment. Respondent seeks to use Student's disability related learning challenges as a basis for exclusion rather than as a reason to strengthen supports within the general education setting.

75. The testimony of Respondent's expert, Dr. Pearson, underscores the District's misunderstanding of inclusion. She accurately defined inclusion as "opportunities for students with disabilities to learn alongside students without disabilities and have access to the general curriculum in addition to opportunities for social and peer engagement in ways that allow them to demonstrate their knowledge and reflect educational progress." T vol 3 p 852:12-17 (T of Pearson). Respondent's approach is the opposite: rather than ensuring Student has meaningful access to the general curriculum and peer interactions, the district seeks to remove him precisely because his disability affects his rate of progress. Such reasoning is incompatible with the IDEA's LRE mandate, which prohibits using the very manifestations of a student's disability as justification for segregation.

76. Dr. Pearson attempted to justify this standard by explaining there is a "divide" in her field regarding inclusion between researchers who continue to believe students with extensive support needs should be educated in segregated settings and others "who have strongly and fiercely advocated for inclusive teaching of students with disabilities across levels of support need." T vol 3 pp 852:18-853:13 (T of Pearson). Dr. Pearson testified that researchers Jennifer Kurth and Andrea Ruppert, who she described as "strong advocates for inclusive settings" also describe a "tilting point at which student who have extensive support needs, if they are not able to demonstrate educational progress in the general education setting" where it is important "to consider a setting in which they may be better able to demonstrate educational progress." T vol 3 p 854:7-17 (T of Pearson). On cross-examination, however, Dr. Pearson retracted her attribution of this statement to these researchers and indicated those were her words, not the researchers, and she was not sure Dr. Kurth was even part of that research. T vol 3 p 898:12-21 (T of Pearson).

77. Conversely, Petitioners' expert, Dr. Burnette, who is engaged in an ongoing research study reviewing 15,000 articles from 2004 to present to determine if there was any harm in inclusive settings for students with complex support needs, testified that as of the 13,700 articles reviewed thus far, there has been no evidence of harm for a student being included in general education. T vol 2 p 478:4-10 (T of Burnette). These initial findings parallel the findings of Dr. Burnette's research with the Institute of Education Services, where she was responsible for data collection for the East Coast that studied inclusive education outcomes across four IDEA placement types for students with complex support needs. T vol 2 p 476:20-477:10 (T of Burnette). "[A]ll of the findings from communication to academics, postschool outcomes were all

significantly different for students who were included versus students who were not included in general education. Students [included 80 percent or more of the day in general education] had far better access to general education curriculum and content. They had better communication skills, math, reading, access to all of those settings and the general education curriculum. And students that were in more restrictive settings had not only more -- or less access to the general education curriculum but also more aversive practices.” T vol 2 pp 477:11-25, 520:10-18 (T of Burnette).

78. In fact, there is “no research” showing that students, including Student, make more progress when instructed on extended content standards. T vol 2 p 520:5-6 (T of Burnette). Instead, particularly with respect to post-school outcomes, students are “far more likely to have postsecondary education [and] find employment if they’re instructed on the standard course of study throughout their school career.” T vol 2 p 520:6-10 (T of Burnette).

79. The only research of supporting pullout instruction involves students with dyslexia receiving “targeted reading interventions . . . with an evidence-based reading program.” T vol 2 p 603:1-7 (T of Burnette). Removal from general education was specific to students with complex or extensive support needs, because research in that area “does not support them being pulled out for instruction,” largely because “generalization is. . . more challenging” for those students. T vol 2 p 603:8-16 (T of Burnette).

80. In contrast, Dr. Boyd did not have any research to support that pulling Student out was going to allow him to make more gains than what he is making in general education. T vol 1 p 244:13-16 (T of Boyd).

81. By treating Student’s disability-related progress profile as grounds for exclusion, Respondent adopts a standard that would systematically marginalize students with similar disabilities. This approach is not supported by law, educational practice, or the testimony in the record, and it cannot justify removing Student from his nondisabled peers.

EXTENDED CONTENT STANDARDS AND NCEXTEND 1

82. The experts in this case presented two (2) distinct understandings of the purpose for Extended Content Standards (ECS) which must be reconciled before proceeding further.

83. Respondent’s experts described it as “an alternative curriculum to the standard curriculum” that is “typically for students with significant cognitive disabilities and for those who maybe are unable to access the general curriculum.” T vol 3 p 849:1-9 (T of Pearson); T vol 4 p 1134:8-15 (T of Harrison)

84. Petitioners’ expert, however, described ECS differently as “an adaptation from the standard course of study,” emphasizing that ECS students are “not a separate curriculum” and “not a separate placement,” but rather require “a modified set of standards based on the standard course of study.” T vol 2 p 512:17-25 (T of Burnette). The Undersigned finds Petitioners’ experts more persuasive as to the rationale for ECS.

Requirements for ECS Participation

85. The evidence admitted at hearing demonstrates that Respondent’s decision to educate Student on the Extended Content Standards (ECS) was driven primarily by the criteria for participation in the alternate assessment. *See, e.g.*, Stip. Ex. 20 pp. 460–63 (Alternate Assessment Eligibility Worksheet (the “Worksheet”)); Pet’r Ex. 212 (North Carolina Alternate Assessment Decision Making Flow Chart (the “Flow Chart”)). Yet, as Dr. Burnette testified, the record lacks documentation showing that the IEP Team—or the parent—had a clear understanding of either the alternate assessment or the ECS. T vol. 2 pp. 517:18–518:4 (T of Burnette); *see also* Stip. Ex. 20 p. 463. This absence of informed decision making is inconsistent with IDEA requirements for meaningful parental participation and informed IEP Team deliberation.

86. Although Student met some of the criteria identified in the Flow Chart—such as requiring constant immediate supervision and having adaptive behavior scores two standard deviations below the mean in multiple domains—several other required criteria were not met. Petitioners specifically challenged: (1) the absence of a cognitive score; (2) the absence of parental consent; (3) whether the IEP Team considered other relevant factors (including Student’s hearing loss and extended absences); and (4) Student’s removal from the general education classroom for more than sixty percent (60%) of the school day. Pet’r Ex. 212. These deficiencies undermine Respondent’s reliance on the Flow Chart as a basis for placing Student on the ECS.

87. Both the Flow Chart and the Alternate Assessment Eligibility Worksheet use the conjunctive “AND” for all criteria, indicating that each criterion must be satisfied before a student may be deemed eligible. *See* Pet’r Ex. 212; Stip. Ex. 20 pp. 460–63; T vol. 2 p. 602:16–17 (T of Burnette) (testifying that both documents require meeting Section A (significant cognitive disability) and Section B (adaptive behavior) to proceed). Respondent’s application of these tools—treating partially met criteria as sufficient—contradicts the plain structure of the eligibility framework and renders the conjunctive requirements meaningless.

88. Dr. Burnette also testified that North Carolina’s state guidance requires instruction on the ECS to be delivered by a teacher licensed in adapted curriculum, a requirement that “precludes” many special education teachers because the State distinguishes between “adapted curriculum” and “general curriculum” licensure. T vol. 2 p. 600:2–8 (T of Burnette). She further explained that adapted curriculum licensure is “typically” associated with instruction on the ECS, which is “usually in a self contained setting,” and noted that she “ha[s] not seen extended content standards done in the general education setting.” T vol. 2 p. 600:8–13 (T of Burnette). This testimony underscores the practical reality that ECS instruction is closely tied to more restrictive placements—further highlighting the importance of strict adherence to eligibility criteria and informed decision making before assigning a student to the ECS pathway.

Flow Chart Factors for ECS Determination

89. Respondent did not adhere to the ECS criteria.

Cognitive Score

90. The most glaring deficit in Respondent's decision making for ECS was that Respondent did not have a cognitive score for Student when Respondent decided to educate Student using ECS. Stip. Ex. 20 p 460. The school-based members of the IEP Team informed Mother "[t]he State of NC stated that we do not have to have a cognitive score to move through the [ECS] flow chart." Stip. Ex. 16 p 265. Respondent likewise asserted in its October 31, 2024 Response to the Second Amended Due Process Petition, "Per DPI, there is no cognitive score that is required for eligibility determination." Response p 6 (referencing a Tip Sheet Alternate Assessment Eligibility Worksheet & Assurance which was not moved or received into evidence).

91. Although undisputedly Student "has complex support needs, he has medical needs, he has educational needs, [] it is not documented that he has a significant cognitive disability." T vol 2 p 589:17-20 (T of Burnette). Without a cognitive score, a student could never be placed on the extended content standards. T vol 2 p 466:10-13 (T of Leach).

92. The means by which the IEP team has to make the determination whether a student has a significant cognitive disability is a cognitive evaluation. T vol 2 p 463:6-14 (T of Leach), yet such evaluations are not designed for or normed on students with Student's unique constellation of needs. *See* T vol 2 p 463:15-23 (T of Leach) ("[B]ut the challenge with that is cognitive assessments are not designed to be normed on students who have a profile like Student, so it's very difficult to ever get an accurate read of a student's cognitive capabilities when they have a profile like him."); T vol 2 p 467:22-25 (T of Leach).

93. The Undersigned finds that the IEP documents themselves indicated that a cognitive score was required prior to ECS determination. Respondent proffered no evidence contrary to this requirement.

Parental Consent

94. In addition to a cognitive assessment, a parent must consent to moving a child to ECS. T vol 2 pp 463:24-464:2 (T of Leach); *see* Pet'r. Ex. 212; Stip. Ex. 20 pp 460-63. Parental consent is required because there are "really significant ramifications" to instruction on extended content standards, including that the student "won't graduate with a diploma," which had been "a consistent piece of [R. D's] vision." Because "there's no one more invested than the family in what happens to their child" such decisions "should be part of [the parent's] choice," stating that T vol 2 pp 518:19-519:1 (T of Burnette).

95. The Undersigned finds that there was no parent consent to the ECS decision.

IEP Team's Consideration of Other Factors

96. Notably, Student was out of school during the pendency of the Petition filed on February 6, 2023, until September 5, 2023. Dr. Boyd admitted that the time Student was out of school was a factor in why he wasn't making progress. T vol 2 p 325:1-4 (T of Boyd).

97. Excessive absences impact a student's ability to participate in a regular assessment because if a student isn't present when other students are receiving instruction for a majority of the school year or a significant amount of time within the school year, they are missing instruction, which would negatively impact performance on assessments unless the student was already performing above grade level. T vol 2 p 404:13-24 (T of Leach).

98. Excessive absences also impact a student's ability to make progress on their IEP goals because if a child isn't present to receive the intervention and instruction related to their IEP goals, they are not going to make progress on them. T vol 2 p 405:3-7 (T of Leach). Likewise, although partial-day absences (such as modified schedules) are not identical to full-day absences, they nonetheless result in a reduced amount of instructional time. Any time a student is not permitted to attend school for the full duration they otherwise would, it constitutes a loss of instructional opportunity. T vol 2 pp 405:19-406:2 (T of Leach).

99. The concerns related to Student's absences raised by both Mother and Jennifer Holmes during the March 6, 2024 IEP meeting were valid. T vol 2 p 406:9-14 (T of Leach); Stip. Ex. 17. Likewise, Mother's concerns regarding gaps in Student's services and the absence of an EC teacher is a factual and highly relevant consideration. Documented periods without an EC teacher mean that Student was not receiving the specially designed instruction required by his IEP. T vol 2 p 409:11-23 (T of Leach).

100. The Undersigned finds the Alternate Assessment Worksheet and the Flow Chart both require the IEP Team to consider these other factors, which in this situation included excessive absences and gaps in services, but that the IEP Team failed to consider these important additional factors.

101. Also, when a student requires assistive technology such as an FM system, it is typically included "under accommodations and modifications under every aspect of the IEP," including "reading, math, science, social studies...[and] testing, all of those things." T vol 2 p 548:19-25 (T of Burnette). The FM system "was not listed on [Student's] IEP as part of his accommodations;" this omission was "a harm to Student" because "he needs that assistive. . . device to hear appropriately." T vol 2 pp 548:25-549:3 (T of Burnette).

102. The Undersigned finds the IEP Team failed to consider whether Student could even hear the instructions before deciding to move him to the ECS.

Student's Removal from General Education

103. By ignoring mandatory ECS eligibility criteria, Respondent predetermined Student's placement in a more restrictive environment without parental participation.

104. Instruction on ECS can be provided in the general education classroom, "if it was done as it was intended, [], all instruction could be modified. . . to that standard wherever you are." NEED CITE to this quote A student would have "more access to [a] content-rich environment. . . in a general education setting." T vol 2 p 513:1-8 (T of Burnette). Based on the record, however, the school-based IEP team appeared to view ECS "as a separate curriculum and a separate place."

T vol 2 p 516:13-14; p 516:14-20 (T of Burnette) (citing as an example the May IEP meeting, where the team discussed alternate assessment criteria, including whether Student was “instructed on the extended content standards,” and noted that he was instead “being instructed on the general education curriculum.”)

105. “[E]ven students who are on the extended content standards are general education students first” and that this designation would not inherently change for Student. However, in this case, Respondent’s practices indicated it “would change,” explaining that after the team “went through the eligibility for the NCEXTEND1,” they “immediately changed his service delivery to self-contained special education with 55 minutes of general education time.” T vol 2 p 590:4-14 (T of Burnette).

106. The Undersigned finds that even if Student qualified for the ECS, that did not require his removal from the general education classroom.

PARENTAL PARTICIPATION

107. Parents are required members of the IEP Team. In North Carolina, when the IEP Team cannot reach consensus, the LEA representative makes the final decision binding the LEA. T vol. 1 p. 82:14 18 (T of Boyd). Dr. Boyd served as the LEA representative at all of Student’s IEP meetings during the 2023–2024 school year and confirmed that the August 21, 2024, Team did not agree. T vol. 1 pp. 86:18 20, 87:3 6, 94:10 13 (T of Boyd).

108. Respondent’s expert, Dr. Pearson, testified that she evaluates parental participation by determining whether parents received prior written notice, whether their concerns were documented, and whether the record reflects engagement. T vol. 3 pp. 910:15 911:14 (T of Pearson). Based on her review, she opined that Mother was engaged and generally able to participate. T vol. 3 p. 851:19 24 (T of Pearson). However, she acknowledged uncertainty about the chronology of meetings and had not reviewed the May 8, 2024, stay put IEP. T vol. 3 pp. 881:4 891:3 (T of Pearson).

109. Petitioners’ expert, Dr. Burnette, emphasized that meaningful parental participation is especially critical for students with complex support needs. T vol. 2 p. 557:15 24 (T of Burnette). She testified that parents’ long term vision and expectations must guide IEP decision making, and that Student’s parents consistently articulated a clear vision for inclusion and a diploma bound path. T vol. 2 pp. 557:24 558:4 (T of Burnette).

110. Even Dr. Pearson agreed that a parent’s vision statement is important and acknowledged that moving Student to the ECS was “contrary to [Mother’s] vision.” T vol. 3 pp. 911:23 912:5, 913:10 914:6 (T of Pearson). Dr. Burnette testified that the IEP Team failed to incorporate this vision when discussing ECS and inclusion, shifting instead toward a more restrictive placement inconsistent with the Parents’ stated goals. T vol. 2 pp. 558:12 23, 558:24 559:1 (T of Burnette).

111. Mother acknowledged that disagreement alone does not constitute a denial of participation. T vol. 3 pp. 766:19 22, 767:2 3 (T of Mother). Her concern was that her evidence

based objections were not meaningfully considered and that the school based team had predetermined to segregate Student T vol. 3 pp. 767:4 8 (T of Mother).

112. As discussed below, evidence of predetermination is a recognized indicator that a parent has been denied meaningful participation in the IEP process.

PROGRESS ON IEP GOALS AND LEAST RESTRICTIVE ENVIRONMENT

113. The least restrictive environment is the setting in which a student will “have the ability to demonstrate educational progress with their nondisabled peers to most extent possible.” T vol 3 p 871:10-14 (T of Pearson). An IEP Team must consider multiple sources of data—such as behavioral data, FBA data, EOG data, formative and summative evaluation data, and other assessments administered during the year—along with qualitative data from educators to determine a student’s LRE. T vol 3 pp 871:23-872:9 (T of Pearson). Notably absent from Dr. Pearson’s list of data sources is the consideration of progress on IEP goals.

114. The IDEA does not require a student educated in the general education setting meet grade-level standards. T vol 2 p 461:7-9 (T of Leach).

115. There is no dispute that although Student was not on grade level but that he made progress on his IEP goals during the 2023-24 school year. *See, e.g.*, T vol 3 p 845:14-22 (T of Pearson) (noting the IEP Team’s discussion of Student’s progress); T vol 4 pp 1187:24-1188:3 (T of Special Education Teacher) (discussing Student’s progress in written expression and subsequent shift to typing skills); T vol 1 pp 203:3-4, 237:6-10 (T of Boyd) (testifying to Student’s progress on his IEP goals); T vol 2 p 549:23 (T of Burnette) (testifying to Student’s progress on his IEP goals during the 2023-24 school year).

Progress on August 30, 2023, IEP Goals

116. On September 5, 2023, Student returned to school on a modified day, Stip. 14, and remained on a modified day until November 27, 2023. Stip. 16. The IEP Team reported Student’s progress during this period when drafting the PLOPs and goals at the February 14, 2024, and February 20, 2024, IEP meetings. Stip. Exs. 14, 15.

117. Student progressed in reading sight words of increasing difficulty – moving from the Pre-primer list, to Primer, and then to the First Grade list, which he was reading with 74% accuracy. Stip. Ex. 14 p 185. Student was beginning to read second grade sight words. T vol 4 p 1165:15-16 (T of Special Education Teacher). Student also made progress on his math goals, Stip. 14 p 188 (documenting his progress independently and with support on his three (3) math goals) and met his Social Skills goal to greet and say goodbye to peers and adults and, with RBT support, participated in unstructured activities such as lunch with peers and collaborative recess activities. Stip. Ex. 14 pp 190-91. He progressed on his Written Expression goal related to handwriting and met his goal to create a sentence with visual supports and prompting. Stip. Ex. 14 pp 191-92. Student mastered his Daily Living Skills goal related to classroom routines and tasks. Stip. Ex. 14 p 195.

Progress on March 15, 2024, IEP Goals

118. At the May 8, 2024, IEP meeting, the IEP Team reported Student made progress in functional communication, including increased vocal speech and AAC use, improved joint attention to peers, gaze shift during instruction, body orientation, mastery of receptive identification of common words, advancement to additional instructional words aligned with general and special education lessons, and decreased transition refusals. Stip. Ex. 19 p 384.

Progress Through Remainder of 2023-2024 School Year and ESY

119. Likewise, by the May 8, 2024, meeting, Student had met his newly developed goal to reduce transition refusals by this meeting, and the IEP Team agreed to update the goal. Stip. Ex. 19 p 384. The IEP Team made no changes to the goals at the May 8, 2024, IEP meeting when Dr. Boyd, the LEA Representative, changed Student's instruction to the ECS, except to update the goal Student had already mastered in the prior six (6) weeks since it was developed. Stip. Ex. 19 pp 38486; *compare* Stip. Ex. 14 *with* Stip. Ex. 19.

120. By May 15, 2024, less than two (2) months after his math goals were developed, Student was independently completing two-digit calculations with 40-43% accuracy and receiving instruction on three-digit calculations. T vol 5 pp 1216:15-1217:22 (T of Special Education Teacher) (reviewing Student's work samples).

121. By May 23, 2024, Student had mastered his Daily Living Skills goal and was averaging 72% on his goal of maintaining joint attention which had a mastery level of 80%. Stip. Ex. 32 p 1147.

122. Student's ESY teacher reported Student's progress on his IEP goals in Reading and Math both with and without refusals reflecting Student's understanding of the materials when the refusal behaviors are removed. *See* Stip. Ex. 20 pp 417-18 (Math - 74.7% overall and 93.3% refusals removed; Reading 51.1% overall and 76.7% refusals removed); Stip. Ex. 33 pp 1154-56 (Quarter 5 Progress Report for Reading and Math). In addition, the records contained anecdotal evidence of Student's progress. T vol 2 p 550: 19 (T of Burnette). Student's mCLASS scores increased "from a number in the 200s to a number in the 300s," and that he made "incremental progress" from the beginning to the end of the year in reading, despite the assessments becoming more difficult over time. T vol 2 p 550:19-25 (T of Burnette).

123. Classroom-based assessment data, if graphed, would show "an ascending trend line for his reading skills," indicating continued improvement. T vol 2 pp 550:25-551:2 (T of Burnette). Although Student's reading skills reflected a "kindergarten level," "he was still making progress." T vol 2 p 551:2-3 (T of Burnette). Student "met two of his [math] goals" and was "progressing at a rate to meet his communication goals." T vol 2 p 549:14-19 (T of Burnette). Overall, Student's progress was "variable. . . but. . . still progress." T vol 2 p 551:10-12 (T of Burnette).

124. In addition to the progress noted by the school staff and Student's educational records, his parents recognized Student's progress. Mother stated Student made significant progress in reading during the 2023–2024 school year, describing it as "tremendous" and "mind-blowing." T vol 3 pp 725:10-726:5 (T of Mother). She explained that while his reading

development had been “slow in coming,” he demonstrated increasing ability over time, particularly when assessments were not strictly timed. T vol 3 pp 725:10-14 (T of Mother). Student was able to read “fifth grade passages on a 30 percent fluency” and “first grade passages” at approximately “86, 87,” noting that this represented substantial growth from earlier in the year when he was “not attending to reading” and reading only “three words.” T vol 3 p 725:14-21 (T of Mother). Student’s progress further included improved speech and verbal reading, T vol 3 p 725:23-25 (T of Mother). Mother emphasized the timed assessments did not fully capture his abilities due to his disabilities, explaining that “when you remove that, what he’s been able to do is -- it has been mind-blowing to see the progress that he’s made.” T vol 3 p 726:1-5 (T of Mother)

2024-2025 School Year

125. At the August 21, 2024, IEP meeting, the IEP Team updated Student’s IEP to reflect his progress on his IEP goals since the May 8, 2024, meeting including his progress during ESY services. Stip. Ex. 20 p 466. The IEP Team did not change Student’s goals from the May 8, 2024, IEP except to add objectives, as required for students educated on the ECS. Compare Stip. Ex. 14 with Stip. Ex. 19 and Stip. Ex. 20.

126. Although Student’s goals remained unchanged and documented progress, the IEP Team changed the frequency and location of Student’s service delivery “to align with the need for specially designed instruction on the extended content curriculum” not based on Student’s unique circumstances. Stip. Ex. 20 p 468.

Other Benefits from Mainstreaming

Consistent Use of AAC Device and Improved Communication Skills

127. As early as September 27, 2023, Student’s Transition Team noted that Student was using his AAC device more consistently and following classroom routines. Stip. Ex. 54 p 1189. Student continued to make progress in following classroom routines and met classroom expectations by receiving Class Dojo points and joining group activities. Stip. Ex. 54 pp 1204, 1218.

128. Throughout the fall, Student’s communication continued to improve with maintaining joint attention and communicating with peers. *See, e.g.*, Stip. Ex. 54 p 1202 (making more eye contact and looking in the direction of the person communicating with him). Mother discussed Student generalizing the same skills outside of school by waiting in line, saying “thank you” during trick-or-treating, and with his “engagement, communication, and behavior.” *Id.* p 1208.

129. Student’s communication skills improved during the 2023-24 school year as he increased his verbalization, began using longer phrases and sentences on his AAC device (i.e., up to 4-word sentences), and responding appropriately to greetings from peers. Stip. Ex. 14 p 193. Mother reported “tremendous growth and gains” in his vocabulary and communication at home. Stip. Ex. 54 p 1227.

Social Benefits of Peer Modeling

130. Student's peers modeled appropriate interactions with Student, which he reciprocated and engaged with them in collaborative interactions. Stip. Ex. 14 pp 190-91. Student's general education teacher confirmed the social benefits to Student of inclusion with his nondisabled peers. Stip. Ex. 18 p 315.

131. Student's peers also engaged with Student who mastered his goal of cooperative play with a peer by January 26, 2024. Stip. Ex. 54 p 1230. Student's peers sought out opportunities to talk and include him. T vol 5 pp 1234:24-1235:3 (T of General Education Teacher). Student engaged with his peers during academic lessons such as collecting and recording data to complete a graph using his AAC device during a math lesson. T vol 4 p 1178:6-22 (T of Special Education Teacher); Resp't. Ex. 116 p 1583. In addition, Student received a "Climber's Club" certificate at his end-of-third-grade award ceremony, which was awarded for showing "growth and improvement throughout the '23-'24 school year" and was signed by Ms. Melton. T vol 3 pp 719:24-720:4 (T of Mother). Stip. Ex. 10. Aside from his preschool graduation, Student had not previously attended an end-of-year award ceremony, making this recognition "really exciting" for Mother. T vol 3 p 720:5-9 (T of Mother).

132. Mother testified over the course of the 2023-2024 school year, she saw "tremendous gains. Not only just the academics. . . all encompassing, speech, behavior, the academics, the reading, the verbal expression. . . outside school, we were just seeing. . . gains in all areas. . . leaps and bounds." T vol 3 pp 724:17-725:4 (T of Mother).

Behavioral Progress

133. Throughout the 2023-24 school year, Student "definitely made progress" on his behaviors. T vol 2 p 391:18-22 (T of Leach).

134. Respondent's witnesses and the school team in the IEP meetings compared Student's behaviors in the special education classroom receiving instruction one-on-one from the special education teacher versus in the general education classroom. *See* T vol 4 p 1208:19-24 (T of Special Education Teacher); T vol 4 p 1038:8-13 (T of Harrison) (explaining the special education classroom was "less distracting" so "he demonstrated less of those interfering behaviors and engaged in learning opportunities at a higher rate").

135. Dr. Leach noted that the difference in Student's behavior between the general education classroom and one-on-one settings has no real relevance from a behavior perspective. She explained it is expected a child will focus better in a one-on-one setting, while the general education classroom naturally presents more distractions. However, she emphasized these distractions reflect the real-world environment Student will encounter, and the general education classroom is "the closest thing we have as educators to prepare him for that world." T vol 2 pp 413:19-414:4 (T of Leach).

136. Additionally, Dr. Leach clarified that one-on-one instruction is "completely different" from instruction in classrooms that use extended content standards. She opined "Student

has demonstrated he can learn very effectively” in one-on-one settings, which should continue for targeted reading instruction. T vol 2 p 414:8-11 (T of Leach). In contrast, adaptive classrooms for extended content standards in North Carolina use a separate curriculum, Unique Learning Systems, which lacks an evidence base and is delivered during whole-group instruction with very passive learning. T vol 2 p 414:11-17 (T of Leach). These classrooms “almost never” provide “systematic, explicit instruction on skills related to the child’s IEP.” T vol 2 p 414:17-18 (T of Leach). As a result, placing Student in such a setting “does not mean he’s going to get all of that one-on-one systematic instruction related to his IEP goals. In fact, he’ll probably get significantly less of that.” T vol 2 p 414:19-23 (T of Leach).

137. The BCBA provided data reviews throughout the 2023-24 school year, with the exception of the period of time when the IEP Team was developing Student’s IEP from February – March 2024. Stip. Ex. 23 pp 836-50 (Feb. 2- 9, 2024 Weekly Data Review); pp 824-35 (next Data Review dated March 25 – April 22, 2024). At the Transition meetings, the BCBA reported Student’s progress on all targeted areas. *See* Stip. Ex. 54 (documenting progress with transition refusals, elopement, communicating with peers, responding to redirections, and attending to instruction); T vol 4 p 1021:5-7 (T of Harrison).

138. When developing Student’s March 15, 2024, IEP, the IEP Team discussed the importance of providing instruction on behavior goals in the general education setting to support the generalization of skills. Stip. Ex. 14 p 234. Yet, at the August 21, 2024, IEP meeting, the school team changed the location of Student’s service delivery completely to the special education classroom, purportedly to teach skills in isolation for later generalization. Stip. Ex. 20 pp 468.

139. There is no evidence-based research supporting the proposition that students with complex support needs should be taught skills in a separate setting and then generalize them to a general education classroom. T vol 5 pp 1341:2-6, 1342:7 (T of Leach); T vol 5 p 1342:11-13 (T of Leach). This approach “is assuming something very difficult for students with complex support needs,” and noted generalization is “hard for everybody whether they have a disability or not.” T vol 5 p 1342:13-16 (T of Leach). “[T]he research recommends embedding interventions in the context in which they’re actually going to need the skills so they don’t have to learn something separately and then do the work to try and generalize it.” T vol 5 p 1342:19-23 (T of Leach).

140. Respondent presented evidence that Student’s behaviors required the support of an RBT, sometimes two (2) RBTs, and the supervision of a BCBA. Resp’t. Ex. 134; T vol 5 p 1234:13-17 (T of General Education Teacher). Ms. Harrison clarified the second RBT was needed as Student was first attending school for a full day and two (2) staff were needed on the playground “to make sure he was safe, data was collected accurately, and to help him transition through the second half of the school day more successfully.” T vol 4 p 1006:16-22 (T of Harrison). By the end of the year, Student only needed support from one (1) RBT except for field trips or special events. T vol 4 p 1038:1921 (T of Harrison).

141. At the IEP meetings, Respondent did not assert Student required a more restrictive setting due to his behaviors. *See* Stip. Exs. 19, 20. During the hearing, Ms. Harrison testified there were “some spikes in some behaviors” prior to the May 8, 2024, IEP meeting. T vol 4 p 1039:1115 (T of Harrison). Her data indicated, however, that the “spike” had “returned to low levels.” Stip.

Ex. 23 p 817. The evidence presented consistently indicated Student’s targeted behaviors were decreasing, and Student had not exhibited behaviors that needed to be addressed through a Crisis Protocol. Stip. Ex. 16 p 263; Stip. Ex. 54; T vol 4 p 1136:19-20 (T of Harrison) (testifying to the decreasing trend).

142. Student has had no discipline referrals since 2021. Stip. Ex. 18 p 310. The school relied on data collected in the Anecdotal Data Collection Form to report thirty-three (33) significant disruptions as of February 26, 2024. *Id.* No discipline record was entered in evidence that any of these disruptions resulted in a disciplinary action or documentation outside the Anecdotal Data Collection form created by Special Education Teacher. Stip. Ex. 22. As discussed *infra*, the severity of the “significant disruptions” is questionable.

143. Student struggled most often in the bathroom; however, throughout the school year his refusals decreased. *See, e.g.*, Stip. Ex. 54 pp 1206, 1219. T vol 4 p 1137:7-13 (T of Harrison) (referring to Stip. Ex. 23 p 813 highest level of spitting was in PE).

144. In reviewing the compilation of data collected by the BCBA, Student remained stable or made progress in almost every area on the last reported data for the 2023-24 school year ending May 3, 2024, prior to the school team increasing his segregation. *See, e.g., id.* pp 809-22 (March 25–May 3, 2024, Data Review documenting progress in Functional Skills, Functional Communication, Joint Attention with Peers, Gaze Shift During Instruction, Body Orientation During Whole Group Instruction, Receptive Identification of Common Words, and Spitting).

Administrative Convenience

145. At the February 26, 2024, IEP meeting, the school-based members of the IEP Team informed Mother “[t]he delivery of instruction for the 4 areas of core instruction [for students on the ECS] take place in a separate classroom” and is taught by an EC teacher with certification in Adapted Curriculum. Stip. Ex. 16 p 265.

146. This justification was repeated at the March 6, 2024, IEP meeting, when “the district stated that we do not teach the adaptive skills standards [ECS] in the general education classroom.” Stip. Ex. 17 p 277. Dr. Boyd informed Mother “that there was nothing preventing the ECS from being delivered in the gen[eral] ed[ucation] classroom except that’s how [Respondent’s] programming is set up.” T vol 1 pp 190:23-191:3 (T of Boyd).

147. The IEP team’s rationale for removing Student from the general education classroom to receive instruction on the extended content standards appeared to be based on “habit,” describing it as “this is what we do here” and “how we. . . implement the extended content standards,” namely “in a separate place. . . a separate location.” T vol 2 p 566:12-15 (T of Burnette). Although the team suggested Student “won’t be totally removed from his peers,” the service delivery reflected otherwise, assigning “205 minutes in the self-contained special education setting,” which indicated that “that’s where he’s going to be instructed.” T vol 2 pp 566:18-567:1 (T of Burnette).

**IMPLEMENTATION OF THE AUGUST 28, 2023 SETTLEMENT AGREEMENT AS TO ITS IMPACT ON
FAPE AND RESULTING PROGRESS**

148. On August 28, 2023, the Parties entered into a Settlement Agreement resolving prior litigation. Pet'r Ex. 16. Petitioners later filed this action alleging, among other claims, that Respondent failed to implement material terms of that Agreement. Although this Tribunal lacks jurisdiction to enforce the Settlement Agreement directly, the Agreement was admitted into evidence to evaluate whether Respondent's failure to implement agreed-upon provisions affected Student's receipt of FAPE and evinced predetermination of placement.

149. The disputed provisions concerned: (1) the independence and role of the BCBA and RBT; (2) conducting an FBA after Student returned to school with RBT support; (3) development of a BIP; (4) the role of the Inclusion Consultant; and (5) staff training and behavioral data collection. Dr. Boyd acknowledged responsibility for ensuring compliance with the Agreement. T vol 1 p 119:8-11 (T of Boyd).

150. Respondent contracted with ENC ABA to provide BCBA and RBT services. However, the resulting Memorandum of Understanding ("MOU") materially differed from the Settlement Agreement by modifying, omitting, or adding terms. The BCBA testified she was never provided the Settlement Agreement before entering the MOU and was unaware of the Agreement's \$15,000 spending cap for services.

151. The Settlement Agreement required the BCBA and RBT to remain "independent." In contrast, the MOU designated ENC ABA staff as representatives of Respondent and prohibited them from acting as parent advocates. Pet'r Ex. 16 ¶ 1(a); Stip. Ex. 3 p 31; T vol 1 p 132:6-12 (T of Boyd). Although the BCBA understood her role to be "independent" or "neutral," T vol 4 p 1106:15-17 (T of Harrison), the evidence showed no shared understanding of what "independent" meant. Expert testimony established that an independent contractor shares information equally with parents and the school district and does not act as a district representative. T vol 2 p 355:19-23 (T of Leach); T vol 2 pp 356:10-18, 357:8-17 (T of Leach).

152. The Agreement further required the BCBA to train Respondent's staff and for the RBT to attend inclusion training. Pet'r Ex. 16 ¶ 1(a). The MOU only referenced training "post creation and distribution on the BIP, but did not include any training of the RBT. Stip. Ex. 3 p 28. The BCBA admitted she never conducted BIP training as contemplated in the MOU, T vol 4 pp 1111:24-1112:3 (T of Harrison), and the RBT did not attend the inclusion training provided to school personnel. T vol 1 pp 149:20-150:3 (T of Boyd); Stip. Ex. 7.

153. The Settlement Agreement also required the RBT to provide Student's parents with weekly raw behavioral data. Pet'r Ex. 16 ¶ 1(b)(vii). The BCBA testified she was unaware of that requirement. T vol 4 p 1114:17-23 (T of Harrison). Instead, as Respondent drafted in the MOU, *see* Stip. Ex. 3 pp 30-31, the RBT prepared summaries that were first reviewed by Dr. Boyd before being shared with Student's parents. T vol 4 p 1117:14-17 (T of Harrison).

154. Both the Settlement Agreement and the MOU required the BCBA to conduct an FBA after Student returned to school during the 2023–2024 school year. Pet'r Ex. 16 ¶ 5(b); Stip.

Ex. 3 p 28; T vol 1 p 132:15-18 (T of Boyd). The BCBA admitted no FBA was conducted that year. T vol 4 p 1109:4-6 (T of Harrison). Likewise, although the Agreement required development of a BIP, Pet'r Ex. 16 ¶ 6; Stip. Ex. 3 p 28, the BCBA testified the only BIP existed within her internal "Program Protocols," and no BIP appeared in Student's IEP documents. T vol 4 pp 1109:161110:14; 1112:3-10 (T of Harrison).

155. The Settlement Agreement also contemplated substantial involvement by the Inclusion Consultant, including observations, participation in meetings, staff training, and consultation with Student's parents. Pet'r Ex. 16 ¶ 4(a)-(b). Respondent's separate contract with the Inclusion Consultant omitted many of those obligations and reduced the contract amount. Although the Inclusion Consultant provided a training in October 2023, several personnel working directly with Student—including the RBT and certain related-service providers—did not attend. Compare Pet'r Ex. 4 ¶¶ 3(c), 4 with Pet'r Ex. 32. The Inclusion Consultant also did not observe Student during the 2023–2024 school year, T vol 1 p 138:24-139:1 (T of Boyd), despite testimony that classroom observations were central to assessing Student's progress, accommodations, and instructional supports, T vol 2 p 494:11-13 (T of Burnette); T vol 2 p 494:13-18 (T of Burnette); T vol 2 pp 494:18-495:1 (T of Burnette); T vol 2 p 495:1-9 (T of Burnette).

156. The evidence demonstrated that Respondent failed to implement multiple material provisions of the Settlement Agreement related to behavioral support, staff training, data sharing, the FBA, the BIP, and inclusion consultation. These failures limited the collection and use of behavioral data, reduced staff preparation and coordination, and impeded development of appropriate behavioral and inclusion support necessary for Student's educational progress and receipt of FAPE.

2023-2024 IEP MEETINGS LEADING UP TO THE ECS PREDETERMINATION AT THE AUGUST 2024 IEP MEETING

157. The August 28, 2023, Settlement Agreement provided that the August 30, 2023, IEP meeting would serve as Student's annual review and prohibited Respondent from unilaterally changing Student's placement before February 2024. Pet. Ex. 16 ¶ 7(a); compare Stip. Ex. 11 p 69 with Pet'r. Ex. 16 ¶ 8. Instead, Respondent convened the meeting as an "addendum," leaving the IEP set to expire on February 1, 2024. Stip. Ex. 11 p 69; T vol 1 p 167:22-23 (T of Boyd). Although Respondent later asserted the Settlement Agreement required delaying the annual review until February, Dr. Boyd admitted the Agreement did not prohibit earlier meetings or mutually agreed upon changes. T vol 1 pp 170:8-9, 174:11-15 (T of Boyd). *See* Pet'r Ex. 16 ¶ 8; *see also* Stip. Ex. 12 (September 11, 2023, IEP changing accommodations to the BOG by mutual agreement).

158. At the August 30, 2023, IEP meeting, Mother shared her vision for Student's inclusion. Stip. Ex. 11; Stip. 13. The IEP documented Student's continued placement in general education as part of the Settlement Agreement. Stip. Ex. 11. Mother testified the early meetings were collaborative and represented a "fresh start" with a largely new team. T vol 3 p 693:6-16 (T of Mother).

159. Concerns regarding Student's inclusion placement emerged quickly. At a September 27, 2023, transition meeting, school staff suggested Student receive instruction outside

the general education classroom due to difficulties hearing and following instruction. Stip. Ex. 54 p 1190; T vol 4 p 1023:5-11 (T of Harrison) (recommending instruction outside the general education classroom “to avoid having to give so much vocal redirection to him.”). Mother and Petitioners’ experts objected, emphasizing that modifications and adult support should be adjusted before considering removal from general education. T vol 3 pp 684:20-685:2 (T of Mother); T vol 3 p 685:710 (T of Mother); Stip. Ex. 54 p 1190. The principal acknowledged placement changes would require an IEP Team decision. T vol 3 p 685:10-18 (T of Mother).

160. Beginning February 14, 2024, the IEP Team met multiple times to conduct Student’s annual review. Stip. 17. The first meetings were collaborative, and the Team developed Student’s present levels, annual goals, and behavioral goals. T vol 1 pp 286:9, 293:12-14 (T of Boyd); T vol 3 p 691:3-7 (T of Mother). After this meeting, however, before the February 26, 2024, meeting, Respondent began collecting data focused on behavioral disruptions, removals from class, and comparisons between Student’s performance in general education and separate settings. This information was then added to Student’s IEP before the February 26, 2024, IEP meeting. Ex. 14 p 196; Stip. Ex. 16 p 262; T vol 2 pp 399:22-400:7 (T of Leach) (While the IEP denotes “33 significant disruptions” under the special factors section, Dr. Leach clarified, “that information came from [the Anecdotal/Event Recording: Data Collection Form] where they were reporting things as significant classroom disruptions that, in my opinion, were not.”).

161. At the February 26, 2024, meeting, Respondent first introduced Extended Content Standards (“ECS”). Dr. Boyd informed Mother that placement and instructional programming “go hand in hand” and presented ECS as an alternative to full inclusion. T vol 1 p 186:12-17 (T of Boyd); T vol 3 p 696:20-24 (T of Mother) (testifying that she was informed that ECS “cannot be delivered in the general education classroom”); T vol 1 p 187:8-23 (T of Boyd). Mother testified she was “caught off guard,” T vol 3 p 697:3-4 (T of Mother), particularly because Student had only attended full school days for approximately forty-three days with consistent supports in place. T vol 3 pp 697:22-698:1 (T of Mother); T vol 3 pp 698:2-699:1 (T of Mother); T vol 1 p 188:8-17 (T of Boyd). Mother and multiple experts, including Respondent’s own inclusion consultant, expressed that Student needed more time in his current placement before any ECS determination could be made. T vol 3 p 699:9-21 (T of Mother); *see* Stip. Ex. 16 p 264 (noting that Mother did not object to discussing ECS but felt Student had not had sufficient time in the General Ed classroom with the current supports).

162. When Mother and Ms. Holmes reiterated that Student “ha[d] not been in school a full year and there is not enough data” to change Student’s instruction to the ECS, the school-based members of the IEP Team responded it was important to go through the flow chart “to determine if he is or is not an appropriate candidate for [ECS].” Stip. Ex. 16 p 265. Dr. Boyd emphasized to Mother that Respondent did not have a cognitive score for Student, but that a cognitive score was not required for his placement on the ECS. T vol 1 pp 186:18-187:3 (T of Boyd).

163. Despite these concerns, the school team repeatedly equated ECS with more restrictive placement and pull-out instruction. Dr. Boyd acknowledged that ECS was discussed as an alternative to full inclusion, T vol 1 p 187:8-23 (T of Boyd), despite also noting that no law prohibits instruction on ECS in a general education setting, T vol 1 p 188:18-20 (T of Boyd). Mother consistently requested additional time for Student to receive consistent instruction and

supports before any decision regarding ECS or increased segregation, T vol 3 pp 698:2-699:1 (T of Mother), but felt the IEP team was not receptive to her input, T vol 3 p 699:2-5 (T of Mother); (T vol 3 pp 699:24700:8 (T of Mother) (noting the tone of the meeting “pivoted quickly” and “you started to see a divide” from “collaborative” to “my team, your team”). As there was limited time to complete the IEP meeting, the IEP Team agreed to continue the development of the IEP recognizing a decision would not be reached at the meeting regarding service delivery or location of service delivery at this meeting. Stip. Ex. 16 p 264.

164. At the March 6 and March 15, 2024, meetings, the school team continued revisiting ECS despite having recently agreed to limited pull-out services. The Team relied heavily on standardized testing, behavioral data, and assertions that Student was functioning at “pre-academic” or kindergarten levels, Stip. Ex. 14 p 221, although Petitioners presented expert testimony and documentary evidence that these assessments were neither valid nor reliable measures of his abilities, Pet’r. Exs. 166, 167; compare Pet’r. Ex. 164 with Resp’t. Ex. 116. The evidence further shows that although the school team reported that Student was not accessing grade-level measures with significant modification, Stip. Ex. 14 p 222, this was contradicted by other evidence in the record. *See, e.g.*, Stip. Ex. 20 p 466 (informing Mother accommodations are not permitted on mCLASS). Additionally, in considering the Alternate Assessment flowchart and the Alternate Assessment Worksheet, the IEP Team acknowledged that it did not have a cognitive evaluation and checked the first box “no.” Stip. Ex. 14 p 200; Stip. Ex. 17 p 277; Pet’r. Ex. 212; T vol 3 p 701:3-7 (T of Mother).

165. Petitioners’ experts also testified that ECS and segregated placements are intended for students with significant cognitive disabilities and that removing students from general education often widens, rather than closes, achievement gaps. Throughout these meetings, Mother, Petitioners’ experts, and Respondent’s own inclusion consultant consistently requested additional time and continuation of inclusive supports. Stip. Ex. 17 p 278 (noting she would “like to see him a full year, full days in school before we talk about the need for [ECS]”); T vol 1 p 192:9-11 (T of Boyd). Evidence showed Student’s behavioral transitions had improved and that his February 2024 IEP had only been implemented for approximately twenty-three days by the May 8, 2024, meeting. Nonetheless, the school team continued advancing ECS placement discussions. *See* T vol 2 p 422:14-423:1 (T of Leach) Stip. Ex. 19 p 385.

166. Notably, prior to the March 6, 2026, IEP meeting, Dr. Boyd researched the term “inclusion.” T vol 1 pp 196:7-20 (T of Boyd) (noting she probably conducted a Google search or looking the term up in the dictionary). During the hearing, when asked why she would have researched inclusion rather than consult with the inclusion consultants, the following exchange occurred:

Q. You didn’t defer to the two inclusion consultants that were at the meeting about inclusion before you looked it up in the dictionary?

A. Who are in line with Ms. Mother’s inclusivity mindset. I -- I mean, we have differing opinions of inclusion as far as when inclusion should be used. I am very much in support of a hundred percent inclusion if that is going to benefit . . . I’m sure you’re referring to Sara Jo and Ms. Holmes. I -- I’m sure I did not because the expectation is she would mirror Ms. Mother’s thoughts.

T vol 1 pp 197:6-17 (T of Boyd). Dr. Boyd further testified that she did not contact Dr. Soldovieri to observe Student, T vol 1 pp 197:6-10; 199:24-200:4, 200:21-201:1 (T of Boyd), and she was unable to meaningfully explain how she received or implemented her input. T vol 1 p 307:202-22 (T of Boyd) (When asked “at each of the IEP meetings in ’23-’24 did Sara Jo give any input” Dr. Boyd simply answered “Yes, she did.” T vol 1 p 307:202-22 (T of Boyd); T vol 2 p 309:11-18 (T of Boyd) (When asked whether “any of that input included input on the extended content standards” or “input about Student’s time in a special education location” Dr. Boyd simply answered “Yes”).

May 8, 2024, IEP Meeting

167. Student’s IEP Team convened on May 8, 2024, to discuss ESY, review the APE evaluation, review and revise his IEP, and discuss educational placement. Stip. Ex. 19 p 331. Mother testified her understanding of the purpose of the May 8, 2024, was to discuss extended content standards, review the adaptive PE evaluation, and discuss extended school year services. T vol 3 p 711:9-12,21-23 (T of Mother)

168. The Parents’ concerns and vision for Student continued to emphasize their desire for his inclusion with his nondisabled peers and opportunity to achieve a high school diploma. Stip. Ex. 19 p 339; *see also* T vol 5 pp 1269:25-1270:1 (T of General Education Teacher).

169. At the time of the May 8, 2024, IEP meeting, Student’s February 2024 IEP had only been implemented for 23 days. T vol 3 p 712:1-3 (T of Mother).

170. The school team updated Student’s present levels for reading and math. The school team did not include updates on Student’s progress on his IEP goals, but only included information comparing his on-task and off-task behaviors in the EC classroom versus the general education classroom. *See* Stip. Ex. 19 pp 341-44.

171. After discussing Student’s progress, the school team again proposed changing Student’s instruction to the ECS. Stip. Ex. 19 pp 384-86. Mother repeated her position had not changed, reminded the school team of Student’s experience without a teacher or consistent support prior to this school year, and the regression he experienced during the prior school year. *Id.* p 384. The school team responded that he was provided ESY. *Id.*

172. Mother testified during the meeting, “positions didn’t change” regarding placing Student on the ECS. T vol 3 p 712:25 (T of Mother). She explained her position remained that the team “just need[ed] more time,” emphasizing that “it wasn’t a no. It was need more time.” T vol 3 p 713:6-8 (T of Mother), and that 23 days of data was insufficient to make an informed choice. Mother further testified that she struggled to understand the team’s position, framing it as a “risk and benefit” question and asking, “what is the harm to give the boy a little more time?” T vol 3 p 713:9-11 (T of Mother). She stated, however, that the school team’s response was definitive, describing it as, “this is what we’re doing. This is what we’re doing.” T vol 3 p 713:11-12 (T of Mother). The only in-person member of “home team Student” at this meeting was Mother. T vol 3 p 719:2-7 (T of Mother).

173. When questioned by the Tribunal, Mother provided clarity that her position was not a hard no to the ECS but “simply that let’s give him more time before we make that determination.” T vol 3 pp 713:16-715:1 (T of Mother)

174. The IEP team had a “large discussion about [Student’s] progress with transitions now being much less problematic in the gen ed classroom” and his only remaining transition difficulties were “the bus, and the cafeteria, PE, things like that.” T vol 2 p 420:10-17 (T of Leach). Stip. Ex. 19 p 384. Ms. Holmes reminded the school team “we are now showing the behaviors are under control[,] and she would like to see the data into next year and how that progresses and look at this prior to him entering middle school.” Ms. Soldovieri echoed this sentiment. Stip. Ex. 19 p 385.

175. The school team responded Student had been “provided modifications in the general education classroom and he is not showing the progress that we would be expecting.” Stip. Ex. 19 p 385. The school team indicated “time is of the essence as he is moving closer to middle school where the expectations are going to get significantly harder.” *Id.*

176. The school team informed Mother “[t]he modifications are being done so far from the 3rd grade content that it is no longer the same skill.” Stip. Ex. 19 p 385. The Undersigned notes the admitted evidence does not support this statement as the math work samples submitted into evidence were primarily skills taught in second and third grade. *See discussion infra.*

177. When the question was raised as to whether instruction on ECS would require Student to be in the segregated classroom “all day for core subjects” or if he could access the general education classroom for that instruction, the school team responded it was “a team discussion for what the services and times would look like” and later that “being on the [ECS] does not mean that he will not be a part of the General education classroom in some ways decided upon by the IEP team.” Stip. Ex. 19 pp 385-86.

178. The school team explained it was driven by seeing a “less stressed [Student]” and wanting Student “happy, relaxed and engaged so that he can access the academics at his ability level and he can feel that success throughout his day.” Stip. Ex. 19 p 385. Dr. Leach does not share the concerns that Student’s reported frustration justifies moving him to an extended content standards classroom. T vol 2 p 416:14 (T of Leach). She acknowledged that frustration may occur but emphasized it should not lead to limiting his access to a standard diploma. Instead, the focus should be on adjusting how instruction is delivered to reduce frustration while maintaining him in the least restrictive environment, rather than changing his placement. T vol 2 p 416:14-21 (T of Leach) (“There’s a lot of other things we could do before we would ever consider taking him out of the least restrictive environment.”).

179. Dr. Burnette testified the record reflected evidence of low expectations for Student, including repeated statements that staff could “see on his face” that tasks were “so hard” or that he was “overwhelmed,” and frequent comparisons between Student’s performance in general education and separate settings, including statements that he could “attend[] for six minutes” in a separate setting but not in general education, without comparable data from the general education environment. T vol 2 p 556:1-12 (T of Burnette). This disparity in measurement—“we measured

it here, but we didn't measure it there"—suggested a failure to presume competence. T vol 2 p 1214 (T of Burnette). She further explained that even when Student appeared disengaged in the general education classroom, such as being “in the back of the room on a break,” he could still be “listening” and benefiting from exposure to the general education curriculum, which he “would not have access to...in a self-contained place.” T vol 2 p 556:15-21 (T of Burnette).

180. “It was clear to me from the record and from listening that. . . the school team members had already discussed this. When the parents and Jennifer Holmes and the inclusion specialist indicated that more time was needed, that was simply documented. There was no discussion around that. . . the LEA made the decision to go ahead and make that change regardless of those opinions being in complete contradiction to the school-based team who, in my opinion, had already decided before the meeting happened.” T vol 2 p 422:14-423:1 (T of Leach); Stip. Ex. 19 p 385.

181. Over the objection of Mother, Ms. Holmes, and Ms. Soldovieri, who all agreed “more time [was] needed and that they see he is progressing in his current setting,” Dr. Boyd, as the LEA Representative decided to “move [Student] to the [ECS] for the start of the 24-25 school year.” Stip. Ex. 19 p 385; T vol 1 pp 226:7-12, 227:6-7 (T of Boyd).

182. Special Education Teacher explained the school team did not want to implement the change in May because it did not want to “change his placement and his course of study with just a few weeks left of school.” T vol 4 p 1193:22-25 (T of Special Education Teacher).

183. Dr. Burnette testified the record reflected statements indicating predetermination of Student's placement on the extended content standards. She identified statements that “if we can't agree, we need to talk to our lawyers” and that “it's already been done...we made that decision in May,” as evidence that the decision had been made prior to meaningful team discussion. T vol 2 pp 560:24-561:13 (T of Burnette).

184. The Undersigned finds the statements made by Dr. Boyd and the school team in the meetings combined with Respondent's decision to change Student's instruction to the ECS after discussing Student's progress, the absence of data regarding Student's progress on his new goals after 23 days, Dr. Boyd's comments to the IEP Team regarding the forthcoming segregation, which was by Special Education Teacher's testimony, are all evidence of Respondent's predetermination.

August 13, 2024, Emails

185. On August 13, 2024, Molly Branson, one of Student's special education teachers, Jessica Harrison, and Dr. Boyd emailed regarding the need for objectives for each of Student's behavior goals as required for students on the ECS. Pet'r. Ex. 10 p 208.

186. Dr. Burnette testified the presence of objectives in Student's IEP indicated that he was being considered for placement on the extended content standards, explaining that in North Carolina, “if you are on the extended content standards, you have to have objectives,” whereas in general special education “you just have to have goals.” T vol 2 p 559:19-25 (T of Burnette). She noted that “objectives were written for this IEP” were included in “the draft that was given to the

family” prior to the IEP meeting, which she identified as evidence that the placement decision had been developed in advance. T vol 2 pp 559:25, 560:20-23 (T of Burnette).

**EVIDENCE OF RESPONDENT’S DECISION NOT TO UTILIZE THE SUPPORT OF THE INCLUSION
CONSULTANT AND DISCOUNTING OF PROGRESS**

187. The Settlement Agreement had provided for a “mutually agreeable Inclusion Consultant to assist Student’s IEP team through the end of the 2024-25 school year.” Pet’r. Ex. 16 ¶ 4(a). Respondent contracted with Ms. Soldovieri on July 10, 2023, to provide training on inclusive practices and strategies for educators to implement in general education to promote successful learning and provide support for the 2023-24 school year. Pet’r. Ex. 32 p 357. The financial compensation in the contract was capped at \$4,000.00 and provided an hourly rate of \$175.00. *Id.*

188. Mother repeatedly referenced her desire for the school team to collaborate and seek the input from the inclusion consultant throughout the 2023-24 school year. *See, e.g.*, Stip. Ex. 14 p 184; Stip. Ex. 16 p 265; Stip. Ex. 17 pp 279, 283; Stip. Ex. 18 p 322; Stip. Ex. 20 p 412.

189. General Education Teacher received no assistance in modifying Student’s assignments and agreed if his general education assignment were not modified correctly, it was her responsibility. T vol 5 p 1303:12-21 (T of General Education Teacher).

190. Respondents’ staff testified they utilized the Modifications Checklist provided by Ms. Soldovieri for Student’s assignments. *See, e.g.*, T vol 5 p 1234:6-10 (T of General Education Teacher) (testifying to the use of 18-point font, 1-2 problems per page, and choosing between 2-3 answers); T vol 4 p 1167:10-13 (T of Special Education Teacher). The first bullet point on the Modifications Checklist is “Maintain grade level concept at . . . his access level (i.e., character traits, multiplication).” Resp’t. Ex. 95.

191. Ms. Soldovieri suggested providing Student 1-2 problems instead of five (5) problems in the daily math work; General Education Teacher provided two (2). T vol 5 p 1297:12-15 (T of General Education Teacher). On cross-examination, General Education Teacher reviewed questions from Student’s daily math work that indicated Student correctly completed the problems with his accommodations, but General Education Teacher marked them incorrect and “gave a zero” because he circled the wrong answers. T vol 5 pp 1298:17-1300:21 (T of General Education Teacher).

192. Including the training per the Settlement Agreement, there were two (2) meetings with Ms. Soldovieri. T vol 5 p 1296:17 (T of General Education Teacher); T vol 4 p 1167:9-10 (T of Special Education Teacher) (describing attending an inclusion training at the beginning of the year).

193. Dr. Burnette testified that an inclusion consultant is “usually. . . called in . . . after a trial” or when a district “need[s] support for students with...a complex support need.” T vol 2 p 490:2-6 (T of Burnette). She explained her role as an inclusion consultant involves observing the student, reviewing records, and speaking with “the family” and “the student themselves” to “get

an understanding of what’s happening . . . [and] what was the concern,” after which she creates “a plan of . . . what we’re going to do.” T vol 2 p 490:9-15 (T of Burnette).

194. Dr. Burnette’s work addresses both individualized supports and systemic changes, explaining that it is “not only. . . about accommodations and modifications for that student” but also “what can the school do as a whole to make it more accessible to presume competence in the child.” T vol 2 p 490:16-19 (T of Burnette). Dr. Burnette further testified that she provides trainings tailored to staff needs and observed concerns, including “evidence-based practices, Universal Design for Learning, how to collect data, [and] how to. . . include the student with their peers,” with the goal of identifying “the sticking points. . . to meaningfully include a student with disabilities.” T vol 2 pp 490:19-491:2 (T of Burnette).

195. The Settlement Agreement provided for the inclusion consultant to observe Student three (3) times during the 2023-24 school year. Pet’r. Ex. 16 ¶ 4(d)(ii).

196. Ms. Soldovieri did not observe Student until the end of the following school year on May 1, 2025. Pet’r. Ex. 121.

197. Ms. Soldovieri was unable to observe Student during the school day to provide suggestions to school staff regarding alternatives. She participated in discussions during the Transition meetings in the fall and IEP meetings in the spring, but when she asked for a virtual meeting to discuss providing support to Student, Principal Melton suggested the staff email her and then schedule a virtual meeting. Stip. Ex. 54 p 1218. Respondent did not present any evidence a follow-up virtual meeting occurred.

198. Dr. Burnette testified that she provides ongoing follow-up coaching by returning “every month and more if they need it” to review prior trainings and support implementation. T vol 2 p 496:19-22 (T of Burnette). During these visits, she “ask[s] . . . a lot of questions,” such as noting when something “was not modified” and offering assistance, asking, “How can I help you?” T vol 2 p 496:21-23 (T of Burnette). She described providing in-the-moment coaching to ensure students are meaningfully included, including an example where a student was “doing some menial task in the back of the room.” She explained that she worked with staff to use “the same exact materials” as the rest of the class but “modified them really quickly” so the student could participate. T vol 2 p 496:24-497:4 (T of Burnette). Dr. Burnette emphasized that the purpose of this coaching is “making sure that they translate what was done in the coaching sessions to actual practice.” T vol 2 p 497:5-6 (T of Burnette).

199. Dr. Burnette testified, based on her review of the records, the district’s inclusion consultant, Dr. Soldovieri, “didn’t come in person until. . . the end of the 2024-2025 school year” which was a significant amount of time “without someone coming in person to provide training.” T vol 2 pp 497:11-14, 498:22-25 (T of Burnette). Pet’r Ex. 121. She acknowledged that “some things that [Dr. Soldovieri] did. . . were. . . okay, like the checklist that she created,” but emphasized that the consultant “never came and saw the . . . classroom or the student in person.” T vol 2 p 497:14-17 (T of Burnette). Dr. Burnette opined that the lack of in-person observation and support was “a huge detriment to Student” because it prevented the consultant from “see[ing] all

the things” and from helping staff “modify and... adapt in real time,” including being able to “step in and ask questions and help modify that instruction.” T vol 2 p 497:17-20 (T of Burnette).

200. Dr. Burnette testified that, while the settlement agreement provides that the inclusion consultant “will come and observe,” including the option to do so virtually if out of state, “that observation is not reflected in his IEP.” T vol 2 p 505:5-9 (T of Burnette). Compare Stip. Ex. 16. p 263 with Stip. Ex. 11 p 97. Dr. Burnette also testified that the March 2024 IEP included training and quarterly check-ins to be provided by the inclusion consultant. T vol 2 p 506:4-10 (T of Burnette). *Compare* Stip. Ex. 16. p 263 *with* Stip. Ex. 14 p 213.

201. The records reflected a need for inclusion consultant support during the 2023–2024 school year. Student’s work samples were “very visually cluttered,” with “so many things on a page,” and that the data collection “didn’t presume a lot of competence,” noting that comments were included on “every data collection page,” sometimes “disparaging,” rather than allowing “the data. . . to speak for itself and be able to tell the story of. . . what [Student’s] able to do and not do.” T vol 2 p 507:3-11 (T of Burnette).

202. She further testified that the data lacked sufficient specificity, explaining that for skills such as W-H questions, it only indicated that Student “struggles with. . . understanding W-H questions” without identifying “is it who, is it what, is it where,” or providing percentages to show performance. T vol 2 p 507:14-20 (T of Burnette). She also noted the absence of individualized, motivating approaches, stating she “didn’t see a lot of evidence” that instruction incorporated Student’s interests, which could have supported greater progress. T vol 2 p 508:2-8 (T of Burnette).

203. Likewise, there was a lack of evidence-based practices specific to students with complex support needs like Student, and much of the assessment relied on “norm-referenced” measures comparing him to peers, despite those measures not being appropriate for a student with Down syndrome. T vol 2 p 508:9-16 (T of Burnette); T vol 2 p 509:9-12 (T of Burnette). Dr. Burnette noted that, “even despite all of that,” Student “still demonstrated progress over time,” but that progress was often discounted in the records. T vol 2 p 508:17-23 (T of Burnette).

204. Dr. Burnette opined the team’s understanding of Student’s progress “would have been enhanced through training with an inclusion specialist,” particularly given that his profile—“intermittent progress, slow over time”—is “pretty consistent with most children with Down syndrome.” T vol 2 pp 508:24-509:2 (T of Burnette). She emphasized that improved data collection and the use of evidence-based practices were “huge” areas where an inclusion consultant “could have really helped the team understand” and better support Student T vol 2 p 509:3-8 (T of Burnette).

205. Dr. Burnette testified that the lack of inclusion consultant support impacted the provision of a free appropriate public education to Student by contributing to “the absence of evidence-based practices” and a failure to ensure accessibility of instruction. T vol 2 p 509:17-20 (T of Burnette). She pointed to an IEP statement indicating that “standards were not accessible to Student at this time,” which she found significant, explaining that making instruction accessible “is not Student’s fault” but “the teacher’s job. . . to make it accessible.” T vol 2 p 509:19-24 (T of Burnette).

Burnette). Stip. Ex. 20 p 416, 461. When instruction is not accessible, educators should examine “how can we make this accessible,” and that the absence of inclusion consultant support contributed to the failure to make the curriculum accessible to Student T vol 2 pp 509:24-510:2 (T of Burnette). Making “the third-grade curriculum accessible for Student” was “something that an inclusion consultant would have made abundantly clear.” T vol 2 p 510:11-14 (T of Burnette). She further testified that, “even with. . . minimal supports,” Student “still made. . . an incremental amount of progress in an ascending trend line in some of his reading goals.” T vol 2 p 511:2-5 (T of Burnette).

206. Dr. Burnette testified, in her opinion, Student “would have continued to make bigger gains and more progress” during the 2023–2024 school year if school staff had received inclusion consultant support. T vol 2 p 511:6-12 (T of Burnette). She explained that such support would have provided “evidence-based strategies” and “specific training for someone with complex support needs,” which improves instructional practices. T vol 2 p 511:12-16 (T of Burnette). By way of example, citing the ESY data, Dr. Burnette explained that when the EC teacher “took out the refusals,” Student “showed progress — more progress than before,” demonstrating that he “was capable of mastering so many of his IEP goals.” T vol 2 p 512:5-16 (T of Burnette).

207. At the August 2024 meeting, Ms. Mahaffey testified the team “listened” to Dr. Soldovieri’s input and responded when she asked questions, including providing a fourth-grade standard so she could give an example of how inclusion might look. T vol 3 pp 642:22-643:3 (T of Mahaffey). However, she observed there were “not a lot of follow-up questions to really see what that might look like” to explore implementation, request specific examples, or seek additional guidance despite Dr. Soldovieri’s expertise. T vol 3 p 643:4-7 (T of Mahaffey).

208. Without the ongoing support from the inclusion consultant, the school team focused on inappropriate standards to measure Student’s engagement in general education and, importantly, lacked understanding of the inconsistencies in Student’s demonstration of knowledge as an aspect of his complex support needs. *See, e.g.*, Stip. Ex. 54 pp 1198 (discussing Student was not “attending” to the lesson); 1204 (discussing difficulty gauging Student’s progress due to inconsistencies in demonstrating knowledge).

209. Shifting to classroom disruptions, Ms. Harrison’s protocol indicated the classroom teacher “defines what [significant disruption] looks like and when a disruption becomes significant to the learning environment.” Resp’t. Ex. 165 p 3316. Student’s records contained no definition for “significant disruption.” T vol 2 p 452:5-8 (T of Leach).

210. Dr. Leach opined that it is important for the team to define “significant disruption” in advance so that the determination is not left solely to the subjective judgment of an individual teacher. She explained that teaching is “very difficult,” and in moments of stress, a teacher may react emotionally to challenging behavior and perceive it as more disruptive than it actually is. T vol 2 pp 386:19-387:1 (T of Leach).

211. Dr. Leach testified there is not one way to define “significant disruption”, but the key consideration is the degree to which a behavior interferes with the learning environment—specifically, whether it prevents other students from completing their work or causes them to complete it at a lower level of quality than they otherwise would. T vol 2 pp 386:21-387:8 (T of

Leach). She emphasized that teams must deliberately distinguish between true, instructionally meaningful disruptions and ordinary classroom distractions. While some behaviors may be “annoying or irritating” or draw students’ attention—such as brief off-task moments, laughter, or students turning to look—these do not necessarily constitute significant disruption, as similar interruptions routinely occur in classrooms (e.g., a staff member entering the room). T vol 2 p 387:8-18 (T of Leach). Likewise, when labeling a child’s behavior as a “significant disruption” warranting removal, the team must also consider where the child will be sent. Dr. Leach explained that removing a child to another setting—such as an EC classroom—can shift the disruption to “a much more vulnerable population who probably cannot ignore and continue working to the same extent that a child without significant disabilities can be.” T vol 2 p 388:6-16 (T of Leach).

212. Although Student had an assigned RBT and supervising BCBA who were tasked with gathering data on Student’s behavior, Special Education Teacher, Student’s special education teacher, created an Anecdotal/Event Recording: Data Collection Form. Stip. Ex. 22; T vol 5 p 1287:4-5 (T of General Education Teacher). General Education Teacher, Special Education Teacher, Student’s special education teacher, Caitlin Shotts, Student’s assigned RBT, and Jessica Harrison, the BCBA, added entries to the Form. Stip. Ex. 22.

213. Dr. Leach also testified that the data, while potentially useful as ABC (Antecedent Behavior-Consequence) data, was not being used effectively. “ABC is what we use to determine what was happening in the environment that caused the problem behavior or what happened after the problem behavior that might be maintaining it.” T vol 2 pp 389:21-3 (T of Leach). ABC data allows the team to adjust routines to prevent recurring problem behaviors. In her review of the records, Dr. Leach observed that the recurring issues in Student’s routines could have been addressed in this way, but there was no evidence in the record that the team used the collected data. T vol 2 p 390:3-16 (T of Leach).

214. General Education Teacher began recording “significant classroom disruptions” on the first day Student attended school. which leads the Undersigned to conclude the document was created in anticipation of Student’s arrival to document his behaviors. *Compare* Stip. Ex. 22 p 772 (first entry Sept. 5, 2023) with Stip. Ex. 11 p 69 (IEP implementation date of Sep. 5, 2023). General Education Teacher classified Student’s “significant classroom disruptions” to include Student receiving his EC services in the general education classroom, the malfunction of his AAC device, his sensory diet, leaving his seat during instruction to retrieve a book, leaving his desk, and his RBT providing positive verbal support. *See, e.g.*, Stip. Ex. 22 pp 773 (Sept. 21, 2023); 775 (Sept. 29, 2023); p 776 (Oct. 3-4, 2023); 777 (Nov. 16, 2023); 780 (Jan. 17, 2024) 782 (Feb. 14, 2024); 787 (Apr. 24, 2024).

215. General Education Teacher also documented Student passing gas in her class on the Data Collection Form and the resultant smell. Stip. Ex. 22 p 773 (Sept. 21, 2023). General Education Teacher explained she documented it because his “gut health” impacted his behavior, however, she did not inform Mother about the Data Collection Form. T vol 5 p 1288:2-11 (T of General Education Teacher).

216. Dr. Leach testified of the anecdotal/events recorded by the school team, “very few” met the criteria of significant disruption. Notably, many entries misattributed disruptions to

Student that were caused by adults working with him, not Student, or noted minor student reactions—like looking in his direction or laughing—that were brief and not truly disruptive. Only a few instances, such as times when the classroom had to be evacuated, qualified as significant disruptions. T vol 2 p 389:3-20 (T of Leach). Stip. Ex. 22.

217. The school team indiscriminately reported every incident, including those described *supra*, in the thirty-three (33) significant disruptions reported at the February 26, 2024, IEP meeting and included in all documentation by the IEP Team going forward. *Compare* Stip. Ex. 22 pp 772-83 with Stip. Ex. 16 p 262.

218. On cross-examination, General Education Teacher insisted she was only documenting the “significant disruptions that occurred in the classroom . . . not Student’s behavior.” T vol 5 p 1290:7-9 (T of General Education Teacher). However, these “significant disruptions” were included as additional information about how Student’s behavior(s) impede his learning or that of others. Stip. Ex. 14 p 196 (noting 33 significant disruptions).

219. The Undersigned notes of the six (6) times Student’s classroom was reportedly “evacuated” due to Student’s behavior, the anecdotal notes evince Student’s peers were not in the classroom or evacuated from the classroom suggesting a hyperbolic reporting of the severity of the instances to support the predetermined decision to change Student’s placement. *See* Stip. Ex. 22.

EVIDENCE OF RESPONDENT’S DISCOUNTING STUDENT’S PROGRESS

220. On October 4, 2023, Dr. Boyd discussed Student’s report card notation with Ashley Melton and Danielle General Education Teacher. T vol 1 p 153:2-5 (T of Boyd). On October 5, 2023, Dr. Boyd provided a comment to be included for all Student’s graded subjects: “Due to work being significantly modified well-below grade level, a numerical value cannot be assigned at this time.” Pet’r Ex. 7 p 28; T vol 1 p 153:8-13 (T of Boyd); Stip Ex. 54 p 1196 (noting this language would be included on the report card at the Oct. 13, 2023, Transition meeting).

221. Thus, throughout the 2023-24 school year, Respondent gave Student a grade of zero (0) on all core academic subjects. Stip. Ex. 9; T vol 1 p 155:1 (T of Boyd). Student received a grade of “S” in all Specials classes (i.e., music, art, physical education). Stip. Ex. 9. No other students in the district with modified assignments as an IEP accommodation receive zeros on their report cards for performing below grade level. T vol 1 p 156:16-20, 157:13-18 (T of Boyd); T vol 2 p 313:23-24 (T of Boyd) (“There isn’t another child really receiving zeroes”).

222. Despite receiving a grade of zero (0) in all core subjects, his principal, Ms. Melton added the comments: “Great work [Student]! We are proud of you!” to his second quarter report card, and on his final report card for the school year, Ms. Melton wrote “Proud of you [Sam]!” and promoted him to fourth grade. Stip. Ex. 9 pp 48, 50; T vol 1 pp 159:25-160:3. Student was later promoted to fifth grade with zeros on his report cards, and the testimony at the hearing intimated he would be promoted to sixth grade with all zeroes on his report card. T vol 1 p 160:3-5 (T of Boyd); T vol 1 p 262:8-10 (T of Boyd).

223. Student's report card grades do not accurately reflect the grade level of Student's modified work. General Education Teacher testified that Student's work was modified to kindergarten level. T vol 5 p 1234:4-5 (T of General Education Teacher). Special Education Teacher also testified that Student's work was modified to a kindergarten or first grade level, but when shown the publisher's grade level of the document entered to support her testimony, Special Education Teacher acknowledged it was third grade. T vol 5 p 1225:16-21 (T of Special Education Teacher) (acknowledging Resp't. Ex. 116 p 1586 is a third-grade standard). The Undersigned notes that Student's IEP specifically provided for modified assignments to support access to the general education curriculum. Stip. Ex. 14 pp 205-13. Respondent characterized Student's need for modified assignments as evidence that he could not access grade-level curriculum, asserting the assignments were modified to the extent they no longer reflected grade-level standards.

Progress in Math

224. Special Education Teacher instructed Student one-on-one in the resource setting and used that time to pre-teach skills for the general education classroom in math. T vol 5 pp 1209:25-1210:1 (T of Special Education Teacher). Student's math goals in his March 15, 2024, IEP are first or second grade level standards, when Student was in third grade. *Compare* Stip. Ex. 14 p 198 *with* Pet'r. Ex. 164 pp 2147, 2150; T vol 5 pp 1210:6 – 1212:7 (T of Special Education Teacher). Although Special Education Teacher differentiated this for Student because he used a calculator, and opined that Student did "not understand the concept of addition or subtraction," T vol 5 p 1224:2-3 (T of Special Education Teacher), a calculator is one of Student's accommodations and "if he can meet that goal with a calculator, then he meets that goal." T vol 5 p 1212:11-23 (T of Special Education Teacher).

225. Comparing the admitted work samples for math and the K-8 Math Standards, the assignments admitted into evidence reflected second and third grade standards. *Compare* Resp't. Ex. 116 pp 1583, 1586 (picture and bar graphs) with Pet'r. Ex. 164 pp 2151 (NC.2.MD.10 (2nd grade)), 2154 (NC.3.MD.3 (3rd grade)); *see also* T vol 5 p 1225:16-21 (T of Special Education Teacher).

226. Students in the resource setting are working with students one (1) to three (3) grade levels below their nondisabled peers. T vol 5 p 1207:22-23 (T of Special Education Teacher). Student's math goals in his IEP to be worked on during third and fourth grades, were one (1) to three (3) grade levels behind his nondisabled peers. T vol 5 p 1213:5-9 (T of Special Education Teacher).

Progress in Reading

227. Student made progress on his End of Grade (EOG) testing in Reading, improved his Lexile level, and scored higher than sixteen percent (16%) of all third-grade students in North Carolina in Math. Pet'r. Ex. 60. Yet, when asked "what progress" General Education Teacher observed in Student during the school year, General Education Teacher answered "on third grade content and standards there was no progress." T vol 5 p 1245:8-12 (T of General Education Teacher).

228. Dr. Burnette testified that data collection for students with complex support needs differs from that of typically developing students. She explained that, while typically developing students are often assessed using “standards-based assessments that are normed” such as end-of-grade tests and mCLASS, students with complex support needs require a different approach as they may not show “these huge jumps and gains,” and instead demonstrate “variable progress,” T vol 2 pp 552:20-552:6 (T of Burnette). She testified Student’s progress, was what is to be expected with someone with complex support needs yet showed “an upward trajectory.” T vol 2 p 553:5-9 (T of Burnette).

229. Although Student was documented as attending to whole group instruction for thirty (30) seconds or less in September 27, 2023, General Education Teacher testified Student’s average of attending to whole group reading instruction for “less than ten minutes” in the spring “wasn’t successful.” Compare Stip. Ex. 54 p 1189 with T vol 5 p 1250:14-17 (T of General Education Teacher).

Progress on mCLASS performance

230. The school team discounted Student’s progress on one of the mCLASS subtests explaining, “he selected the last answer choice on all of the questions.” Stip. Ex. 20 p 466; T vol 5 pp 1310:20-1311:2 (T of General Education Teacher) (acknowledging on cross-examination Student’s high score on a subtest was not the result of Student selecting the last answer). However, when Student scored “zero,” and selected the last answer choice, this was not discounted as an accurate measure of his performance. T vol 5 pp 1260:8-10; 1260:23-1261:2 (T of General Education Teacher).

231. Even without accommodations, Student made progress over the 2023-24 school year in mCLASS. Resp’t Ex. 87 (increasing Composite Score from 268 to 348).

Progress During ESY

232. Mother summarized Student’s progress during ESY as “tremendous” and “really insightful,” noting that his teacher “really focused” on analyzing his skills and “weeding out” behaviors to better understand what he could do. T vol 3 p 723:9-18 (T of Mother). She testified that managing his sugars made a noticeable improvement, T vol 3 p 723:18-23 (T of Mother), and that when behaviors were removed from the data, Student demonstrated significant mastery, stating that “he was 93 percent” on a goal that had only recently been introduced. T vol 3 p 724:4-14 (T of Mother).

233. During ESY, Student was supported by an EC teacher and his RBT. T vol 2 p 310:1-4 (T of Boyd). Student’s ESY services were for an hour, three times per week. T vol 2 p 331:8-11 (T of Boyd).

234. The Tribunal notes that when testifying about the progress Student made on his IEP goals during ESY, Dr. Boyd offered conflicting explanations that seemingly discounted his progress—first attributing it to the skill being measured in isolation, then to the 1:1 instructional setting, though acknowledging that Student’s pull-out instruction is likewise delivered in a 1:1

setting—reflecting a pattern of dismissing progress irrespective of the context in which it was achieved. T vol 1 pp 231:10-232:7 (T of Boyd). Likewise, during the February 14, 2024, IEP meeting, Student’s EC teachers noted that task refusals keep him from meeting his goals and assessing his academics. Stip. Ex. 14 p 232. Dr. Boyd admitted that when Student’s ESY teacher removed his refusals, there was an increase in Student’s demonstrated progress. T vol 1 p 234:5-8 (T of Boyd).

235. At the August 21, 2024, IEP meeting, the school team likewise discounted ESY progress explaining, “[t]his was done in a 2 on 1 setting with the EC teacher and RBT supporting him during these sessions.” Stip. Ex. 20 p 466. General Education Teacher acknowledged Student’s growth based on the ESY data but attributed it to a “significantly modified day,” and “the two-on-one setting,” and felt Student “needed more of that time to continue to close the gaps.” T vol. 5 p 1276:17-24 (T of General Education Teacher). Dr. Boyd echoed this sentiment and discounted Student’s progress “because it was in a—a one -to one setting. . . just like we see progress when we do the pullout services with our EC teacher from the general education classroom.” T vol 2 p 310:15-24 (T of Boyd).

236. Dr. Burnette testified that, based on her review of the records, staff made “assumptions about. . . [Student] that impact. . . what they believed to be possible,” citing an example where it was noted that they could “tell on his face that this is just too much, too hard,” which she stated “that is not presuming competence.” T vol 2 p 515:3-8 (T of Burnette). She testified that such conclusions, based on perception rather than data— “like, oh, I feel like”—reflect a failure to presume competence. T vol 2 p 515:8-11 (T of Burnette). In contrast, she explained that presuming competence requires that “even despite” a student appearing overwhelmed, educators “still presume that he’s capable and able to learn.” T vol 2 p 515:11-14 (T of Burnette). On cross-examination, Dr. Burnette acknowledged the IEP Team is required to have data regarding “what Student can do” and “what [Student] is actually doing,” and agreed the team “should have data that shows progress” or, if applicable, a lack of progress. T vol 2 pp 592:15-21, 593:4-9 (T of Burnette). However, she clarified that collecting and relying on data is not inconsistent with presuming competence, testifying that the team can “still presume competence and collect data and give access to the general education curriculum.” She emphasized that presuming competence remains appropriate alongside data-based decision-making. T vol 2 p 592:2-6 (T of Burnette).

237. The school team discounted evidence of Student’s progress. T vol 2 p 552:4-9 (T of Burnette). When Student showed improvement, such as in his mCLASS scores, which “is not a normed reference test for someone with Down syndrome. . . or autism,” the team attributed it to factors like “he just chose the third one.” T vol 2 p 552:9-13 (T of Burnette). Rather than recognizing it as progress while educators “would never ask a typically developing child to prove that they knew that that was the right answer.” T vol 2 p 552:13-16 (T of Burnette).

238. During the August 2024 IEP meeting, no objective measure or benchmark was identified to determine what level of progress would have been sufficient for Student to remain on the standard course of study. T vol 3 pp 643:22-644:2 (T of Mahaffey). Although the team acknowledged his progress, including growth during extended school year and in mCLASS data, that progress was consistently “discounted,” attributed to factors such as the “two-on-one” ESY

setting or that he was “clicking the last answer.” T vol 3 p 644:2-7 (T of Mahaffey); T vol 3 p 644:8-10 (T of Mahaffey) (“any kind of progress we tried to highlight was discounted or...not enough”); T vol 3 p 635:5-9 (T of Mahaffey) (noting the team “didn’t need any explanation for the zeros” or consider that behaviors may have contributed to those scores but were “quick to discount any potential progress that was being shown in the data”). In sum, the IEP team was dismissive of Student’s progress.

PROCEDURAL VIOLATIONS AND EDUCATIONAL HARM

Administering inappropriate assessments and educational harm

239. Throughout the 2023-24 school year, Student’s IEP Team administered the mCLASS/DIBELS assessments to Student despite the publisher’s admonition that such assessments were inappropriate for students who are “deaf, who stutter, who are completely nonverbal, or who have severe phonological difficulties.” Pet’r. Ex. 166.

240. Student “is a primarily nonverbal student who uses an augmentative device to communicate.” T vol 5 p 1301:18-21 (T of General Education Teacher). When asked if it was appropriate to give Student an assessment that requires a verbal response, General Education Teacher did not answer the question but responded: “It’s an assessment that we give all of the students.” T vol 5 p 1301:22-25 (T of General Education Teacher).

241. Student also has severe phonological difficulties and is minimally verbal; therefore administering the mClass to Student without any accommodations would “absolutely not” have been appropriate because it would not give any indication of the skills Student has, but instead would “set up for him to fail and so it looks like he doesn’t have . . . the skills that he may have if he was given a different informal assessment designed for him to be able to engage” T vol 2 pp 424:11-425:7 (T of Leach); Pet’r Ex 166. Accommodations are permitted for mClass and the publisher identifies which are approved and which are unapproved. T vol 2 p 425:19-22 (T of Leach); Pet’r Ex. 167.

242. Student’s IEP also included accommodations in all subject areas of “wait time for responses when given a direct question or instruction (up to 15 seconds)” and “alternate response modalities (AAC device, spoke words, typed response, selecting from 2 choices, “point, match, select,” etc.)” yet none of these accommodations were provided to Student Stip. Ex. 14 p 213. The only accommodation was “Testing in a Separate Room – One-on-One.” *Id.* General Education Teacher testified that the assessments given to Student were timed and standardized. T vol 5 p 1302:5-9 (T of General Education Teacher). General Education Teacher did not receive training for the Star Reading assessment administered to Student. She knew there were accommodations available, but she did not testify she provided those to Student T vol 5 pp 1302:23-1303:5 (T of General Education Teacher).

243. The school team informed Mother: “No accommodations are allowed for MClass benchmarks,” Stip. Ex. 20 p 466, although the publisher provides approved accommodations, which Respondent did not provide to Student Pet’r. Ex. 167 pp 2190-91. The publisher also allows for “unapproved accommodations” when the student’s IEP requires testing with an unapproved

accommodation. *Id.* at 2191. “Scores obtained using an unapproved accommodation can be used to measure individual growth for the student.” *Id.*

244. Dr. Leach testified that, during the meeting, the general education teacher stated she “couldn’t make accommodations and modifications within the classroom setting if those same modifications and accommodations weren’t allowed on the assessments,” which Dr. Leach said was “completely wrong.” She clarified that educators may implement any accommodations and modifications needed to support a student during instruction. For standardized or districtwide assessments, accommodations are permitted, but they may not match the full range of supports provided during classroom instruction. The only rule is that “you cannot provide an accommodation on a statewide assessment or districtwide assessment that you weren’t providing within the classroom.” T vol 2 p 419:3-18 (T of Leach).

245. The publisher of the DIBELS Assessment/MClass indicates students receiving special education can be progress monitored using “materials at the students’ instructional-level if the grade-level materials are too difficult to show response to instruction.” Pet’r. Ex. 166. Respondent did not include any information in Student’s IEP regarding his performance on progress monitoring at his instructional level or an attempt to identify his instructional level through progress monitoring. *See* Stip. Exs. 14-20.

246. Dr. Pearson did not recall if Student was provided accommodations on the curriculum-based measures like mCLASS, but she believed having that information was important in determining whether to rely on the mCLASS scores in forming her opinion. T vol 3 p 919:13-23 (T of Pearson). Likewise, Dr. Burnette opined that, while the IEP team “used what was available to them,” including “classroom-based assessments” and other measures, those assessments are not normed for students with Student’s profile. T vol 2 p 555:2-8 (T of Burnette) (noting that, because the team “used assessments,” that were “not [norm] referenced for a student with complex support needs,” she “would not consider that an evidence-based approach for someone with complex support needs”).

247. The IEP Team then used the results from these assessments, administered without accommodations and deemed inappropriate by the publisher due to Student’s language impairments, as part of the justification of changing Student’s instruction to the ECS. Stip. Ex. 14 p 221.

Failing to conduct AT evaluation and educational harm

248. On September 15, 2021, Dr. Molly Widney recommended “FM/Roger system use in the classroom” to address Student’s hearing loss. Stip. Ex. 18 p 307.

249. At the August 30, 2023, IEP meeting the IEP Team did not update Student’s Communication Plan Worksheet, which continued to reflect Student’s primary eligibility category was “Developmentally Delayed,” and the IEP Team considered “No amplification” to address Student’s hearing loss. Stip. Ex. 11 p 101.

250. At the September 27, 2023, Transition meeting, Jessica Harrison informed the Transition Team that Student could not hear if the EC teacher lowered her voice in the general education classroom. Stip. Ex. 54 p 1190. She recommended removing him from general education because she could not determine what he could hear and understand when working on his IEP goals. T vol 4 pp 1021:5-11, 1024:16-21 (T of Harrison).

251. At the October 13, 2023, Transition meeting, the school team discussed Student attending to teacher-led instruction better in the 1:1 setting. Ms. Soldovieri questioned whether Student could hear the instruction and reminded the team of the audiologist's recommendation for an FM system. Stip. Ex. 54 p 1198. Mother agreed this should be considered and encouraged the team to identify what the barriers could be to Student maintaining attention. *Id.*; T vol 2 p 526:4-17 (T of Burnette) (regarding FM system and Dr. Soldovieri's inquiry about whether Student was able to hear).

252. At the February 26, 2024, IEP meeting, the IEP Team completed Student's Communication Plan Worksheet and noted Student "does not have audiological equipment at this time." Stip. Ex. 16 p 262.

253. Dr. Burnette opined that assistive technology is "absolutely" important to Student's education. T vol 2 p 521:6-9 (T of Burnette). She explained that Student has "a documented conductive hearing loss" and uses "his talker" to communicate and "demonstrate his knowledge." She further noted that tools such as a calculator help "mitigate some of his struggles with fine motor skills." T vol 2 p 521:11-17 (T of Burnette). Dr. Burnette opined that "any way that he can use assistive technology...has been beneficial" in enabling Student to "demonstrate his knowledge" and "access the curriculum." T vol 2 p 521:17-19 (T of Burnette).

254. An FM system is a microphone worn by the teacher and the student has a "speaker on their desk that takes what you say and amplifies it close to them." T vol 2 pp 521:23-522:2 (T of Burnette); T vol 2 p 522:16-20 (T of Burnette) (testifying to the recommendation in 2021 of the FM system found in Student's reevaluation report).

255. There was no discussion at the February 26, 2024, IEP meeting, T vol 2 p 524:2-3, 14 (T of Burnette); Stip. Ex. 16 p 26, or the March 15, 2024, IEP meeting about conducting an evaluation for an FM system, even though the recommendation was noted in Student's reevaluation report. T vol 2 p 523:9-12 (T of Burnette).

256. Dr. Burnette opined that an FM system would impact Student's access to the general education curriculum. She testified that "if you're not hearing instruction, it would be very challenging," and explained that, given Student's "documented conductive hearing loss," being able to hear instruction would directly affect his "ability to make progress...on the curriculum." T vol 2 pp 526:18-22, 527:5-11 (T of Burnette). She likewise opined that the failure to evaluate Student for an FM system during the 2023–2024 school year resulted in educational harm and a loss of educational opportunity. T vol 2 p 545:13-19 (T of Burnette). Dr. Burnette testified that Student's "attention and most of his behaviors were very variable," and explained that "being able to hear instruction is critically important to being able to attend to instruction," T vol 2 p 549:4-10 (T of Burnette), and that Student's difficulties in reading and spelling, including distinguishing

similar sounds like “B and D,” may have been impacted by his inability to hear those distinctions. T vol 2 pp 545:21-546:3 (T of Burnette).

257. Dr. Burnette opined that when a student requires assistive technology such as an FM system, it is typically included “under accommodations and modifications under every aspect of the IEP,” including “reading, math, science, social studies...[and] testing, all of those things.” T vol 2 p 548:19-25 (T of Burnette). She noted that the FM system “was not listed on [Student’s] IEP as part of his accommodations,” and opined that this omission was “a harm to Student” because “he needs that assistive. . . device to hear appropriately.” T vol 2 pp 548:25-549:3 (T of Burnette).

Failure to conduct FBA and educational harm

258. On August 29, 2023, Jennifer Holmes completed a Functional Behavior Assessment (FBA) of Student Stip. Ex. 1.

259. Ms. Holmes’s FBA included virtual observations, interviews with Mother, Ms. Grant (Student’s prior one-on-one assistant), and Ms. Luna (Student’s tutor and former assistant), an FBA questionnaire completed by Mother, and the completion of the Functional Assessment Screening Tool (FAST) and the Questions About Behavioral Functioning (QABF) by Mother, Ms. Grant, and Ms. Luna. Stip. Ex. 1 pp 1-9. Ms. Holmes identified four (4) targeted behaviors: refusal, yelling, physical aggression, and elopement, and provided definitions for each of the behaviors. Stip. Ex. 1 pp 9-10. Ms. Holmes hypothesized the functions of these behaviors were escape and to gain access to tangible items and provided replacement behaviors to address through two (2) recommended IEP goals. *Id.* pp 10-11; T vol 2 p 359:14-17 (T of Leach).

260. Ms. Holmes recommended sixteen (16) antecedent strategies and seven (7) reactive strategies. *Id.* pp 11-13. Ms. Holmes also developed a Crisis Plan if Student became “so emotionally dysregulated that a crisis response is needed.” *Id.* p 13. The Crisis Plan did not include contacting administration or removing Student from the classroom. *Id.*

261. Ms. Harrison described antecedent strategies the RBT utilized with Student such as token economy, errorless teaching, access to a calm-down area, using first/then language, frequent, varied praise, differential reinforcement from a preferred staff member. T vol 4 pp 984:11-993:17 (T of Harrison). Student’s “RBT became his preferred staff” and providing the differential reinforcement. T vol 4 p 988:19-24 (T of Harrison).

262. Ms. Holmes specifically recommended “incorporat[ing] more social activities throughout [Student’s] day . . . to engage with peers in social activities [e.g., playing Connect Four or Jenga to] . . . help build [Student]’s relationships with same-age peers and increase [Student]’s motivation in the school setting.” *Id.* p 14. Ms. Holmes noted “[p]eer-mediated interventions can increase [Student]’s motivation to engage in non-preferred tasks and will also help increase independence across the school environment.” *Id.* p 14.

263. Student also required “the support of a one-on-one assistant who has received training in the principles of applied behavior analysis, such as a registered behavior technician

[RBT]” and the incorporation of functional communication training “throughout [Student’s] school day to increase his ability to communicate his wants and needs.” Ms. Holmes noted “[i]t will be critical that all staff who work with [Student] are trained on this protocol [to teach Student to request a break] to prevent reinforcing maladaptive behaviors.” Stip. Ex. 1 p 14. Student had a RBT that accompanied him during the school day and worked on functional communication. T vol 4 pp 979:25-981:15 (T of Harrison) (describing the RBT providing functional communication). Respondent did not present evidence that other staff who worked with Student were trained on the same protocol.

264. Ms. Harrison also described the reactive strategies the RBT utilized with Student, such as using clear, concise directives, reminding Student of appropriate behaviors and access to reinforcers, directing Student to communicate his wants and needs and to a calm-down area, and prompting him to select a calming activity. T vol 4 pp 994:5-995:19 (T of Harrison).

265. Ms. Holmes also recommended incorporating video models throughout Student’s day “to teach appropriate behaviors,” explaining that “[v]ideo models do not need to be lengthy, but rather a 45-90 second video showing desired behaviors for the given scenario/context.” Stip. Ex. 1 p 14. The interventions included in Student’s IEP were appropriate, but Dr. Leach testified that two equally or more important supports—video modeling and peer-mediated interventions—were missing, and she would expect both to be used for a student with needs like Student’s in a general education setting. T vol 2 p 373:6-13 (T of Leach).

266. The purpose of video modeling is to deliver instruction to teach new skills by having a child watch a very short video clip of the skill needed. T vol 2 p 373:16-19 (T of Leach). Video modeling is “so important for students with autism in particular [because] they don’t often have the social attention needed to engage when people are modeling, but they are able oftentimes to look at a screen and watch a skill being modeled on a screen and then imitate what’s in the video.” T vol 2 p 373:19-24 (T of Leach). Dr. Leach testified she conducted research that shows that when you use social narratives with video modeling you get “huge outcomes that you wouldn’t have gotten otherwise.” T vol 2 p 374:2-6 (T of Leach).

267. Peer-mediated intervention is where “we teach peers ways to interact with the child to promote the child’s skill acquisition.” T vol 2 p 374:12-16 (T of Leach). For example, “if we want the child to learn how to respond to greetings, we might teach peers how to initiate greetings with the child to provide multiple opportunities throughout the day to work on that skill.” T vol 2 p 374:16-19 (T of Leach).

268. Video models were not used with Student (T vol 4 p 982:8-10) (T of Harrison), and while the school team “did some peer support strategies” those strategies were not in the IEP or in a BIP and were not implemented in a systematic, intensive manner that would have promoted more progress. T vol 2 pp 374:21-375:2 (T of Leach). Peer-mediated interventions were not used with Student T vol 4 pp 990:25-991:6 (T of Harrison).

269. Dr. Leach testified that including video modeling and peer-mediated interventions in the IEP is important because it makes them legally required, ensuring they are implemented with the necessary intensity to achieve the desired effect. T vol 2 p 375:3-9 (T of Leach). Dr. Leach

opined the failure to include those strategies prevented Student from making greater progress. T vol 2 pp 375:22-376:3 (T of Leach).

270. Student's IEP Team reviewed Ms. Holmes's FBA and Crisis Plan at the August 30, 2023, IEP meeting. Stip. Ex. 11 p 105. There is no evidence in the record of any discussion around the findings of the FBA. T vol 2 pp 369:23-370:10, 372:11-21 (T of Leach).

271. Jennifer Holmes' recommendations regarding replacement behaviors and IEP goals in the FBA were also not incorporated into Student's IEP. T vol 2 p 376:7-17 (T of Leach). Dr. Leach opined not including them had a negative impact on Student's educational progress because he wasn't working on skills that were replacement behaviors for the problem behaviors he was having. T vol 2 p 377:7-14 (T of Leach).

272. The difference between skill acquisition and behavior-reduction. T vol 2 p 377:19-2 (T of Leach). Dr. Leach testified by focusing on skill acquisition, behaviors will reduce regardless of whether they are specifically targeted because the focus is on building the skills the child needs, so they don't have to demonstrate the problem behaviors anymore. T vol 2 p 378:16-21 (T of Leach).

273. The focus in Student's records was "very, very heavily" on behavior reduction, i.e., reducing problem behavior, with "a very small focus" on skill acquisition. T vol 2 p 377:21-25 (T of Leach). Dr. Leach opined this approach amounts to "playing whack-a-mole," in that it relies on behavioral modification strategies rather than positive behavioral interventions and supports, explaining that while a skilled behavior analyst can reduce a particular problem behavior, failing to identify and address the underlying cause—and to teach the necessary replacement skills—results in a cycle where suppressing one behavior simply leads to the emergence of another. T vol 2 p 378:1-9 (T of Leach). Consistent with Dr. Leach's opinion, Special Education Teacher testified Student's behaviors "evolved throughout the year so some things reduced while new behaviors emerged." T vol 4 p 1187:13-14 (T of Special Education Teacher).

274. The IEP Team adopted the FBA "to use and train the staff on for their data collection and baseline and to implement from the start." Stip. Ex. 11 p 106. The IEP Team did not adopt the Crisis Plan at the meeting, the additional recommended goals, or various strategies recommended in the FBA.

275. The Settlement Agreement provided for a new FBA to be completed by the BCBA once Student "returned to school with RBT support to further develop or modify Student's BIP or behavior goals." Pet'r. Ex. 16 ¶ 5(b). The FBA was not completed until January 2026. Pet'r. Ex. 97.

276. Dr. Leach testified in her expert opinion an FBA should have been conducted after "no more than a month of [Student] being in school" because the 2023 FBA was conducted in a home setting and the BIP would need to reflect an FBA that was done in the school setting. That while "many of the recommendations may have been the same, we may have different functions" because "all behavior is environmentally specific so what we're missing is. . . if these were the same behaviors, were there different functions in the school environment. . . are there different

variables that we need to consider for intervention and adjusting environmental variables to promote child success.” T vol 2 pp 360:10-361:3 (T of Leach).

277. Ms. Harrison explained she conducted an “informal functional behavior assessment” by analyzing Student’s behavior to assess the functions of those behaviors and tailor the interventions. T vol 4 p 1010:21-25 (T of Harrison). Ms. Harrison conducted an “Evaluation of Intervention Effectiveness” from October 10-12, 2023, to look at the interventions being utilized, determine if they were effective, and evaluate her staff’s implementation of the interventions. Resp’t. Ex. 48; T vol 4 pp 1011:19-1012:4 (T of Harrison).

278. Dr. Leach testified there is a significant distinction between an FBA and routine behavior data collection. While behavior analysts may continuously and informally do processes similar to an FBA, however, a formal FBA in a school setting is specifically conducted to develop an effective behavior intervention plan—which did not occur here—making the two processes fundamentally different. T vol 2 p 368:9-15 (T of Leach). In sum, the protocols from Ms. Harrison are not equivalent to conducting an FBA. T vol 5 p 1355:8-11 (T of Leach).

279. No other FBA was conducted by Respondent during the 2023-2024 or 2024-25 school years. T vol 2 pp 363:21-24, 364:16-18 (T of Leach). An FBA was not conducted by Respondent until January 4, 2026. T vol 2 p 364:24-25 (T of Leach). Pet’r Ex. 97. Dr. Pearson was unaware a second FBA was not conducted until January 2026 and was surprised an FBA had not been conducted for over two (2) years. T vol 3 p 901:9-14 (T of Pearson).

280. Dr. Leach explained that when developing a hypothesis about why a student engages in problem behavior, she identifies all possible functions (reasons), especially for students with complex needs who may have multiple motivations. She links those behaviors to underlying challenges (e.g., communication, social, or academic deficits) and uses this analysis as a checklist to ensure the intervention plan addresses each cause. This includes implementing proactive (antecedent) strategies, reinforcement (consequence) strategies to encourage desired behaviors, and adjusting attention so that appropriate behaviors receive positive reinforcement while problem behaviors receive little or no attention. T vol 2 pp 380:10-381:7 (T of Leach).

281. This illustrates the importance of using information from a FBA to meaningfully inform a BIP, rather than merely creating a document labeled as a BIP that is not actually based on FBA data. T vol 2 p 381:8-12 (T of Leach).

282. Dr. Leach opined that the failure to conduct an FBA and develop a BIP during the 2023–2024 school year caused Student educational harm and a loss of opportunity because the failure to conduct an FBA prevented development of a comprehensive BIP, including necessary antecedent strategies, consequence interventions, replacement behaviors, and an effective crisis plan. While Student still made progress, she testified he would have made greater progress with those supports in place. T vol 2 pp 368:16-369:9 (T of Leach). Without explanation, Ms. Harrison opined she did not think there was educational harm from not conducting an FBA. T vol 4 p 1014:6 (T of Harrison).

283. Ms. Harrison explained attending to instruction was a difficult skill for Student, but she did not explain any skill acquisition instruction to target this deficit. T vol 4 p 1025:11-12 (T

of Harrison). Instead, Ms. Harrison's opined Student should be removed from the general education classroom. T vol 4 p 1051:8-19 (T of Harrison).

284. When discussing Student's behaviors at the May 8, 2024, IEP meeting, the IEP Team agreed "when looking at the function of the behavior, always ruling out medical first is important." Stip. Ex. 19 p 383. Mother shared a recent medical development for Student, as well as dietary issues, that may have been impacting his behavior. *Id.* Throughout the year, Student's Transition team discussed various examples of when he demonstrated increased behaviors that were connected to medical issues. Stip. Ex. 54 (pushing on eyes, headaches, grinding teeth, stomach issues).

285. After Student received the diagnosis of Type 1 Diabetes, Ms. Harrison asked, "if some of the "hitting self" behaviors were a result of the diabetes," and the IEP Team had found it "hard to determine the clear function" of these behaviors. Stip. Ex. 20 p 467. Mother confirmed these behaviors as well as others Student previously exhibited were present when Student had "high sugars." *Id.*

Failure to develop BIP and educational harm

286. A behavior intervention plan includes four distinct components: (1) replacement behaviors that teach the student appropriate skills to meet the same need as the target behavior; (2) antecedent or proactive strategies that reinforce appropriate behaviors; (3) consequence strategies that reinforce appropriate behavior and address problem behaviors through de-escalation and behavior management; and (4) a crisis plan, when behaviors may escalate to a crisis level. The purpose of the BIP is to reduce or eliminate target behaviors while building the skills the student needs. T vol 2 pp 361:15-362:9 (T of Leach); T vol 2 p 362:12-15 (T of Leach).

287. A BIP is distinct from IEP behavior goals. T vol 2 p 362:16-22 (T of Leach). While behavior goals identify desired outcomes, a BIP provides the specific strategies and supports for teaching skills, preventing problem behaviors, and reinforcing appropriate behaviors. T vol 2 pp 362:23-363:2 (T of Leach). Dr. Pearson also explained that "antecedent strategies" should be employed when staff know a student struggles in a particular setting, which would be part of a BIP, and agreed as to the importance of teaching skill acquisition and positive replacement behaviors in addition to reducing maladaptive behaviors, which would also be part of a BIP. T vol 3 pp 904:8-905:2 (T of Pearson).

288. Dr. Leach testified in her expert opinion the proposals Ms. Holmes made for a BIP were "a great start for the school to put those things into place day one when he – when he came back to school because they're all evidence-based practices." T vol 2 p 361:7-12 (T of Leach). The antecedent strategies recommended by Ms. Holmes were "very relevant for [Student] and had all of these things been in place and implemented, I think he really would have thrived even more." T vol 2 p 363:18-20 (T of Leach). Dr. Pearson agreed a BIP should be developed within a few weeks of conducting an FBA. T vol 3 p 899:11-14 (T of Pearson).

289. The IEP Team did not develop a BIP but decided to "give him the time at his new school with new staff before we consider writing a BIP." Stip. Ex. 11 p 106. Ms. Harrison opined

this was appropriate. T vol 4 p 997:21-24 (T of Harrison). The only time a BIP is discussed after this meeting is six (6) months later at the February 26, 2024, IEP meeting. Stip. Ex. 16 p 263. Dr. Pearson was unaware that a BIP was not discussed until February 26, 2024, despite the FBA being conducted in the summer of 2023. T vol 3 pp 899:24-900:12 (T of Pearson).

290. No BIP was entered into evidence. Dr. Pearson did not see a BIP in the records she reviewed and agreed a BIP should have been a part of his educational record during the 2023-24 school year. T vol 3 p 900:13-23 (T of Pearson).

291. Ms. Harrison developed an informal document called Program Protocols during the 2023-24 school year in a Google doc. T vol 4 p 996:2-3 (T of Harrison). Within the Program Protocols, Ms. Harrison developed an informal BIP, but “[i]t was not adopted by the IEP team.” T vol 4 pp 996:3-5 (T of Harrison); Resp’t. Ex. 165 p 3316.

292. Dr. Leach clarified a BIP needs to be titled as such because “in special education we have multitiered systems of support [MTSS] where we do a ton of behavioral interventions and supports outside of a behavior intervention plan. Those might be titled something different, like a Behavior Support Plan if it’s not directly related to the outcomes of an FBA. It shouldn’t be titled a Behavior Intervention Plan unless it’s directly correlated with an FBA.” T vol 2 p 451:3-12 (T of Leach). The distinction is relevant as Ms. Harrison conflated the typical Tier 3² supports, such as a reading intervention group, provided with MTSS to support her opinion that Student’s service delivery in the special education setting for social skills and behavior was appropriate. T vol 4 pp 1027:24-1028:9 (T of Harrison).

293. Dr. Leach testified that training on a BIP is essential—without it, the plan has no practical value. She explained that general education teachers often lack sufficient background in evidence-based behavioral strategies, so simply providing the BIP is not enough. Staff must receive “didactic training” on the strategies in the plan, including how it connects to the FBA and the underlying reasons for the student’s behavior, so they understand it as a manifestation of the student’s disability rather than misconduct. She further emphasized that, beyond initial training, ongoing in-class coaching is necessary to ensure staff can implement the interventions consistently and with fidelity. That it would be “impossible” for “someone else to implement” a BIP someone else wrote without someone “very skilled” coaching them. T vol 2 pp 381:16-382:12 (T of Leach).

294. Dr. Leach testified that staff training on a BIP is even more critical when a student has an RBT assigned. She explained that schools often mistakenly rely on the RBT and BCBA to handle behavior while others focus on academics, but this division is ineffective. Instead, every adult who interacts with the student—across all settings—must be trained on the BIP. She emphasized that an RBT is a supplemental support who comes equipped with essential training and expertise, but is not a replacement for a trained team, and that consistent implementation by all staff is necessary both for effectiveness and for eventually fading RBT support. Without this, instruction and behavior supports become misaligned, leaving the RBT to manage issues that could

² Tier 3 supports are part of the Multi-Tiered System of Supports (MTSS) framework, which is a precursor to providing special education. T vol 4 pp 1028:12-1030:5 (T of Harrison) (explaining MTSS and the different tiers of support).

have been prevented through proper team-wide implementation. T vol 2 pp 382:13-20 (T of Leach).

295. Dr. Leach testified there was “no point in even writing” a BIP if you’re not going to train school staff on it. T vol 2 p 381:13-16 (T of Leach). Dr. Pearson did not see any evidence of training on a BIP in Student’s record either. T vol 3 pp 900:24-901:2 (T of Pearson). Ms. Harrison testified she provided “formal training” to Student’s bus driver and bus monitor and “informally” trained “any staff that were working directly with Student in the school setting.” T vol 4 pp 1003:24-1004:2 (T of Harrison).

296. Dr. Leach testified that, in Student’s case, there was no meaningful evidence that staff received the necessary training, modeling, or coaching on implementing a BIP. She noted that although a document labeled as a BIP was introduced later in the school year, there was no true BIP in place beforehand. Additionally, while the BCBA conducted supervision of the RBT and held data review meetings, those activities did not substitute for hands-on staff training and support. As a result, the focus appeared to be primarily on data review rather than ensuring that all staff were properly trained to implement behavioral interventions. T vol 3 pp 383:21-24, 385:5-18 (T of Leach).

297. Dr. Pearson agreed that failing to appropriately address a student’s behavior needs can cause harm and can impact academic progress. T vol 3 p 901:15-23 (T of Pearson).

298. The Undersigned admitted into evidence two (2) of the protocols for which Ms. Harrison was able to establish a date of their creation. Resp’t. Exs. 162, 165; T vol 4 pp 1054:16 – 1088:19 (T of Harrison). The Protocols were not dated and included tracked changes that Ms. Harrison testified could have been made by other people with access to the Google doc. T vol 4 pp 1002:21-1004:1 (T of Harrison).

299. Dr. Leach testified in her expert opinion Student “without a doubt” had a “definite need for a behavior intervention plan.” T vol 2 p 360:12-15 (T of Leach).

300. Without a current FBA or BIP in place, there was not a plan developed to address the function of the behaviors or to utilize consistently across settings; this resulted in General Education Teacher and Student’s RBT calling for administrative support or reportedly evacuating the classroom on the following dates:

Sept. 22, 2023 p 774	Administration called because Student initially refused to transition.
Nov. 29, 2023 p 778	Administration called because General Education Teacher was concerned student would elope with RBT.
Feb. 9, 2024 pp 781-82	Administration called and classroom evacuated because Student crawled on floor when another student threw up.

Feb. 9, 2024 p 782	Administration called and classroom purportedly “evacuated,” despite the class not being in the room but going to Specials early due to teacher “peeking in the door and [seeing Student] throwing a sanitizer bottle” in the classroom.
Feb. 22, 2024 pp 782-83	Administration called due to Student’s transition refusal, crawling on floor, and opening the doors of a cabinet and looking inside.
Feb. 22, 2024 p 783	Administration called due to Student’s transition refusal.
Feb. 23, 2024 p 783	Administration and classroom evacuated due to Student’s task refusal and hitting leg of RBT and hitting and kicking filing cabinet.
March 28, 2024 p 784	General Education Teacher documented “classroom evacuated” when the class went to Specials at the regularly scheduled time after Student kicked filing cabinet during indoor recess.
March 29, 2024 pp 784-85	Administration called due to behavior in gym listed as “Aggression toward self, others, or property; Hygiene issues.”
April 12, 2024 p 785	Administration called due to behavior in gym listed as “Transition or Task Refusal resulting in potential danger to self or others; Aggression toward self, others, or property.”
April 16, 2024 p 785	Administration called due to behavior in the bathroom listed as “Aggression toward self, others, or property.”
April 17, 2024 pp 785-86	Administration called due to refusal to transition to art. Behavior listed as “Aggression toward self that could result in injury; aggression toward others and property.”
April 18, 2024 p 786	Administration called and “classroom evacuated” due to Student’s elopement under the table in the cafeteria, which resulted in peers being “moved due to disruptive behavior.”
April 29, 2024 p 787	Administration called and “classroom evacuated” due to behavior listed as “Aggression toward self, others, and property; Elopement to a degree that becomes unsafe” and other students being removed from the area in the classroom.

301. General Education Teacher described an incident requiring her to “evacuate the classroom,” but her testimony differed from what she documented contemporaneously in Stipulated Exhibit 22. Compare Stip. Ex. 22 p 782 (describing General Education Teacher “peeking in the door and [seeing Student] throwing a sanitizer bottle”) with T vol 5 p 1241:1015 (T of General Education Teacher) (describing the same incident as Student “throwing things that were on his desk like his Yeti water bottle, a sanitizer bottle, some tissues” and “things flying around the room”).

302. Dr. Leach opined the incident noted in the May 2024 IEP of Student crawling under a table or under another student's chair did not necessitate the evacuation of other students from the classroom. T vol 2 p 422:2-6 (T of Leach). Stip. Ex. 19 p 384.

303. General Education Teacher testified "there were many things that caused Student to seem . . . "overstimulated" in the general education classroom, such as noise, and his behaviors "would highly increase in the classroom the more noises that there were." T vol 5 p 1243:16-19 (T of General Education Teacher). When asked to provide examples of the noises that would cause behaviors, General Education Teacher provided examples such as: "holding in a sneeze," "a noise from across the room," "a water bottle dropping," and "someone putting a book on their desk from across the room." 1244:25-1245:5 (T of General Education Teacher). Respondent did not present evidence that such noises were unique to a general education classroom.

304. While the IEP Team provided a space for Student to utilize in the general education classroom when he was overstimulated or during a scheduled break, this was not part of the BIP and not available throughout Student's day. Stip. Ex. 16 p 263; T vol 4 p 15-17 (T of Harrison). Many of Student's reported behavioral challenges were reported in the Specials classrooms, gym, or cafeteria. *See* Stip. Exs. 22, 23.

305. Dr. Boyd confirmed Student required the support of an RBT to receive FAPE. Pet'r. Ex. 20 p 276; T vol 1 pp 133:23-134:6 (T of Boyd). Due to the failure to develop a BIP or train all school staff to respond consistently and appropriately to his behavior, when the RBT was unavailable, Respondent required Student to leave school early. *Id.*

Refusing to consider all relevant information prior to changing to ECS

306. The Alternate Assessment Eligibility worksheet provides multiple questions for the IEP Team to complete. The first question asks the IEP Team whether the student has been determined to have cognitive abilities falling within the most significant cognitive disability range . . . using standardized assessments, and demonstrates adaptive skills that are 2 standard deviations below the mean . . ." Stip. Ex. 14 p 220.

307. At the March 6, 2024, IEP meeting, the school team completed the Alternate Assessment Eligibility worksheet and noted Student had not been determined to have cognitive abilities falling within the most significant disability range. Stip. Ex. 14 p 220; Stip. Ex. 17 p 277. 308. The North Carolina Alternate Assessment Decision Making Flow Chart reviewed by the IEP Team aligns with the Alternate Assessment Eligibility worksheet and provides specific criteria that must be established before a student "is eligible to participate in the NC Alternate Assessment." Pet'r. Ex. 212. These include inter alia a determination of a "significant cognitive disability," the receipt of services and supports outside the general education classroom "for greater than 60% of the day," and "instruction from the [ECS]." *Id.* As explained *infra*, Student's IEP never called for instruction outside the general education classroom "for greater than 60% of the day." Stip. Ex. 20 pp 443-44.

309. The Undersigned notes both the Flow Chart and the Alternate Assessment Eligibility worksheet uses the conjunctive “and,” and the subsequent questions 2-4 all presume “the student’s significant cognitive disability.” Stip. Ex. 14 pp 220-22; Pet’r. Ex. 212.

310. The Alternate Assessment Eligibility worksheet requires the IEP Team to consider whether the student’s inability to participate in the regular EOG test was “primarily the result of the extent of the significant cognitive disability and NOT the result of excessive absences, visual or auditory processing, social, cultural, language, or economic difference.” Stip. Ex. 14 p 222.

311. When completing the Communication Plan worksheet at the same meeting, the IEP Team documented Student did not have the “communication, language, and literacy skills necessary to acquire grade-level academic skills and concepts in the general education curriculum.” Stip. Ex. 14 p 218.

312. Despite acknowledging Student’s communication deficits impeded his ability to acquire grade-level academic skills and concepts in the general education curriculum, the school team did not consider the impact of Student’s hearing loss and language deficits when completing the Alternate Assessment Eligibility worksheet. Stip. Ex. 14 p 222. Instead, the school team wrote Student has a communication plan to address his hearing loss, even though the plan did not include any supports, and an AAC device. *Id.*

313. When Mother and Ms. Holmes asked for the school team to consider his missed instruction from excessive absences the prior year, his limited instruction on a modified day, and the impact of his absence and loss of instruction due to his behavior (i.e., transition refusals), the school team refused. Stip. Ex. 17 p 277.

314. Dr. Pearson testified she was aware of Student’s absences for an extended period of time prior to the 2023-24 school year and agreed an extended period of absence could impact a student’s academic and functional progress and behavior when a student returns to school, which is something an IEP Team should consider. T vol 3 pp 903:8-904:7 (T of Pearson).

Failing to implement inclusion support in the IEP and educational harm

315. Student’s IEP specifically provided for the inclusion consultant to meet quarterly with school personnel supporting Student Stip. Ex. 14 p 213. Respondent did not present evidence of these meetings to collaborate on the implementation of Student’s IEP. Student’s assignments in these classes were not modified appropriately, and Student demonstrated increased behaviors in these settings. Stip. Ex. 19 p 384.

October 30, 2024, Resolution Meeting

316. The IDEA encourages parties to a dispute to attempt resolution prior to proceeding to an administrative hearing. 20 U.S.C. §§ 1415(e) (Mediation), (f)(1)(B) (Resolution session). The IDEA requires the attendance of “a representative of the agency who has decision making authority on behalf of such agency.” 20 U.S.C. § 1415(f)(1)(B)(i)(II).

317. The IDEA mandates discussions that occur during mediation are confidential, but not the discussions from a resolution session. Compare 20 U.S.C. § 1415(e)(2)(G) with § 1415(f)(1)(B). Therefore, the Undersigned may consider any relevant information from these meetings regarding the Parties' efforts to resolve the matter.

318. The Parties attended a resolution meeting as required by the IDEA on October 30, 2024. Pet'r. Ex. 53; T vol 1 p 245:6-8 (T of Boyd). Dr. Boyd, members of Student's IEP Team, Mother, Father, and Erin Mahaffey, parent advocate, attended. Pet'r. Ex. 53.

319. The agenda for the meeting includes the citation to the federal regulations indicating the purpose of the meeting including providing the parents an opportunity to discuss the due process complaint "so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint." Pet'r. Ex. 53 p 531; 34 C.F.R. § 300.510(a)(2).

320. There was little to no discussion of the issues raised in the due process petition. Ms. Mahaffey stated, at the outset, Dr. Boyd asked what the issues were, and Mother responded that they were outlined in the petition, including the proposed resolutions. When Mother offered to read the petition, the team declined, stating they already had a copy. T vol 3 p 654:22-655:14 (T of Mahaffey). Ms. Mahaffey testified that the meeting was "very quick," "very, very brief," and "very cold," and that there was "nothing really up for discussion," with the district having "nothing to discuss" regarding the issues or resolution. T vol 3 p 654:22-655:14 (T of Mahaffey).

321. Respondent did not offer any means of resolution to the parents at the resolution meeting, instead informing the parents it was their "platform." T vol 1 p 246:1-3, 18-21 (T of Boyd).

322. Respondent issued a Prior Written Notice for the meeting that indicates: "the school team was not here to offer proposals." Pet'r. Ex. 53 p 532.

Training of School Personnel

323. The Settlement Agreement provided for the inclusion consultant to provide a 2hour training "to all school administrators and school personnel assigned to work with Student on evidence-based inclusive practices for children with Down syndrome and children with autism." Pet'r. Ex. 16 ¶ 4(d)(vi).

324. Respondent's Inclusion Consultant, Sara Jo Soldovieri, conducted a two (2) hour training on October 17, 2023, on "Evidence-based Inclusive Practices for Students with Down Syndrome and Students with Autism." Stip. Ex. 7. The 2023 Settlement Agreement provided for "all school administrators and school personnel [who] work with Student" to receive this training. Pet'r. Ex. 16 ¶ 4(d)(iv). Respondent did not provide for Student's occupational therapist or Specials' teachers (e.g., art, music, physical education) to attend the training. Stip. Ex. 7. Similarly, Respondent did not provide for any of the Registered Behavior Technicians (RBTs) who worked directly with Student throughout the entirety of his school day to attend the training. *Id.*

325. Student displayed many of the greatest challenges with his behaviors in Specials classes, where he was instructed by teachers who never received this training and accompanied by RBTs who were also untrained. *See, e.g.*, Stip. Ex. 22; Stip. Ex. 54 pp 1197 (discussing transition refusals related to Specials), 1216, 1238 (need for administrative support during art when Student did not transition), 1233 (difficulty completing tasks in PE); Pet'r. Ex. 7 p 159 (noting multiple instances where administration was called for support during Specials); Pet'r. Ex. 28 p 342 (required physical intervention due to refusal to transition to art).

326. Dr. Burnette testified that her trainings are not limited to a single session, explaining that she “usually provide[s]. . . in the beginning. . . two days of training,” followed by additional sessions depending on staff availability. T vol 2 p 496:2-6 (T of Burnette). She described a recent training as involving “the entire school,” consisting of “a whole half-day training” with “hands-on work” focused on learning “how to adapt and modify instruction.” T vol 2 p 496:6-10 (T of Burnette). She further testified that earlier trainings addressed “Universal Design for Learning and presuming competence,” which she identified as “initial barriers to inclusion for. . . most of the cases” she has worked on, and stated that these topics are “great places to start.” T vol 2 p 496:1015 (T of Burnette).

327. Dr. Leach testified that there was clear, “glaring” evidence in the record of the need for staff training on how to address Student’s behavior. T vol 2 p 439:20-23 (T of Leach). She explained that team members made statements that were “not only inaccurate but also from a perspective of low expectations.” T vol 2 p 439:24-25 (T of Leach). She emphasized that, in her practice, she first trains teams on “belief systems” and then on how to measure success for students performing below grade level. T vol 2 pp 439:25-440:6 (T of Leach).

PREDETERMINATION AND SUBSTANTIVELY INAPPROPRIATE IEP

August 21, 2024, IEP Meeting

328. Student’s IEP Team convened on August 21, 2024, prior to the start of the 2024-25 school year. Stip. Ex. 20. Erin Mahaffey attending the meeting as a parent advocate with Mother.

329. Ms. Mahaffey testified that, at the beginning of the meeting, she and Mother checked in at the main office and were escorted to “a large classroom that was set up for the meeting.” T vol 3 pp 628:23-629:3 (T of Mahaffey). When they entered, there were “about 13 people already seated, computers out, ready to go,” which she described as “a little intimidating” because they did not know “what they had said before we walked in.” T vol 3 pp 629:3-7 (T of Mahaffey).

330. Mother shared her parent concerns at the meeting, noting they had been “pre-sent” and were also read aloud to the team. T vol 3 pp 636:21-23 (T of Mahaffey). She stated that the concerns included Student’s Type 1 diabetes diagnosis, the parent’s goal for him to remain “included as much as possible with his general education peers,” and her disagreement with the use of extended content standards. T vol 3 pp 636:23-637:2 (T of Mahaffey). Ms. Mahaffey testified that the team “listened to her concerns. Some questions were asked about the Type 1

diabetes and how it was being treated, but then the meeting moved on.” T vol 3 p 637:5-7 (T of Mahaffey).

331. Mother informed the IEP Team of Student’s diagnosis of Type 1 Diabetes over the summer. Stip. Ex. 20 p 467; T vol 1 p 237:11-13 (T of Boyd). General Education Teacher recalled the “extent of the conversation” was whether more time was needed before ECS, he wasn’t on insulin, was adjusting well, and the family was monitoring his diet. T vol 5 p 1278:6-12 (T of General Education Teacher). “It did not change [her] mind about feeling that [ECS] was the best thing for him” or the special education time or delivery location. T vol 5 p 1279:1-6 (T of General Education Teacher).

332. The IEP Team documented Student’s progress in mCLASS and during ESY. Stip. Ex. 20 p 466. Dr. Pearson did not recall reviewing the data from ESY in forming her opinions. T vol 3 pp 924:24-925:2 (T of Pearson).

333. Ms. Mahaffey testified the team reviewed a range of data during the meeting, including Student’s “present levels which included reading, writing, math data, [and] behavior data,” as well as “a lot of discussion around mCLASS and ESY data.” T vol 3 p 634:2-5 (T of Mahaffey). She further testified she was the one who requested inclusion of additional mCLASS data because the draft IEP only contained beginning-of-year and mid-year data and did not include end-of-year data. She explained that she asked for this information “so we could see what progress had possibly been made in the last school year.” T vol 3 p 634:7-14 (T of Mahaffey).

334. There was no discussion by the team regarding Student’s progress on end-of-grade testing. T vol 3 p 635:10-14 (T of Mahaffey).

335. Ms. Mahaffey testified that, although ESY data was included in the draft IEP, it was initially “quickly glazed over” during the meeting until she requested further discussion. T vol 3 p 635:17-20 (T of Mahaffey). She stated that the team then reviewed the ESY teacher’s progress notes, which showed “a lot of growth” across goals. T vol 3 p 635:20-23 (T of Mahaffey). She highlighted the ESY data was presented in a way that separated skill from behavior, explaining that when “refusals were removed,” there was a “significant jump in progress,” demonstrating Student’s “actual skill acquisition.” T vol 3 pp 635:23-636:9 (T of Mahaffey). Ms. Mahaffey testified that she emphasized the importance of this method of data presentation, but that the team discounted the progress, attributing it to the “two-on-one” setting. T vol 3 p 635:6-10 (T of Mahaffey).

336. Dr. Leach opined that excluding refusal sessions from Student’s data is highly significant because if refusals are included, the data reflects “behavioral challenges, not his skill acquisition,” and can “whitewash his...success, his skill development.” When Dr. Leach spoke with Respondent’s current inclusion consultant in preparation for her testimony, she informed her of the importance of collecting more frequency data than percentage data. T vol 2 p 430:22-431:8 (T of Leach). Stip. Ex. 24 p 957. T vol 2 p 431:10-17 (T of Leach) (providing an example of how Student’s success could be whitewashed by his refusals being included in the data).

337. After the discussion of the data, the team moved to “the discussion of the alternate assessments.” T vol 3 p 635:11-14 (T of Mahaffey).

338. The school team then completed the Alternate Assessment Assurance Document to change Student’s instruction to the ECS and his participation in the NCEXTEND 1. Stip. Ex. 20 pp 463, 466-67. The school team documented Mother did not agree instruction on the ECS and participation in NCEXTEND 1 was “reasonable and appropriate.” Stip. Ex. 20 p 463, 467.

339. Ms. Mahaffey testified that she asked whether the decision was “up for discussion” and was told “no. The decision had been made at the previous meeting” and the team was “just here...to make the changes in the paperwork,” with the data already considered earlier. She stated that this was despite the parent’s disagreement. T vol 3 p 639:13-23 (T of Mahaffey). T vol 3 p 661:3 (T of Mahaffey) (reiterating Dr. Boyd’s statement the decision to move Student to the ECS “had already been made” prior to the August 2024 IEP meeting).

340. The tone of the meeting, particularly during discussion of alternate assessment and extended content standards, became “uncomfortable,” “a little bit...aggressive,” and at times “surprising.” T vol 3 p 644:11-17 (T of Mahaffey).

341. Mother repeated her desire for Student’s inclusion in general education, vision for his future, and objection to Student’s change to the ECS. *Id.* pp 412-13. Mother further testified that she sought to ensure the team understood “what had happened over the summer,” including Student’s progress and the impact of his Type 1 diabetes diagnosis, which she identified as key concerns discussed during the meeting. T vol 3 p 727:3-7 (T of Mother). Mother testified that the team was not receptive to her input, T vol 3 p 727:11-18 (T of Mother), that “they’d already made their decision,” T vol 3 p 728:8-11 (T of Mother), and that while the input was “heard” and “noted,” she did not feel there was any “sincere consideration” given and that there was “no merit to our concerns. No merit.” T vol 3 p 728:12-19 (T of Mother).

342. When Ms. Mahaffey asked if the ECS decision was made or was up for discussion, the school team reiterated the decision about ECS was made at the May 2024 IEP meeting.

343. Dr. Boyd stated the decision had “already [been] made [on] May 8th,” and Student’s progress and his Type 1 diabetes diagnosis would not be taken into consideration because Mother had not agreed to a cognitive evaluation. T vol 3 p 730:10-15 (T of Mother). Mother testified that she felt this was inappropriate, explaining that “one has nothing to do with the other,” and described the situation as feeling “vindictive,” “unjust,” and “retaliatory.” She further testified that it felt “very contingent,” like “holding something over my head,” and characterized the conduct as “very unprofessional,” which made her feel “very uncomfortable.” T vol 3 p 730:18-25 (T of Boyd).

344. On cross-examination by the Board’s attorney, Dr. Boyd testified that the Team “would have considered” Student’s new diagnosis and that the Team considers “any new information” provided. T vol 2 p 312:5-9 (T of Boyd). When confronted on re-direct, however, with the clear inconsistency between her prior statement that ECS was not up for discussion and her later assertion that all new information is considered, Dr. Boyd could not reconcile the disparity

and offered no meaningful explanation—ultimately retreating to the generic proposition that IEP teams are required to consider new information. T vol 2 p 326:20-23 (T of Boyd).

345. Additionally, Ms. Mahaffey pointed out the upwards trajectory in the data from the past year, and the new diagnosis did not support changing Student to the ECS. Stip. Ex. 20 p 467. She asked for the school team to reconsider ECS based on the progress during ESY and the new diagnosis. *Id.* Dr. Leach opined Student’s Type-1 diabetes diagnoses was important to his behavior for the same reason it’s important to rule out medical reasons when doing an FBA. T vol 2 p 435:23-24 (T of Leach). “Any medical diagnosis can impact a child’s stamina, their – any problem behavior. It could limit their ability to attend and focus to instruction. And, of course, for Student, he’s got multiple conditions that could be impacting that and no one knew he had diabetes. So it’s certainly relevant.” T vol 2 pp 435:25-436:4 (T of Leach); Stip. Ex. 20 p 465; *see also* T vol 2 p 420:18-22 (T of Leach) (agreeing one “hundred percent” that always ruling out medical first is important).

346. Ms. Mahaffey testified that “[i]t was made clear from the LEA that the decision was already made and although this new information had been discussed at the team[sic], it didn’t feel that it was actually going to be considered. The decision was done.” T vol 3 p 640:9-12 (T of Mahaffey); T vol 3 p 641:1-4 (T of Mahaffey) (“It really started to feel like no matter what new information we brought to the table, they would listen and nod, but it wasn’t actually going to be considered and the decision had already been made.”) T vol 3 p 641:7-12 (T of Mahaffey) (“[N]o matter what progress we could highlight, it was not enough progress for them to consider keeping him on the standard course of study.”)

347. Taken together, Respondent’s witnesses’ testimonies demonstrate that the purported “consideration” of Student’s new diagnosis was, at best, post hoc rationalization. At the time of the meeting, Respondent affirmatively communicated that ECS was not subject to discussion based on an unrelated factor—parental refusal to consent to cognitive testing—revealing that the decision had already been made and was not open to meaningful team input.

The PWN

348. Likewise, the PWN created contemporaneously with the meeting supports this finding, as the school team explained in response to Ms. Mahaffey, “[t]his meeting was to develop the IEP that reflects his need for the [ECS] with updated Goals and objectives and service time.” Stip. Ex. 20 p 467.

349. The IEP Team agreed the goals, developed the past year when Student was educated in the general education classroom were appropriate. Stip. Ex. 20 p 467. No changes were made to Student’s IEP goals at the August 2024 IEP meeting, T vol 1 p 239:7-9 (T of Boyd), however, Student’s IEP team added objectives to Student’s IEP as required by the ECS. T vol 1 p 239:10-13 (T of Boyd); Pet’r Ex. 10 p 208.

350. Dr. Burnette testified she “did not see evidence that they changed the goals” between the May and August IEPs, stating that “they just added the objectives.” T vol 2 p 562:1013 (T of Burnette). She opined that, if the team was “changing his service delivery and setting,” she

“would expect a completely different set of. . . IEP goals,” indicating that the failure to revise the goals was inconsistent with the change in placement. T vol 2 p 562:13-16 (T of Burnette).

351. Ms. Mahaffey testified the team reviewed the alternate assessment assurance questions which were presented as “yes or no,” and Mother acknowledged she understood them but answered “no” to the last questions of whether she agreed. T vol 3 p 637:3-5 (T of Mahaffey). Stip. Ex. 20 p 463. She stated that the team responded by saying “we’ll note your disagreement on the prior written notice.” T vol 3 p 638:5-7 (T of Mahaffey). Ms. Mahaffey testified she then interjected and asked whether the decision was “up for discussion or has the decision already been made. . . because the LEA said, after mom said no there, her disagreement would be noted in the prior written notice, and then it was as if the meeting was to move on.” T vol 3 p 638:7-9, 639:610 (T of Mahaffey).

352. When Ms. Mahaffey asked, “if the team has the decision making authority to change the student off the diploma track without the parents['] agreement,” Dr. Boyd responded that she was the LEA representative and she decided if there was disagreement. T vol 1 pp 238:25239:6 (T of Boyd). The PWN documents the school team “explained that the LEA made this decision because there was disagreement within the team,” and the parent was “provided with the parental handbook with her rights.” Stip. Ex. 20 p 467.

353. Ms. Mahaffey testified there was “a lot of discussion” regarding Student’s service delivery following the alternate assessment discussion. T vol 3 p 641:13-16 (T of Mahaffey). She explained that Student’s current IEP provided “about 45 minutes of pullout,” whereas the proposed draft increased that to “about four and a half hours of pullout.” T vol 3 p 641:16-20 (T of Mahaffey). She testified she raised concerns about the “significant jump” in minutes, noting that, in light of the progress discussed during the meeting, she “didn’t feel like it was an appropriate use of the continuum.” T vol 3 pp 641:20-642:1 (T of Mahaffey).

354. Mother, Ms. Mahaffey, and Ms. Soldovieri again asked for Student to have “more time” in general education with supports before making this decision. The school team refused. Stip. Ex. 20 p 467. Dr. Boyd informed Mother she had “gathered the data to support whatever programming we needed to support.” T vol 1 p 241:17-21 (T of Boyd).

355. The school team proposed Student participate with the general education classroom “for the second half” of each school day: lunch, recess, Specials, Science, and Social Studies. Stip. Ex. 20 p 468. With respect to specials, the proposal was that Student would participate with his general education peers, but there was “no discussion about any kind of. . . specially designed instruction during that time.” T vol 3 p 667:1-4 (T of Mahaffey).

356. Mother testified, although the team suggested Student “doesn’t have to be segregated full day” and could spend time with general education peers, that time was limited to non-instructional settings such as “lunch and recess.” T vol 3 p 769:14-20 (T of Mother). She also expressed concern about reliance on specials for inclusion, noting that “Student’s had the most struggles with specials.” T vol 3 p 769:20-25 (T of Mother).

357. Mother testified “all the important stuff was going to be in a self-contained classroom” and that he would only be “let. . . out to play and eat lunch with his friends,” which she characterized as “not quality” inclusion. T vol 3 p 770:11-15 (T of Mother). Stip. Ex. 16 p 265 (“The delivery of instruction for the 4 areas of core instruction do take place in a separate classroom.”). Mother also reiterated that Student performs better in the mornings, yet his time in the general education classroom would be in the afternoon, and “there is nothing to say that the [ECS] cannot be taught in the general education classroom.” Stip. Ex. 20 p 468. Ms. Soldovieri agreed and provided an example to the school team. *Id.* p 469.

358. Ms. Soldovieri asked if he could have more time in general education to “use the skills that he was remediating in the special education classroom.” Stip. Ex. 20 p 469. The school team answered this would be in Science and Social Studies, which aligned with the school team’s proposal. *Id.*

359. In response to the suggestion that Student receive Reading services in the general education classroom, the school team proposed removing him to the EC classroom for 1:1 instruction in the reading program, SPIRE. Stip. E. 20 p 469.

360. Ms. Mahaffey testified, during the meeting, the parent was open to increased service minutes “as long as they were valuable and targeted specifically to Student’s need.” T vol 3 p 666:3-6 (T of Mahaffey). Stip. Ex. 20 p 470. She explained that, historically, Student “had not done well or not made progress in small group separate setting instruction,” and the parent requested that any pullout reading instruction be “one-on-one” and that Student receive “as much instruction as possible in the general education room.” T vol 3 p 666:6-11 (T of Mahaffey).

361. When it became apparent the school team would not consider keeping Student’s service delivery as it was in the May 8, 2024, IEP, Ms. Mahaffey stated Mother’s willingness to consider 45-minutes of Reading instruction in the general education setting and 45-minutes of 1:1 instruction in the special education classroom on SPIRE, with the remaining Reading instruction to be delivered in the general education classroom. Stip. Ex. 20 p 470.

362. The school team then proceeded with changing Student’s instruction to the ECS but agreed to provide 30-minutes of Reading instruction on the ECS in the general education classroom and 45-minutes of 1:1 Research based interventions in Reading in the special education classroom. Stip. Ex. 20 p 473.

363. Ms. Mahaffey testified that the team responded that once Student was placed on the extended content standards, “it was not appropriate to teach him in the general education classroom.” T vol 3 p 642:4-6 (T of Mahaffey). The team indicated that, if the parent continued to insist on general education, Student could be placed “at a desk in the back of the classroom with an RBT.” T vol 3 p 642:6-9 (T of Mahaffey). Ms. Mahaffey responded, “that is not inclusion.” T vol 3 p 642:13 (T of Mahaffey). There was additional discussion with the inclusion specialist, Dr. Soldovieri, who participated virtually and attempted to explain how inclusion could look through modifying assignments within the general education setting. T vol 3 p 642:13-18 (T of Mahaffey). Ms. Mahaffey noted that Dr. Boyd asked the inclusion specialist “can you explain this to me? I

just don't understand . . . how this looks or how it could work.” T vol 3 p 642:19-21 (T of Mahaffey).

364. On cross-examination, Ms. Mahaffey testified, although the August 2024 IEP reflected efforts to allow instruction on the extended content standards in the general education classroom, this occurred only after “a lot of discussion” and that is was the LEA representative who stated it was “not appropriate to teach extended content standards in general education.” T vol 3 p 661:20-25 (T of Mahaffey).

365. The IEP Team increased Student’s daily service delivery in the special education classroom from 45 minutes and 205 minutes, which is a 450% increase in pullout. T vol 2 p 335:1525 (T of Boyd); *compare* Stip. Ex. 19 *with* Stip. Ex. 20 pp 443-44.

366. The service delivery was finalized as:

Daily Living/Independent Living Skills	10 minutes/5 per week	General Education
Social/Emotional Skills	15 minutes/5 per week	Special Education
Communication Skills	25 minutes/5 per week	Special Education
Math	60 minutes/5 per week	Special Education
Reading	45 minutes/5 per week	Special Education
Writing	15 minutes/5 per week	Special Education
Behavior	45 minutes/5 per week	Special Education
Reading	45 minutes/5 per week	General education
Occupational Therapy	30 minutes/1 per week	Special Education
Speech/Language	30 minutes/1 per week	Special Education
Speech/Language	30 minutes/1 per week	General Education

Stip. Ex. 20 pp 443-44.

367. The service delivery provided for 205 minutes of removal to the special education setting three (3) days each week (i.e., forty-nine percent (49%), of Student’s school day), and 235 minutes on two (2) days each week (i.e., fifty-six (56%)).

368. General Education Teacher opined this was appropriate “[b]ased on what we had seen and observed, he was most successful in those settings.” T vol 5 p 1276:2-3 (T of General Education Teacher). This statement ignores the fact that the only member of the IEP Team who knew of Student’s success in a separate classroom, like the ECS class, was Mother. Besides Mother, no members of the IEP Team had ever “seen [or] observed” Student in any setting other than the general education classroom and 1:1 in the resource setting.

369. None of Student's behavior and social skills goals required his removal from nondisabled peers to provide SDI rather nondisabled peers were required to "effectively implement them within a natural context." T vol 2 p 436:9-16 (T of Leach); Stip. Ex. 20 pp 437-440. Dr. Leach disagreed with the service delivery for Student's behavior and social-emotional goals, emphasizing that "those goals were designed considering his performance in the gen ed classroom to increase his engagement within the general ed classroom," yet "they didn't change the goals . . . they just changed the placement." T vol 2 p 437:2-6 (T of Leach). This creates a fundamental problem because "those goals were written to be context specific." T vol 2 p 437:9-10 (T of Leach). If the team intended to move Student to a different setting, "you would have had to assess him in that situation" before developing appropriate goals. T vol 2 p 437:14-15 (T of Leach). Dr. Leach further noted without reassessment, the goals may not fit the new environment at all, explaining that "he may not even have those challenges" in a special education setting, or "he might have more significant challenges." T vol 2 p 437:15-16 (T of Leach). She added that "a lot of kids have more problem behavior in a specialized setting than in a gen ed setting." T vol 2 p 437:18-21 (T of Leach).

370. Student's IEP also indicates he would take the regular EOG tests in Reading and Mathematics, with the accommodations of Testing in a Separate Room – One-on-One and Test Read Aloud (for Reading only). Stip. Ex. 20 p 454. Dr. Burnette explained when the Alternate Assessment Eligibility Worksheet is filled out, "you are taking a student off of the standard course of study's EOG and putting the student on the extended content standards," which "does not equate to a diploma." T vol 2 pp 562:24-564:2 (T of Burnette). Dr. Burnette testified that, as a result of that decision, the student "take[s] the NCEXTEND1 instead of the end of grade test." T vol 2 p 564:3-6 (T of Burnette). Dr. Burnette testified that, although the IEP team completed the form to determine eligibility for alternate assessment, the IEP still indicated that Student would take the "EOGs," rather than the alternate assessment aligned with the extended content standards. T vol 2 p 564:7-12 (T of Burnette). Stip. Ex. 20 p 454.

371. The Alternate Assessment Justification indicates: "Not applicable at this time." Stip. Ex. 20 p 454.

372. The IEP Team focused exclusively on changing Student's instruction to the ECS to facilitate his removal from general education for the first half of the school day, ignoring the legal rationale for making the decision was to deem him eligible for taking the alternate assessment (NCEXTEND 1).

373. The Least Restrictive Environment Justification only indicates Student "may be removed from his nondisabled peers for direct occupational therapy and speech therapy services to decrease environmental stimuli, in order to increase attention and cooperation." Stip. Ex. 20 p 454. There is no justification for Student's removal for the remaining 205 minutes each day. Dr. Leach did not agree with the IEP team's LRE justification, explaining that "we already had evidence that he can learn these skills within the context of the general ed classroom and made progress doing so." T vol 2 p 439:1-3 (T of Leach); Stip. Ex. 20 p 454.

374. Dr. Leach opined Student's August 2024 IEP did not offer Student a FAPE in his LRE and was not substantively appropriate "because they are proposing to remove him from the

general education classroom for the majority of the day and to put him on extended content standards in a self-contained classroom. . . [Student's] making progress in light of his circumstances in the gen ed classroom . . . and continued to do so." T vol 2 p 439:4-19 (T of Leach).

375. Dr. Burnette opined that the IEP developed at the August 2024 meeting did not offer Student a free appropriate public education and was not substantively appropriate. T vol 2 p 567:2-7 (T of Burnette).

376. For the reasons outlined above, the Undersigned concludes the August 21, 2024, IEP was inappropriate and did not offer Student a FAPE in his LRE. The decision to change his instruction to the ECS was predetermined and violated his parents' right to meaningful participation.

IMPROPER USE OF BEHAVIORAL DATA

377. As discussed supra, Ms. Harrison's protocol indicated the classroom teacher "defines what [significant disruption] looks like and when a disruption becomes significant to the learning environment." Resp't. Ex. 165 p 3316. Student's records contained no definition for "significant disruption" and when given the opportunity to point Dr. Leach to a definition in the record, Respondent's counsel did not. T vol 2 p 452:5-8 (T of Leach).

378. Although Student had an assigned RBT and supervising BCBA who were tasked with gathering data on Student's behavior, Special Education Teacher, Student's special education teacher, created an Anecdotal/Event Recording: Data Collection Form. Stip. Ex. 22; T vol 5 p 1287:4-5 (T of General Education Teacher). General Education Teacher, Sarah Special Education Teacher, Student's special education teacher, Caitlin Shotts, Student's assigned RBT, and Jessica Harrison, the BCBA, added entries to the Form. Stip. Ex. 22.

379. General Education Teacher began recording "significant classroom disruptions" on the first day Student attended school, which leads the Undersigned to conclude the document was created in anticipation of Student's arrival to document his behaviors. *Compare* Stip. Ex. 22 p 772 (first entry Sept. 5, 2023) *with* Stip. Ex. 11 p 69 (IEP implementation date of Sep. 5, 2023).

380. General Education Teacher classified Student's "significant classroom disruptions" to include Student receiving his EC services in the general education classroom, the malfunction of his AAC device, his sensory diet, leaving his seat during instruction to retrieve a book, leaving his desk, and his RBT providing positive verbal support. *See, e.g.*, Stip. Ex. 22 pp 773 (Sept. 21, 2023); 775 (Sept. 29, 2023); p 776 (Oct. 3-4, 2023); 777 (Nov. 16, 2023); 780 (Jan. 17, 2024) 782 (Feb. 14, 2024); 787 (Apr. 24, 2024).

381. General Education Teacher documented Student passing gas in her class on the Data Collection Form and the resultant smell. Stip. Ex. 22 p 773 (Sept. 21, 2023). General Education Teacher explained she documented it because his "gut health" impacted his behavior, yet she did not inform Mother about the Data Collection Form. T vol 5 p 1288:2-11 (T of General Education Teacher).

382. Dr. Leach testified of the anecdotal/events recorded by the school team, “very few” met the criteria of significant disruption. Many entries misattributed disruptions to Student that were caused by adults working with him, not Student, or noted minor student reactions—like looking in his direction or laughing—that were brief and not truly disruptive. Only a few instances, such as times when the classroom had to be evacuated, qualified as significant disruptions. T vol 2 p 389:320 (T of Leach). Stip. Ex. 22.

383. The school team indiscriminately reported every incident, including those described supra, in the thirty-three (33) significant disruptions reported at the February 26, 2024, IEP meeting and included in all documentation by the IEP Team going forward. Compare Stip. Ex. 22 pp 772-83 with Stip. Ex. 16 p 262.

384. On cross-examination, General Education Teacher insisted she was only documenting the “significant disruptions that occurred in the classroom . . . not Student’s behavior.” T vol 5 p 1290:7-9 (T of General Education Teacher). However, these “significant disruptions” were included as additional information about how Student’s behavior(s) impede his learning or that of others. Stip. Ex. 14 p 196 (noting 33 significant disruptions).

385. The Undersigned notes of the six (6) times Student’s classroom was reportedly “evacuated” due to Student’s behavior, the anecdotal notes evince Student’s peers were not in the classroom or evacuated from the classroom suggesting a hyperbolic reporting of the severity of the instances to support the predetermined decision to change Student’s placement. *See* Stip. Ex. 22.

REMEDY

Continued General Education Placement with Support

386. Student should remain in a general education setting with pullout services providing “one-on-one systematic instruction on his IEP goals” and opportunities “to preteach concepts that he will need to learn to actively participate in the gen ed classroom.” T vol 2 p 444:5-10 (T of Leach).

387. These services should continue through eighth grade, with the IEP team reviewing whether a standard or occupational diploma is appropriate prior to high school. T vol 2 p 444:512-16 (T of Leach).

BCBA and RBT / ABA

388. There must be “a significant shift over to skill acquisition versus behavior reduction.” T vol 2 p 444:20-21 (T of Leach). The BCBA and RBT should not focus only on “behavior” but rather recognize behaviors as “an indication that there’s skill acquisition problems.” T vol 2 p 444:22-24 (T of Leach).

389. The RBT and BCBA need to be “heavily involved in designing intervention protocols for teaching all skills, academic skills, communication skills, social skills, independent

work behaviors,” because developing these skills will naturally minimize problem behaviors. T vol 2 p 444:24-445:5 (T of Leach).

390. Student requires a “systematic ABA approach to learning that would be embedded within the context of the gen ed classroom,” as this approach has been successfully implemented and “Student’s a perfect candidate for that approach.” T vol 2 p 445:6-12 (T of Leach) (noting that she has personally implemented this approach and published on it since 2010).

Inclusion Consultant

391. Student should receive support from “an inclusion consultant that is physically present” and “an expert in extensive support needs or complex support needs,” who can “observe and train and coach [his] teachers,” with “continuous coaching on how to instruct Student” T vol 2 pp 568:14-16, 569:2-5 (T of Burnette).

392. The inclusion consultant needs to be an expert in students with complex support needs. T vol 2 pp 579:24-25, 580:19-20 (T of Burnette).

393. In addition to an inclusion consultant, it would be beneficial to have “a person that knows a lot about behavior” involved with Student’s IEP team, given that he has “some interfering behavior to his education.” T vol 2 p 606:3-7 (T of Burnette). This may be an additional behavioral consultant, or the current BCBA, collaborating with the inclusion consultant who is an expert in complex support needs. Such support should not be “in lieu of” an expert in complex support needs, but rather in addition to one, explaining that “the team of people” supporting Student should include individuals with expertise in both “special education and behavior” to determine the best ways to support him. T vol 2 p 606:10-17 (T of Burnette).

FM System

394. The IEP Team should ensure Student has “the use of an...FM system for him to hear his instruction.” T vol 2 p 568:16-17 (T of Burnette)

CONCLUSIONS OF LAW

Based on the above Findings of Fact, relevant laws, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

1. To the extent that the foregoing Conclusions of Law contain findings of fact, or that the Findings of Fact are conclusions of law, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011); *Warren v. Dep’t of Crime Control & Pub. Safety*, 221 N.C. App. 376, 379, 726 S.E.2d 920, 923, disc. rev. denied, 366 N.C. 408, 735 S.E.2d 175 (2012).

Jurisdiction

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

3. Specifically, the OAH has jurisdiction over this matter under IDEA, 20 U.S.C. § 1415(f), and the North Carolina General Statutes, N.C. Gen. Stat. § 115C-109.6(a).

4. The Parties agreed to Jurisdiction in the February 6, 2026, Prehearing Order. Docket Entry 2/6/26: Order on Final Pre-Hearing Conference.

5. The IDEA is the federal statute governing the education of students with disabilities. The federal regulations promulgated under IDEA are codified at 34 C.F.R. Part 300. The controlling State law for students with disabilities is Chapter 115C, Article 9 of the North Carolina General Statutes. Stips. 3, 5.

6. Student is a “child with a disability” as defined by the IDEA and is entitled to a free appropriate public education, which includes certain procedural safeguards. 20 U.S.C. §§ 1401(3), -1415.

Parties

7. The Parties agreed to Party Stipulations in the February 6, 2026, Prehearing Order.

8. Petitioner Mother is Student’s mother and Petitioner Father is Student’s father. As parents of Student, a minor child with a disability, and Student, they are guaranteed procedural safeguards with respect to the provision of FAPE which includes contesting the appropriateness of educational decisions made by Carteret County Public Schools and the implementation of Student’s educational programming. *See* 20 U.S.C. § 1415.

9. Respondent, Carteret County Board of Education, is a local education agency (“LEA”) receiving monies pursuant to the IDEA and responsible for providing Student a free appropriate public education. 20 U.S.C. § 1401(19); N.C. Gen. Stat. § 115C-5(7a); Stip. 4. Respondent is the LEA responsible for providing educational services in Carteret County, North Carolina. Respondent is subject to the provisions of applicable federal and state laws and regulations, specifically 20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300 et seq.; and N.C. Gen. Stat. § 115C-106 et seq. These acts, laws, and regulations require Respondent to provide FAPE for those children in need of special education residing within its jurisdiction.

10. The Parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper. The OAH has personal and subject matter jurisdiction over this contested case. The Parties received proper notice of the hearing in this matter. Stip. 1.

Burden of Proof

11. The party requesting the hearing, may not raise issues at the hearing that were not raised in the due process petition unless the other party consents, and has the burden of proof. 20 U.S.C. § 1415(f)(3)(B); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 57-58, 62 (2005). As Petitioners filed the due process complaint, they have the burden of proof.

12. Moreover, the Administrative Law Judge must decide the case based upon a preponderance of the evidence. N.C. Gen. Stat. § 150B-23(a).

North Carolina Rules of Evidence

13. The North Carolina Rules of Evidence in Chapter 8C of the General Statutes govern all contested cases proceedings. N.C. Gen. Stat. § 150B-29; 26 NCAC 3.0122(1). All evidence admitted into the official record that has probative value must be considered by the Administrative Law Judge and has been considered by the undersigned in this case. 26 NCAC 03 .0122(1)-(2).

14. The hearsay statements of Mother as documented in Student's education records and as testified to by various witnesses were admissible evidence because she was a party opponent. N.C. Gen. Stat. § 8C-1, Rule 801(d).

15. Similarly, hearsay statements of Respondent's agents were also admissible under the party opponent exception to the rule against hearsay. N.C. Gen. Stat. § 8C-1, Rule 801(d). Hearsay statements made by Respondent's contractors, however, are not admissible. N.C. Gen. Stat. § 8C-1, Rule 801(d).

Testimony of Expert Witnesses

16. The testimony of expert witnesses must be based on sufficient facts or data, the product of reliable principles and methods, and these principles and methods must be applied reliably to the facts of the case. N.C. Gen. Stat. § 8C-1, Rule 702(a). The expert witnesses whose opinions and testimony met these criteria were given significant weight. *See* N.C. Gen. Stat. § 8C-1, Rule 702

LEAST RESTRICTIVE ENVIRONMENT

17. "In sharp contrast to the vagueness provided in the statute as to the meaning of FAPE, the IDEA has a very specific prescription for the educational environment for a child with a disability. Particularly, the IDEA requires a balancing of the need for the provision of a free and appropriate public education with the need for providing such an education in the least restrictive environment." *Texarkana Sch. Dist.*, 115 LRP 46616 (Arkansas SEA 2015) (citing *Sacramento City Unified Sch. Dist. v. Rachael H.*, 14 F.3d 1398 (9th Cir. 1994)); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044-45 (5th Cir. 1989); *Lachman v. Illinois Bd. of Educ.*, 852 F.2d 290, 295 (7th Cir. 1985), cert. denied, 488 U.S. 925; *A.M. v. Northwest R1 Sch. Dist.*, 8113 F.2d 158, 162 (8th Cir. 1987), cert denied, 484 U. S. 847 (1987)).

18. Placement decisions under the IDEA must be grounded in the individual needs of the child rather than administrative convenience or disability label. *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983); *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1214–15 (3d Cir. 1993); *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 697 (11th Cir. 1991).

19. Under the IDEA, removal from the regular classroom is permissible only when education there cannot be achieved satisfactorily in that setting with supplementary aids and services. *Daniel R.R.*, 874 F.2d at 1048; *Oberti*, 995 F.2d at 1216; 20 U.S.C. § 1412(a)(5)(A).

20. Supplementary aids and services are “aids, services, and other supports that are provided in the regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with [20 U.S.C. § 1412(a)(5)].” 20 U.S.C., § 1401(33); 34 C.F.R. § 300.42; *see also P. ex rel. Mr. P. v. Newington Bd. of Educ.*, 512 F. Supp. 2d 89, 104 (D. Conn. 2007) (identifying the following supplementary aids and services considered by the IEP Team: assistance of two (2) paraprofessionals on a routine basis; co-teaching; program modifications and adaptations to accommodate the student’s needs; modification of the regular curriculum).

21. A child may not be “removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.” 34 C.F.R. § 300.116(e). “In selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs.” 34 C.F.R. § 300.116(d).

22. In *DeVries v. Fairfax County School Board*, the Fourth Circuit emphasized that mainstreaming of children with disabilities is “not only a laudable goal but is also a requirement of the Act” and adopted the *Roncker* standard. 882 F.2d 876, 879 (4th Cir. 1989) (citing *Roncker*, 700 F.2d at 1063 (requiring a court to “determine whether the services which make that placement [at a segregated facility] superior could be feasibly provided in a non-segregated setting”)).

23. According to the *DeVries/Roncker* feasibility analysis, removal to a more restrictive setting is warranted only when: (1) the child cannot benefit from mainstreaming; (2) any limited benefit from mainstreaming is substantially outweighed by the benefits of services that cannot be feasibly delivered in the regular setting; or (3) the child’s presence would significantly disrupt the general education environment. *DeVries*, 882 F.2d at 879.

24. Consistent with *DeVries and Roncker*, there is a strong presumption in favor of educating children with nondisabled peers to the maximum extent appropriate. The yardstick for mainstreaming is “not master[y of] the general-education curriculum for mainstreaming to remain a viable option. Rather, the appropriate yardstick is whether a student, with appropriate supplemental aids and services, can make progress toward his IEP goals in the regular education setting.” *L.H. v. Hamilton Cnty. Dep’t of Educ.*, 900 F.3d 779, 792-793 (6th Cir. 2018).

25. The placement decision of the school-based members of the August 2024 IEP Team was inappropriately based on administrative convenience not Student’s unique needs. The IEP Team informed Mother “[t]he delivery of instruction for the 4 areas of core instruction [for students

on the ECS] take place in a separate classroom” and is taught by an EC teacher with certification in Adapted Curriculum. Stip. Ex. 16 p 265.

26. This administrative edict was repeated at the March 6, 2024, IEP meeting, “the district stated that we do not teach the adaptive skills standards [ECS] in the general education classroom.” Stip. Ex. 17 p 277. Dr. Boyd informed Mother “that there was nothing preventing the ECS from being delivered in the gen[eral] ed[ucation] classroom except that’s how [Respondent’s] programming is set up.” T vol 1 pp 190:23-191:3 (T of Boyd).

27. The IEP Team erred by discussing service delivery before addressing accommodations and modifications in the general education setting. The Team should have determined what supports and supplementary aids were necessary for Student to succeed in the least restrictive environment—his general education classroom—before considering removal. T vol 2 pp 412:19-413:6 (T of Leach). By recommending a change in placement first, the Team bypassed the proper sequence of evaluating supports that might allow Student to remain included.

28. There is no dispute Student made progress during the 2023-24 school year. *See, e.g.*, T vol 3 p 845:14-22 (T of Pearson) (noting the IEP Team’s discussion of Student’s progress); T vol 4 pp 1187:24-1188:3 (T of Special Education Teacher) (discussing Student’s progress in written expression and subsequent shift to typing skills); T vol 1 pp 203:3-4, 237:6-10 (T of Boyd) (testifying to Student’s progress on his IEP goals). T vol 2 p 549:23 (T of Burnette) (testifying to Student’s progress on his IEP goals during the 2023-24 school year); T vol 2 p 391:18-22 (T of Leach) (testifying that throughout 2023-24 school year, Student “definitely made progress” on his behaviors).

29. In reviewing the compilation of data collected by the BCBA, Student remained stable or made progress in almost every area on the last reported data for the 2023-24 school year ending May 3, 2024, prior to the school team increasing his segregation. *See, e.g., id.* pp 809-22 (March 25 – May 3, 2024, Data Review documenting progress in Functional Skills, Functional Communication, Joint Attention with Peers, Gaze Shift During Instruction, Body Orientation During Whole Group Instruction, Receptive Identification of Common Words, and Spitting).

30. Based on a preponderance of the evidence, including Student’s educational records and the documentation incorporated into the August 2024 IEP, the record establishes that Student made more than marginal educational and functional progress toward his IEP goals while educated in the regular education classroom. Respondent presented no credible evidence demonstrating a need for increased segregation—and given Student’s documented progress in the regular classroom— Respondent’s decision to remove him to a more restrictive placement was unsupported by evaluative information, inconsistent with the IDEA’s LRE mandate, and resulted in a denial of FAPE.

OVERVIEW OF IDEA AND STANDARD FOR A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

31. The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) was enacted to “ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their

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

32. Congress enacted the IDEA to “throw open the doors of public education” and help students with disabilities who had previously been “either completely ignored or improperly serviced by American public schools.” *T.B., Jr. ex rel. T.B., Sr. v. Prince George’s Cty. Bd. of Educ.*, 897 F.3d 566, 571 (4th Cir. 2018), citing *In re Conklin*, 946 F.2d 306, 307 (4th Cir. 1991).

33. An IEP is “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with” the IDEA. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a). The IEP is “[t]he primary vehicle for implementing” the IDEA and “sets out the child’s present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.” *Honig v. Doe*, 484 U.S. 305, 311 (1988).

34. “The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). Regardless of the child’s disability, the “substantive obligation” of the school district is the same for all students: “a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.*

35. “Progress through [the education] system is what our society generally means by an ‘education,’ [a]nd access to an ‘education’ is what the IDEA promises,” *Endrew F.*, 580 U.S. at 400-01 (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 203 (1982)). Therefore, “[a] student offered an educational program providing ‘merely more than de minimis progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” *Endrew F.*, 580 U.S. at 402-03 (quoting *Rowley*, 458 U.S. at 179).

36. “[T]he formal requirements of a free appropriate public education, require that all of a child’s special needs must be addressed in the educational plan.” *Town of Burlington v. Dep’t of Educ. for Com. of Mass.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff’d sub nom., Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359 (1985). “If a school district fails to . . . offer the student an appropriate IEP, and if that failure affects the child’s education, then the district has necessarily denied the student a free appropriate public education.” *Boose v. D.C.*, 786 F.3d 1054, 1056 (D.C. Cir. 2015).

37. “In determining what it means to ‘meet the unique needs’ of a child with a disability, the provisions of the IDEA governing the IEP development process provide guidance. These provisions reflect what the Supreme Court said in *Rowley* by focusing on “progress in the general education curriculum.” *Endrew F.*, 580 U.S. at 387; *see also* 34 CFR §§ 1414(d)(1)(A)(i)(I)(aa), (II), (IV).

38. “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Endrew F.*, 580 U.S. at 404. “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* at 388.

EXTENDED CONTENT STANDARDS (ECS)

39. The Every Student Succeeds Act (ESSA), not the IDEA, authorizes a state to “adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards . . . are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment consistent with the purposes of Public Law 93-112 [Section 701 of Chapter 29 of the United States Code].” 20 U.S.C. § 6311(b)(1)(E)(i)(V); 34 C.F.R. § 200.1(d)(5).

40. Section 701 outlines findings, policies, and purposes related to individuals with disabilities, including those with “significant disabilities,” to “enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society,” 29 U.S.C. § 701(a)(3)(F), “achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency,” *id.* - § 701(a)(6)(B), “to maximize opportunities for individuals with disabilities, including individuals with significant disabilities, for competitive integrated employment,” *id.* - § 701(b)(2), and “inclusion, integration, and full participation of the individuals [with disabilities],” *id.* - § 701(c)(3).

41. Importantly, the ESSA prohibits a State from developing or implementing any alternate academic achievement standards that do not meet the ESSA’s requirements. 20 U.S.C. § 6311(b)(1)(E)(ii).

42. Under the ESSA, “[a] State may provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards described in paragraph 1(E) for students with the most significant cognitive disabilities, if the State . . . does not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.” 20 USC § 6311(b)(2)(D)(VII).

43. Likewise, “the total number of students assessed in such subject using the alternate assessments does not exceed 1 percent of the total number of all students in the State who are assessed in such subject.” 20 USC § 6311(b)(2)(D)(I); 34 C.F.R. § 200.6(c)(2). When a State elects to establish alternate academic achievement standards, children who are educated on those standards must be assessed on the State’s alternate assessments, which are subject to the ESSA’s requirements. 34 C.F.R. § 200.2(b)(3)(ii)(B)(2).

44. The IDEA incorporates the ESSA’s requirements for alternate assessments and any alternate academic achievement standards for any State that elects to provide them. 20 U.S.C. § 1412(a)(16)(C). It also authorizes a state to “develop[] and implement[] guidelines for the participation of children with disabilities in alternate assessments” for children who the IEP Team

determines “cannot participate in regular assessments . . . with accommodations as indicated in their respective individualized education programs.” 20 U.S.C. § 1412(a)(16)(C)(i).

45. The IDEA requires alternate assessment be “aligned with the challenging State academic content standards under section 6311(b)(1) of [the ESSA] and alternate academic achievement standards under section 6311(b)(1)(E) of [the ESSA].” *Id.* - § 1412(a)(16)(C)(ii)(I). “[I]f the State has adopted alternate academic achievement standards permitted under section 6311(b)(1)(E) of [the ESSA], measure the achievement of children with disabilities against those standards.” *Id.* - § 1412(a)(16)(C)(ii)(II).

46. North Carolina’s State Board of Education (SBE) elected to provide alternate assessments based on alternate academic achievement standards, which must meet the ESSA’s requirements. SBE Policy ACCT-021(1)(F) (listing “statutory references” as ESSA and Section 105.35 of Chapter 115C of the North Carolina General Statutes). The alternate assessments and alternate academic achievement standards are not addressed in Section 105.35. *See* N.C. Gen. Stat. § 115C-105.35.

47. Chapter 115C mentions “the use of the NCEXTEND1 alternate assessment” as it relates to the “elimination of social promotion,” N.C. Gen. Stat. § 115C-83.7(b)(2), components of the annual testing program, *id.* - § 174.11(c)(4) and allowing a “good cause exemption” from mandatory retention in third grade, *id.* - § 218.85(b)(2)(b).

48. The “extended content standards of the Standard Course of Study as provided in G.S. 115C-81.5” are only referenced once in Chapter 115C, as a component of the State’s testing program, which would require a “written parental request for an alternate assessment.” N.C. Gen. Stat. § 115C-174.11(c)(4). North Carolina General Statute Section 115C-81.5 does not address the extended content standards. *See* N.C. Gen. Stat. § 115C-81.5.

49. The SBE has one (1) policy for Program Administration for Children with Special Needs. SBE Policy EXCP-000. The statutory references for the Policy are Article 9 of Chapter 115C of the North Carolina General Statutes and Section 1407 of the IDEA, which requires “any State rules, regulations, and policies relating to this chapter conform to the purposes of this chapter.” 20 U.S.C § 1407(a)(1). Policy EXCP-000 provides the link the North Carolina Policies Governing Services for Children with Disabilities (“Policies”) and directs any questions to the North Carolina Department of Public Instruction (DPI).

50. Article 9 does not provide any criteria for participation in the alternate assessments or relegation to instruction on alternate academic achievement standards. The Policies have not gone through rulemaking and are not legally binding. *See North Carolina State Bd. of Educ. v. North Carolina*, 371 N.C. 149, 163 (2018) (discussing that the Constitution’s framers had no intention for the Board to “have the unbridled power to adopt rules and regulations of its own volition”).

51. The Policies acknowledge the requirements of the ESSA are binding on any academic achievement standards adopted for children with disabilities. NC 1501-12.4(c)(3); *see also* 34 C.F.R. § 200.1(e). This includes the prohibition on preventing a student who takes an

alternate assessment aligned with alternate achievement standards “from attempting to complete the requirements for a regular high school diploma.” NC 1501-12.4(d)(2); *see also* 34 C.F.R. § 200.6(d)(4). According to the Policies, “a regular high school diploma shall not be aligned to the alternate academic achievement standards” as provided for in the ESSA. NC 1501-1.2(a)(3)(iv). There is no requirement in the Policies for students on the ECS to be segregated from their peers on the Future Ready Course of Study. *See, e.g.*, Policies at 130.

52. For over a century, courts have repeatedly rejected the over-reach of state actors seeking to abrogate the rights of parents to direct the education and care of their children. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390 (1923) (overturning a Nebraska law prohibiting parents from enrolling in schools providing instruction in languages other than English); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (overturning a state law requiring parents to send their children to attend public schools); *Stanley v. Illinois*, 405 U.S. 645 (1972) (overturning an Illinois law denying custody to unwed parents without neglect proceedings afforded to married parents); *Troxel v. Granville*, 530 U.S. 57 (2000) (upholding the unconstitutionality of a Washington law allowing a court to override a parent’s refusal of a grandparent’s visitation of a child). “The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this court.” *Troxel*, 530 U.S. at 65.

53. This interest must be jealously guarded and respected as “[t]he child is not a mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce*, 268 U.S. at 535.

54. North Carolina’s legislature adopted the “Parent’s bill of rights” memorializing this liberty interest and pronounces a parent’s right to “direct the education and care of his or her child.” N.C. Gen. Stat. § 114A-10(1) (2023). North Carolina law also contemplates a “written parental request for an alternate assessment.” N.C. Gen. Stat. § 115C-174.11(c)(4).

55. “In general, you have to have a cognitive assessment to make that decision and you also have to have parent permission and – and approval to move a child to extended content standards.” T vol 2 pp 463:24-464:2 (T of Leach).

56. Dr. Burnette further testified that there are “really significant ramifications” to instruction on extended content standards, including that the student “won’t graduate with a diploma,” which she noted had been “a consistent piece of mom’s vision.” She emphasized that such decisions “should be part of her choice,” stating that “there’s no one more invested than the family in what happens to their child.” T vol 2 pp 518:19-519:1 (T of Burnette).

57. Ms. Mahaffey testified the team reviewed the alternate assessment assurance questions which were presented as “yes or no,” and Mother acknowledged she understood them but answered “no” to the last questions of whether she agreed. T vol 3 p 637:3-5 (T of Mahaffey). Stip. Ex. 20 p 463.

58. Respondent did not present evidence that a cognitive score was not required; therefore, the Undersigned must rely on the plain language of the documents completed by the IEP Team and admitted into evidence.

59. The Flow Chart and the Alternate Assessment Worksheet both use the conjunctive “AND” for all criteria, indicating to the Undersigned that all criteria must be satisfied. *See* Pet’r. Ex. 212; Stip. Ex. 20 pp 460-63; T vol 2 p 602:16-17 (T of Burnette) (testifying the flow chart and in the alternate assessment eligibility worksheet, need both section A (significant cognitive disability) and section B (adapted behavior) to proceed forward).

60. Student “has complex support needs, he has medical needs, he has educational needs, but it is not documented that he has a significant cognitive disability.” T vol 2 p 589:17-20 (T of Burnette). Dr. Leach opined that without a cognitive score, a student could never be placed on the extended content standards. T vol 2 p 466:10-13 (T of Leach).

61. Petitioners proved by the preponderance of the evidence that Respondent’s decision to move Student to the extended content standards without parental permission and without a cognitive evaluation was substantively inappropriate.

PREDETERMINATION AND PARENTAL PARTICIPATION IN THE DECISION-MAKING PROCESS

62. “When Congress passed the IDEA, it placed great importance in the role of parents in crafting an adequate and individualized education for each disabled student. *Rowley*, 458 U.S. at 205–06.

63. “The grammatical structure of IDEA’s purpose of protecting ‘the rights of children with disabilities and parents of such children,’ § 1400(d)(1)(B), would make no sense unless ‘rights’ refers to the parents’ rights as well as the child’s. Other provisions confirm this view. *See, e.g.,* § 1415(a).” *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 517 (2007). “IDEA grants parents independent, enforceable rights. These rights, which are not limited to certain procedural and reimbursement-related matters, encompass the entitlement to a free appropriate public education for the parents’ child.” *Id.* at 533.

64. The IDEA’s procedural requirements are purposefully designed to ensure that parents can meaningfully participate in the process of developing an IEP for their child. *See Rowley*, 458 U.S. at 205–06 (“It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.”); *see also* 34 C.F.R. § 300.322(a); N.C. Gen. Stat. § 115C-109.3(a) (guaranteeing the parent the right “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.”).

65. The IDEA requires both Parents and school staff, as members of the IEP Team, have meaningful participation in developing a child’s educational program. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. §1414(d)(1)(B). “These procedures emphasize collaboration among parents and educators and require careful

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

66. Parents are denied their right to meaningfully participate in the development of their child's IEP when a school district predetermines the child's placement prior to an IEP meeting. *See, e.g., Spielberg ex rel. Spielberg v. Henrico Cnty. Public Sch.*, 853 F.3d 256 (4th Cir. 1988) (finding the school district's decision to change a student's placement before the IEP meeting violated the Education for All Handicapped Children Act, the predecessor to the IDEA); *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) ("Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team.").

67. "To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child." *R.L.*, 757 F.3d at 1188 (citing *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004)). When the school district "presents one placement option at the meeting and is unwilling to consider other alternatives," its actions violate the IDEA. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 F. App'x 342 (9th Cir. 2007); *see also R.L.*, 757 F.3d at 1188–90 (finding the school board predetermined the student's placement where it was "clear that 'there was no way that anything [the student's parents] said, or any data [they] produced, could have changed the [Board's] determination of the appropriate placement'").

68. The August 2024 IEP meeting reflects clear predetermination, as the team adopted a more restrictive placement without reviewing or revising the existing IEP goals. This approach contravenes longstanding guidance from the U.S. Department of Education—OSEP, Questions and Answers on the Least Restrictive Environment (LRE) Requirements of the IDEA (1997)—which explains that placement cannot be determined before goals are developed because the goals drive the placement, not the reverse. Besides the addition of objectives due to the change to ECS, the IEP Team did not make any changes to Student's goals at the August 2024 IEP meetings, despite Respondent's simultaneous move toward a substantially more restrictive setting. This sequence of events confirms Respondent predetermined Student's placement rather than basing the decision on an individualized analysis of Student's needs, as the IDEA requires.

69. Dr. Leach opined the IEP team impeded Student's parents' participation in the development of his IEP by predetermining his removal from the standard course of study and increasing his segregation from his nondisabled peers, stating plainly, "they ignored her." Dr. Leach explained Mother was permitted to express her concerns, those comments were documented, "and then the LEA [representative] made the decision she wanted to make." T vol 2 pp 442:17443:1 (T of Leach).

70. Dr. Leach opined, based on her review of the evidence in the record and the recordings she listened to, Respondent predetermined Student's placement on the ECS. T vol 2 p 470:20-25 (T of Leach). Dr. Leach further opined Respondent's decision to seek a cognitive evaluation of Student was part of that predetermination. T vol 2 p 471:1-3 (T of Leach).

71. Dr. Burnette opined Respondent impeded the parents' participation in the development of Student's IEP by predetermining his removal from the standard course of study and increasing his segregation. T vol 2 p 561:19-24 (T of Burnette). She testified the parent "was refusing" and "said, no," yet the team responded by stating "let's table this discussion till the next time" or "we'll talk about that later." T vol 2 pp 561:24-562:2 (T of Burnette). Despite the parent's objections, the school team "come[s] in August" with "all this service delivery in the special education," which she identified as evidence that decisions had been made without meaningful parental participation. T vol 2 p 562:2-4 (T of Burnette).

72. The Undersigned agrees. The facts as they unfolded in the IEP meetings, coupled with the statements of Respondent's employees and agents, Respondent's misuse of behavioral data, continuous discounting of Student's progress without a meaningful baseline of what constitutes "sufficient progress," and Respondent's decision not to implement key aspects of the 2023 Settlement Agreement that would have supported Student's inclusion, all indicate Respondent predetermined Student's removal from the standard course of study and increased segregation from his non-disabled peers impeding Student's parents' parental participation in the development of Student's IEP.

PROCEDURAL VIOLATIONS

73. A procedural violation is a substantive denial of FAPE when it (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the parents' child; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).

74. "When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, ... the importance Congress attached to these procedural safeguards cannot be gainsaid." *Rowley*, 458 U.S. at 205. "[T]he congressional emphasis upon full participation of concerned parties . . . , demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Id.* at 206.

75. The failure to comply with IDEA's procedural requirements can be a sufficient basis for holding that a government entity has failed to provide a free appropriate public education. *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 635 (4th Cir.1985).

76. "When . . . a procedural defect exists, [the court is] obliged to assess whether it resulted in the loss of an educational opportunity for the disabled child, or whether, on the other hand, it was a mere technical contravention of the IDEA." *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 533 (4th Cir. 2002) (citing *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997) ("[T]o the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.")).

77. Unlike in *M.M.*, where the parents would not have accepted any proposed IEP that did not include their preferred program, Mother testified she was willing to consider the ECS, but

the change was premature due to Student needing more time in general education with the supports in place to access the general curriculum. T vol 3 pp 713:16-715:1 (T of Mother). Similarly, Mother consistently advocated for Student's inclusion with his non-disabled peers but demonstrated her willingness to try targeted one-on-one instruction in the special education classroom. *See, e.g.*, Stip. Ex. 14, Stip. Ex. 20. Accordingly, the record does not support a finding that parental conduct negated prejudice arising from procedural violations. *M.M.*, 303 F.3d 534-25.

78. The failure to conduct an evaluation integral to understanding the student's needs "is a serious procedural violation because it may prevent the IEP team from obtaining necessary information about the student's [identified needs], leading to their being addressed in the IEP inadequately or not at all." *S.S. v. Bd. of Educ. of Hartford Cnty.*, 498 F.Supp.3d 761, 780 (D.Md. 2020) (quoting *R.E. v. New York City Dept. of Educ.*, 694 F.3d 167, 190 (2d Cir. 2012)); accord *Z.B. v. D.C.*, 888 F.3d 515, 524 (D.C. Cir. 2018).

79. The court must ask whether the school district "adequately evaluated [the student's] particular needs and offered [him] an IEP tailored to what it knew or reasonably should have known of her disabilities at the time." *Z.B.*, 888 F.3d at 524 (citing *Endrew F.*, 137 S.Ct. at 999).

Appropriateness of Assessments and Evaluations

80. The IDEA dictates procedural and substantive requirements for conducting assessments and evaluations. 20 U.S.C. § 1414(a)-(c); 34 C.F.R. § 300.301 through 300.305.

81. The IDEA specifically prohibits conducting evaluations and assessments that may produce invalid results or create substantial danger of undue prejudice or confusion about the aptitude and skills of a disabled child. 20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(3).

82. Any evaluations conducted must be "used for purposes for which the assessments or measures are valid and reliable" and must be "selected and administered so as not to be discriminatory." 20 U.S.C. § 1414(b)(3); 34 CFR § 300.304(c)(1)(iii). "There are no exceptions to this requirement." 71 Fed. Reg. 46642 (2006). The LEA must use "technically sound instruments," which "generally refers to assessments that have been shown through research to be valid and reliable." 34 C.F.R. § 300.304(b)(3); 71 Fed. Reg. 46642 (2006).

83. The federal regulations further mandate schools to select and administer tests to "a child with impaired sensory, manual, or speaking skills" such that "the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills . . ." 34 C.F.R. § 300.304(c)(3).

84. Public agencies are also required to administer assessments "in accordance with any instructions provided by the producer of the assessments." 34 C.F.R. § 300.304(c)(1)(v).

85. Throughout the 2023-24 school year, Student's IEP Team administered the mCLASS/DIBELS assessments to Student despite the publisher's admonition that such assessments were inappropriate for students who are "deaf, who stutter, who are completely nonverbal, or who have severe phonological difficulties." Pet'r. Ex. 166.

86. Dr. Burnette opined that, while the IEP team “used what was available to them,” including “classroom-based assessments” and other measures, those assessments “are not norm referenced for someone with Student’s profile.” She testified that, because the team “used assessments,” that were “not [norm] referenced for a student with complex support needs,” she “would not consider that an evidence-based approach for someone with complex support needs.” T vol 2 p 555:2-8 (T of Burnette).

87. The IEP Team then used the results from these assessments, administered without accommodations and deemed inappropriate by the publisher due to Student’s language impairments, as part of the justification of changing Student’s instruction to the ECS. Stip. Ex. 14 p 221.

Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP)

88. Eligibility and educational needs are determined by assessments and evaluations (or reevaluations) such as an FBA, which must consist of a “variety of assessment tools and strategies to gather relevant functional, development, and academic information, including information provided by the parent” to determine “the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum.” 20 U.S.C. § 1414(b)(2)(A)(ii).

89. When a child’s behavior impedes learning, the IEP team must consider positive behavioral interventions and support, including the need for an FBA and BIP. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). Courts have consistently held that when behavior is invoked to justify segregation or reduced services, the failure to conduct an FBA or develop an appropriate BIP may support a finding that the LEA denied FAPE. *C.F. v. New York City Dep’t of Educ.*, 746 F.3d 68, 80–82 (2d Cir. 2014); *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 68–69 (D.D.C. 2008).

90. Neither an FBA nor a BIP is defined by the IDEA, State law, or regulations. However, other jurisdictions in our Circuit, such as Maryland and West Virginia, have defined them as follows:

A BIP is a “proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student’s challenging behaviors and to support the development of appropriate behaviors and responses.” Md. Code Regs. 13A.08.04.02B(1). An FBA is “the systematic process of gathering information to guide the development of an effective and efficient behavior interventional plan for the problem behavior.” Md. Code Regs. 13A.08.04.02B(5).

S.S. v. Bd. of Educ. of Harford Cnty., 498 F. Supp. 3d 761, 771 (D. Md. 2020).

A “functional behavioral assessment” is a process to identify “the purpose and the effect of the problem behavior(s).” W. Va. Bd. of Educ., Policy 2419: Regulations for the Education of Students with

Exceptionalities (2023), at 16. A “behavior intervention plan” is an individualized written plan that “describes the positive behavioral interventions, strategies, and supports” required to implement the student’s IEP goals and objectives. *Id.* at 12. It may include, for example, “environmental modifications,” “instruction in the use of new skills as a replacement for problem behaviors,” and “consequences to promote positive change,” among other strategies.

G.T. v. Bd. of Educ. of Cnty. of Kanawha, 117 F.4th 193, 199 (4th Cir. 2024) (reversed on class certification grounds, not on the merits of the FBA/BIP issues).

91. “[A]s part of the IEP plan, to meet the FAPE standard a BIP should be reasonably tailored to meet the needs of the student while being appropriately ambitious in light of the student’s circumstances. *Endrew*, 137 S. Ct. at 999–1000. A school’s failure to develop a BIP can result in denial of FAPE.” *Bouabid v. Charlotte Mecklenburg Sch. Bd. of Educ.*, No. 3:19-cv00030-RJC-DSC, 2021 WL 5868967, at *9 (W.D.N.C. Dec. 10, 2021), *aff’d*, 62 F.4th 851 (4th Cir. 2023) (citing *Neosho R V Sch. Dist. v. Clark*, 315 F.3d 1022, 1028 (8th Cir. 2003); *Enter. City Bd. of Educ. v. S.S.*, No. 1:19-CV-748, 2020 WL 3129575, at *5-6. (Father Ala. June 12, 2020).

92. Neither the IDEA, State law, or regulations address when or how often an FBA must be conducted except in the manifestation determination context. A functional behavioral assessment is not required by the IDEA except when there is a change of placement or the student is removed for more than ten (10) consecutive school days or there is a series of removals that constitute a pattern. 34 C.F.R. § 300.530(d) and (f).

93. Although an FBA is not a required component of the IEP under 34 C.F.R. § 300.320 (*see* 71 Fed. Reg. 46,629(2006)), the FBA helps the IEP team determine the behavioral goals as well as the “positive behavioral interventions and supports” that are required components of an IEP. 34 C.F.R. § 300.324(a)(2)(i). “[I]t makes a great deal of sense to attend to behavior of children with disabilities that is interfering with their education or that of others, so that the behavior can be addressed, even when that behavior will not result in a change in placement.” 71 Fed. Reg. 46,721 (2006).

94. “‘The failure to conduct an adequate FBA is a serious procedural violation because it may prevent the [IEP team] from obtaining necessary information about the student’s behaviors, leading to their being addressed in the IEP inadequately or not at all.’ A failure to conduct an FBA will not always rise to the level of a denial of FAPE, but ‘when an FBA is not conducted, the court must take particular care to ensure that the IEP adequately addresses the child’s problem behaviors.’” *S.S. v. Bd. of Educ. of Harford Cnty.*, 498 F. Supp. 3d 761, 780 (D. Md. 2020) (internal citations omitted).

95. The Parties agreed pursuant to the 2023 Settlement Agreement to conduct an FBA “after the 2023-2024 school year has commenced and Student has returned to school with RBT support.” Pet’r. Ex. 16 ¶ 5(b). The IEP Team reiterated this agreement at the August 30, 2023, IEP meeting. Stip. Ex. 11.

96. Without a current FBA, Student's IEP teams could not develop appropriate present levels of functional behavior for his behavior goals or determine appropriate behavioral support.

97. Respondent committed multiple procedural violations that resulted in educational harm or impeded Student's parents' participation. Respondent failed to conduct an AT evaluation, failed to conduct an FBA, failed to develop a BIP, and failed to train Respondent's staff to appropriately support Student.

REMEDY

98. Having concluded that Respondent's actions resulted in a denial of FAPE, the decision now turns to the determination of the appropriate remedial measures required under the IDEA to restore Student to the position he would have occupied but for these violations.

99. The IDEA confers "'broad discretion' on the court when fashioning an appropriate remedy." *M.S. ex rel Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 325 (4th Cir. 2009) (quoting *Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1996)). "Courts fashioning discretionary equitable relief under the IDEA must consider all relevant factors . . ." *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 16 (1993). "[O]nce a court holds that the public placement violated [the] IDEA, it is authorized to 'grant such relief as the court determines is appropriate.'" *Id.* at 15-16 (quoting 20 U.S.C. §§ 1415(e)(2), - 1415(i)(2)(C)(iii)).

100. "The relief granted by courts under section 1415(i)(2)(C)(iii) is primarily compensatory education. Compensatory education, however, is not defined within the IDEA and is a judicially created remedy. It is intended as 'a remedy to compensate [the student] for rights the district already denied . . . because the School District violated [the] statutory rights while [the student] was still entitled to them.'" *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717 (3d Cir. 2010) (citing *Lester H. v. Gilhool*, 916 F.2d 865, 872 (3d Cir. 1990); *Boose v. D.C.*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (citing *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C. Cir.2005)).

101. "Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." *G ex rel. RG v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 309 (4th Cir. 2003). "[W]hereas ordinary IEPs need only provide 'some benefit,' compensatory awards must do more—they must compensate." *Reid*, 401 F.3d at 525 (emphasis in original).

102. Courts may also order the school district to take specific actions, such as requiring the school district to conduct evaluations, hire consultants, develop an IEP, and implement an IEP. *See, e.g., K.I. v. Montgomery Publ. Schs.*, 805 F. Supp. 2d 1283, 1299 (ordering the school district to evaluate the child and develop a new IEP); *P. ex rel. Mr. and Mrs. P. v. Newington Bd. of Educ.*, 546 F.3d 111, 123 (2d Cir. 2008) (upholding the hearing officer's mandate that the school district retain an inclusion consultant for a year and complete an FBA).

103. When determining the award, "the hearing officer may not delegate his authority to a group that includes an individual specifically barred from performing the hearing officer's functions." *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 317 (6th Cir. 2007) (quoting

Reid v. Dist. of Columbia, 401 F.3d 516, 526 (D.C. Cir. 2005)); *see also*, *M.S. v. Utah Sch. Deaf & Blind*, 822 F.3d 1128, 1136 (reversing the lower court’s decision to remand the issue of the child’s placement to the IEP Team because “[a]llowing the educational agency that failed or refused to provide the covered student with a FAPE to determine the remedy for that violation is simply at odds with the review scheme set out at § 1415(i)(2)(C).”).

Independent Inclusion Consultant

104. Respondent’s failures impeded the IEP Team’s ability to design appropriate instruction, supports, and placement, additional corrective measures, the involvement of an Independent Inclusion Consultant who is an expert in complex support needs is necessary to conduct observations and lead the IEP Team in developing an appropriate IEP, staff training, implementation of Student’s IEP and progress monitoring, and compensatory services as necessary to remedy the denials of FAPE and ensure that future IEP decisions are based on accurate data and appropriate instructional methodologies.

105. The August 2024 IEP did not offer Student a FAPE in his least restrictive environment under the *DeVries/Roncker* standard, because Respondent increased segregation despite evidence of Student’s more-than-marginal benefit from inclusion. Moreover, the August 2024 placement decision was substantially influenced by administrative convenience rather than an individualized analysis about Student’s unique circumstances.

106. To remediate these errors, Respondent’s predetermination of Student’s placement, and to support Student’s education in his least restrictive environment going forward, an independent inclusion consultant with expertise in students with complex support needs is needed to assist with the development and monitoring of Student’s IEPs for the remainder of the 2025-2026 school year and summer through the end of the 2028-2029 middle school year when Student will finish middle school and transition into high school.

Independent Behavior Consultant

107. To remediate Respondent’s failure to conduct a functional behavior assessment and develop a BIP and Respondent’s overreliance on behavior reduction, an independent behavior consultant who is a BCBA with experience and expertise working with students with complex support should be heavily involved in designing intervention protocols for teaching all skills, academic skills, communication skills, social skills, and independent work behaviors for the remainder of the 2025-2026 school year and summer through the end of the 2028-2029 middle school year, including Student’s transition meeting into high school.

IEP Meeting and Revision of IEP/Placement

108. To correct the effects of Respondent’s failure to conduct an FBA, develop a BIP, conduct an AT evaluation, predetermination, and LRE violations associated with the August 2024 IEP, Respondent shall not unilaterally change Student placement until the end of the 2028-2029 school year.

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

FINAL DECISION

1. Based on the Findings of Fact – including the determinations that Respondent denied Student a FAPE in the least restrictive environment and the August 2024 placement, denial of parental participation and predetermination, and IEP procedural violations – the Tribunal concludes that Petitioners are entitled to relief.

2. The following is **ORDERED** for these violations that resulted in a denial of FAPE, impeding parental participation, and educational harm:

A. Independent Inclusion Consultant

3. The August 2024 IEP did not offer Student a FAPE in his LRE.. Respondent unilaterally increased Student's segregation from his nondisabled peers, failed to demonstrate Student could not be educated satisfactorily in the regular classroom with supplementary aids and services, and relied on administrative convenience rather than individualized analysis.

4. To remediate these predeterminations and to support Student's education in his least restrictive environment going forward, the Tribunal ORDERS Respondent to contract with an independent inclusion consultant with experience and expertise working with students with complex support needs of Petitioners' choice to assist with the development and monitoring of Student's IEPs for the remainder of the 2025-2026 school year and summer through the end of the 2028-2029 middle school year, including Student's transition meeting into high school.

5. Petitioners shall provide Respondent with the names and contact information of each selected independent consultant within five (5) days of the issuance of this Decision.

6. Respondent shall, at public expense, contract with an Independent Inclusion Consultant of Petitioners' choice with comparable expertise as their expert witnesses, within 30 days of the issuance of this Decision and shall fully cooperate by providing all records reasonably requested and ensuring timely access to the student for assessment.

7. The Inclusion Consultant shall:

- a. Review Student's educational records;
- b. Conduct classroom observations in both general and special education settings at least once each month, unless the Inclusion Consultant determines a different frequency is needed;
- c. Interview Petitioners, current teachers, related service providers, and administrators;
- d. Make written recommendations regarding appropriate supplementary aids and services to support Student in general education;
- e. Provide staff training regarding inclusive practices and use of Student's

AAC device; and,

- f. Develop data collection and progress monitoring systems necessary to appropriately monitor Student's progress and address any need for amendments to his supplementary aids and services to assist Student in accessing the general education curriculum in the LRE.

8. The Inclusion Consultant shall provide consultation and support through the end of the 2028-2029 school year including extended school year services.

9. The Inclusion Consultant's attendance (in person or virtually) at the IEP Team meetings through the end of the 2028-2029 school year is required and shall be at public expense.

10. In accordance with his/her own professional judgment, the Inclusion Consultant shall conduct follow-up consultations (no less than quarterly through the end of the 2028-2029 school year including extended school year services) with the IEP Team to review data on Student's academic and behavioral progress and to advise on any needed adjustments to maintain him in his LRE; and,

11. The Inclusion Consultant shall conduct at least one (1) training session for staff working with Student on inclusive practices, LRE decision making, and implementation of accommodations and supplementary aids and services. The training sessions shall be held during the remainder of the 2025-2026 school year and each semester during the 2026-2027 school year, as staff working with Student change during middle school, but more if deemed necessary in the Inclusion Consultant's professional judgment for implementing Student's educational services.

12. Based on the stipulation of the Parties during the hearing, the Undersigned understands an AT evaluation has now been conducted. The Inclusion Consultant shall review the AT evaluation and ensure the appropriate assistive technology supports are in place for Student.

B. Independent Behavior Consultant

13. The Tribunal ORDERS Respondent to contract with an independent behavior consultant who is a BCBA with experience and expertise working with students with complex support needs of Petitioners' choice for the remainder of the 2025-2026 school year and summer through the end of the 2028-2029 middle school year, including Student's transition meeting into high school.

14. Petitioners shall provide Respondent with the names and contact information of each selected independent consultant within five (5) days of the issuance of this Decision.

15. Respondent shall, at public expense, contract with an Independent Behavior Consultant of Petitioners' choice with comparable expertise as their expert witnesses, within 30 days of the issuance of this Decision and shall fully cooperate by providing all records reasonably requested and ensuring timely access to the student for assessment.

16. The Behavior Consultant shall:

- a. Review Student's educational records;

- b. Conduct classroom observations in both general and special education settings at least once each month, unless the Behavior Consultant determines a different frequency is needed;
- c. Interview Petitioners, current BCBA and RBTs, current teachers, related service providers, and administrators;
- d. Make written recommendations regarding shifting the focus of Student's behavior services to skill acquisition versus behavior reduction.

17. The Behavior Consultant should be heavily involved in designing intervention protocols for teaching all skills, academic skills, communication skills, social skills, and independent work behaviors.

18. A Functional Behavioral Assessment is ORDERED and shall be conducted by the Behavior Consultant.

19. The Behavior Consultant shall use the FBA to develop a Behavior Intervention Plan (BIP) and revise existing behavioral goals and supports which shall use positive behavioral interventions and supports designed to enable Student to be educated in the general education setting to the maximum extent appropriate.

20. The Behavior Consultant shall, at public expense, observe, train staff, and monitor implementation of the BIP as the BCBA deems necessary in his/her professional opinion to ensure proper implementation of the BIP, behavior/social emotional goals and supports through the remainder of the 2025-2026 school year and summer through the end of the 2028-2029 middle school year, including Student's transition meeting into high school.

C. IEP Meeting: Placement

21. To correct the effects of Respondent's failure to conduct an FBA, develop a BIP, conduct an AT evaluation, predetermination, and LRE violations associated with the August 2024 IEP, Respondent shall not unilaterally change Student placement or his course of study until the end of the 2028-29 school year, and only with the support of the Inclusion Consultant.

22. At Student's high school transition IEP meeting, the IEP Team shall:

- a. Determine placement by an individualized LRE analysis, not by administrative convenience or preexisting program structures. In conducting the LRE analysis, the IEP shall begin with the presumption of education in the regular education classroom with appropriate supplementary aids and services; and
- b. Remove Student from the general education setting only for those portions of the school day where the Team, based on current data and the Inclusion Consultant's input, concludes he cannot be successfully educated in that setting with such aids and services, consistent with DeVries/Roncker.

D. Generally

23. Nothing in this Order prevents the Parties from agreeing to additional remedies or supports beyond those specified herein, including additional staff training, mentoring, or compensatory services, so long as such agreements are reduced to writing and incorporated into Student's IEP or a separate settlement document.

24. All services provided by the independent consultants as well as their attendance at all IEPs meetings shall be paid by Respondent. The independent consultants shall be invited to attend all IEP meetings held during the remainder of the 2025-2026 school year and throughout the entirety of the 2026-27, 2027-28, and 2028-2029 school years, which they may, at their discretion, choose to attend in-person or virtually.

25. Petitioners are prevailing party on all claims.

E. Compliance

26. To ensure full and timely implementation of this Final Decision, Respondent shall comply with the following requirements:

- a. Contracting With Petitioners' Selected Consultants: Respondent shall, within 30 days of the issuance of this Decision, provide written documentation confirming that it has contracted with the consultants selected by Petitioners, including the defined scope of work and anticipated timelines for completion. Respondent shall provide the consultants a copy of this Final Decision to ensure the contracted work is in compliance with what is ORDERED.
- b. Direct and Open Communication: The independent consultants selected by Petitioners shall be permitted to communicate directly with both Parties regarding scheduling, records needed, assessment procedures, and any clarifying information necessary to complete their evaluations. Respondent shall not restrict, limit, or condition the evaluators' ability to engage in professional dialogue with either Party concerning the scope, methodology, or progress of the evaluations.
- c. Timely Exchange of Information: Both Parties shall promptly provide any information, records, or responses reasonably requested by the consultants to ensure timely completion of the assessments. Respondent shall ensure the consultant have timely access to Student for all assessment activities.
- d. Transparency in Process: Consultants may request additional data, seek clarification, or communicate preliminary impressions with either Party as needed to complete their work. Respondent shall inform the consultants, in writing, that such communication is authorized and expected.
- e. Mutual Extensions of Deadlines: The Parties may mutually agree, in writing, to extend any deadline set forth in this Final Decision as necessary to accommodate the consultant's availability.

- f. Ongoing Documentation of Compliance: Respondent shall submit written evidence to Petitioners within ten (10) calendar days of each contracting action, record transfer, or other steps taken to facilitate compliance with this Final Decision.
- g. Additional Documentation Upon Request: Upon reasonable request, Respondent shall provide Petitioners with any further documentation necessary to verify timely and complete compliance with this Order.

F. Enforceability

27. This Decision constitutes the final administrative determination of the issues presented. This Final Decision is immediately enforceable by the State Board of Education and remains in effect until the party aggrieved files a complaint in either State or federal court and the reviewing court grants a stay of this Final Decision pursuant to N.C. Gen. Stat. § 150B-48.

NOTICE OF APPEAL RIGHTS

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

Any party aggrieved by the findings and decision of an Administrative Law Judge may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.

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

STAY OF FINAL DECISION

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

IT IS SO ORDERED.

This the 19th day of June, 2026.



Samuel K Morris
Administrative Law Judge

CERTIFICATE OF SERVICE

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

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This the 19th day of June, 2026.



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