

**ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit**

IN RE:

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX, Parents of
XXXXXXX, Student**

PETITIONER

VS.

CASE NO. H-25-39

Rogers School District, District

RESPONDENT

**HEARING OFFICER'S AMENDED
FINAL DECISION AND ORDER**

ISSUES PRESENTED:

Whether the Rogers School District (hereinafter "District" or "Respondent") denied XXXXXXXXX (hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE") between April 23, 2023 and April 23, 2025 in violation of certain procedural and substantive requirements of the Individuals with Disabilities in Education Act of 2004, 20 U.S.C. §§ 1400-1485, as amended (hereinafter referred to as "IDEA"), which requires an analysis of the following sub-issues:

(1) whether the District complied with procedural requirements of IDEA or denied parents meaningful participation in Student's education;

(2) whether the District provided Student FAPE in a timely manner by providing an appropriate IEP and implementing appropriate supports and services to address Student's deficits; and

(3) what are the appropriate remedies if IDEA was violated.

PROCEDURAL HISTORY:

On April 24, 2025, Petitioners, the Parents and legal guardians of Student, filed the request for a due process hearing in this matter pursuant to the Individuals with Disabilities in Education Act (“IDEA”). The IDEA requires “[a] parent or agency [to] request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint . . .” 20 U.S.C § 1415(f)(3)(c). The State of Arkansas recognizes this same limitations period. *Ark. Dept. of Educ. Special Educ. And Related Services*, 10.00 Mediations and Hearings, § 10.01.4.6(A). The Eighth Circuit Court of Appeals also applies a two-year statute of limitations period under the IDEA. *See In the Matter of Minnetonka v. M.L.K., by and through his Parents, S.K.*, 2021 U.S. Dist. LEXIS 37609, 2021 WL 780723, at *6 (D. Minn. Mar. 1, 2021). “Any claim of a breach falling outside of the IDEA’s two-year statute of limitations would be untimely.” *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1083 (8th Cir. 2020). Thus, the period from April 24, 2023 to April 23, 2025 is the time at issue.

Parents requested the hearing in this matter because they believed that District failed to comply with the IDEA, as well as regulations set forth by the Arkansas Department of Education, by failing to provide Student with appropriate supports and services to address Student’s deficits in academic and behavioral skills. See Complaint. As remedies, Parents sought private ABA therapy for Student in the school setting, reimbursement for private ABA therapy, ABA therapy and goals listed on Student’s IEP, and compensatory education. See Complaint. The District denied violating IDEA in its response.

In response to Parents’ request for hearing, the Department assigned the case to this impartial Hearing Officer, who scheduled the due process hearing in this matter for

May 28-30, 2025. In their pretrial disclosures filed timely on May 20, 2025, the District and Parent both listed Dr. Tiffany Mrla, Ph. D. (“Dr. Mrla”) as a witness. On May 22, 2025, the District requested a subpoena for Dr. Mrla and requested that Dr. Mrla bring with her “all notes and files regarding evaluations of and treatment for XXXXX.” This hearing officer returned the signed subpoena to the parties on May 22, 2025 via email, pursuant to ADE Rule 10.20.6. At the prehearing conference, this Hearing Officer announced that Parents had the burden of proof, and Parents non-IDEA federal claims were dismissed without prejudice. Parents do bear the burden of proving the District violated IDEA pursuant to *Shaffer v. Weast*, 546 U.S. 49 (2005). However, with regard to the request for an Independent Educational Evaluation, this Hearing Officer finds that the District bears the burden of proving its evaluation was appropriate under § 300.502 (b).

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Debby Linton Ferguson, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. The hearing proceeded as scheduled on May 28-30, 2025, and Dr. Mrla was called to testify, which raised the issue of the subpoena. Parent moved to quash the subpoena pursuant to ADE Rule 10.25.1 and ADE Rule 10.13.1.3. However, this Hearing Officer denied Parent’s motion to quash based on a harmonious reading of ADE Rules at issue and that there would be no unfair surprise or advantage to either party due to the production or introduction of documents. As some time was lost due to technological issues, disputed exhibits, and other issues and as the case proved to be document intensive, additional time was needed to hear evidence in the case. By agreement of the parties, the hearing was continued to October 6-9, 2025.

The hearing moved forward on October 6-8 and concluded on October 8, 2025. At the conclusion of the hearing, the parties jointly requested an extension of time for the production of transcripts, post hearing briefs, and a decision in the matter, and the joint motion for extension of the deadlines was thereafter submitted to this Hearing Officer in writing. Pursuant to the agreement of the parties and the joint motion for extension of the timeline, this Hearing Officer issued an Order on October 14, 2025 granting an extension of the deadlines in this matter such that transcripts would be supplied by October 25, 2025, post hearing briefs would be provided by November 5, 2025 (which was extended to November 7, 2025 after production of the transcripts took longer than expected), and the decision due date was extended to November 20, 2025.

Parents were represented by Theresa Caldwell and assistant Linnie Gramling, and the District was represented by Marshall Ney and Sarah Smith. Also, present for the hearing were XXXXX ("Mother"), XXXXXXX ("Grandfather"), Audra Alumbaugh ("Parent Advocate"), and Tita Devore ("LEA"). The following witnesses testified in this matter: Mother, LEA, Jessica Gibbs ("Special Education Teacher Gibbs"), Charles Totten ("Private Speech Therapist Totten"), Susan Martin ("Speech Therapist Martin"), Haley Smith ("OT Smith"), Tiffany Mrla, Ph.D. ("ABA Therapist Dr. Mrla"), Keegan Sutton ("OT Sutton"), Jennifer Olson ("Special Education Teacher Olson"), Amy Hindergardt ("BCBA Hindergardt"). The parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements, and both submitted a brief for consideration.

FINDINGS OF FACT:

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify.

Independent Sch. Dist. No. 283 v. S.D. ex rel. J.D., 88 F.3d 556, 561 (8th Cir. 1996); *Parrish v. Bentonville Sch. Dist.*, No. 5:15-CV-05083, at *8 (W.D. Ark. March 22, 2017). This Hearing Officer found the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection. There were few inconsistencies, and those inconsistencies did not play a significant role in this Hearing Officer's decision. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided and was therefore given more weight. The findings of fact were made as necessary to resolve the issues; therefore, not all of the testimony and exhibits were explicitly cited. In reviewing the record, the testimony of all witnesses, and each admitted exhibit's content were thoroughly considered in issuing this decision, as were the parties' post hearing briefs.

A. Background

1. At the time of the Complaint, Student was an eleven-year-old fifth-grader attending the Bellview Elementary School in the District, who resided with his Parents and younger sister in the District. See D. Ex. p. 472-473. Student has attended school in the District since the beginning of his kindergarten year in the fall of 2019. See P. Ex. p. 342; D. Ex. p. 474.

2. In February of 2015, Student was diagnosed with autism by a team at Interdisciplinary Evaluation Ozark Center autism Diagnostic Team when he was 21 months old. See D. Ex. p. 251-259. He received one on one ABA therapy in the preschool setting at St. Vincent de Paul. See P. Ex. p. 547; D. Ex. p. 474; Tr. Vol. III p. 71.

3. In April of 2019 when he was five years and ten months old, the District evaluated Student in preparation for his transition to kindergarten at the District. See D. Ex. p. 474-475; P. Ex. p. 342-356. On the Kaufman Assessment Battery for Children ("KABC"), 2nd Edition, Student received standard scores ("SS") of 68 in Sequential Processing, 52 in

Learning Ability, 40 on Simultaneous Processing, and his Mental Processing Index was 47. See D. Ex. p. 474. On the Bracken School Readiness Assessment, 3rd Edition, Student had mastered his colors at 90%, letters at 100%, counting at 67%, size comparison at 5%, shapes at 70%, and his school readiness composite was 4%. See D. Ex. p. 474. On the Adaptive Behavior Assessment System, 3rd Edition (“ABAS”), Parent rated his conceptual composite at 78, his social skills composite at 64, his practical composite at 73 and his general adaptive composite at 68, while the teacher rated his conceptual composite at 69, his social skills composite at 74, his practical composite at 69, and his general adaptive composite at 70. See D. Ex. p. 474. On the Behavioral Assessment System for Children, 3rd Edition (“BASC”), his teacher rated him clinically significant for withdrawal and at risk for attention, atypicality, social skills, and functional communication, and his Parent rated him clinically significant for withdrawal, social skills, and functional communication and at risk for attention problems, atypicality, and activities of daily living. See D. Ex. p. 475. His Autism Spectrum Rating Scale score was “very elevated.” See D. Ex. p. 475. In his OT evaluation dated 4/15/19, OT Sutton noted that Student’s “score may not be reflective of his true fine motor/visual motor abilities but rather of his inability to follow a standardized test. Please see clinical observations and teacher report for a better understanding of his abilities.” See P. Ex. p. 547-552.

B. Kindergarten (2019-2020 School Year)

4. In August of 2019, Student began kindergarten at the District and began receiving special education services under the category of Autism. See D. p. 474. When Student transitioned to kindergarten, Parents requested that Student receive private ABA therapy at school, and the District denied the request. See Tr. Vol. III p. 71-72. Student was placed in the K-2nd grade Academic Linked classroom with Special Education Teacher Olson. See Tr.

Vol. V p. 149-151. Student was in regular class less than 40% and 21% of time in the general education setting each week. See P. Ex. p. 224. He received Speech Therapy for 120 minutes per week, PT for 30 minutes twice weekly, and OT for 30 minutes per week. See P. Ex. p. 212. During Kindergarten, Mother picked up Student about an hour early from school, so that he could receive ABA therapy. See Tr. Vol. III p. 72.

5. On April 14, 2020, Student's IEP team met via zoom due to COVID to create his IEP for first grade ("2020 IEP"). See P. Ex. p. 211. Student had mastered the following goals: reading numbers and then writing them and reading 45 sight words. See P. Ex. p. 212. He partially met the goals of: writing letters a-z in order in lowercase and uppercase independently, adding and subtracting within 10, following his morning routine, completing assignments independently, demonstrating social behaviors such as not crying when he doesn't get what he wants, and demonstrating whole body listening during whole group lessons. See P. Ex. p. 212. Student was reading grade level sight words, understood the concept of reading right to left, and knew his letters and letter sounds. See P. Ex. p. 212. Student could count to 100 by ones, fives, and tens, and understands counting one to one. See P. Ex. p. 212. He could name basic shapes and was making progress on adding numbers to 10. See P. Ex. p. 212. He was struggling with rhyming words, hearing and counting syllables in words, writing and drawing; his verbal skills were very low, only using greetings and salutations when prompted and answering yes/no questions related to himself. See P. Ex. p. 212. He was speaking in short 2-5 word phrases. See P. Ex. p. 212. He received all "2s" on his report card. See P. Ex. p. 212. Student did not show initiative to work, use time appropriately, work independently, or listen attentively; he does show expected progress, complete and return homework, follow one step directions, follow school rules, and respects

others property. See P. Ex. p. 212. Student's letter naming fluency on the DIBELS was 16 in the fall and 20 in the winter. See P. Ex. p. 212. Student's accommodations were: opportunity to respond orally, emphasis on major points, short (1-2 step) instructions, opportunity to repeat and explain instructions, allow edibles as incentives, provide visual schedule to routines of classroom, break work into chunks (work-play), and provide sensory breaks when needed. See P. Ex. p. 215-216. Student's math goals were: demonstrate the ability to write numbers 1-20 in order independently on 4/5 opportunities, demonstrate his ability to write numbers 1-30 in order independently on 4/5 opportunities, demonstrate his ability to add numbers 1-10 independently using a variety of strategies on 4/5 opportunities, and demonstrate his ability to subtract numbers 1-10 independently using a variety of strategies on 4/5 opportunities. See P. Ex. p. 220. Student's English Language Arts ("ELA") goals were: demonstrate his ability to write lowercase letters a-m in order without assistance on 4/5 occasions, demonstrate his ability to write uppercase letters n-z in order without assistance on 4/5 occasions, demonstrate his ability to write uppercase letters A-M in order without assistance on 4/5 occasions, demonstrate his ability to write uppercase letters N-Z in order without assistance on 4/5 occasions, and demonstrate his ability to write 10 CVC words from teacher dictation on 4/5 occasions. See P. Ex. p. 221. Student's ELA comprehension goal was: demonstrate by orally answering who questions after listening to a text read aloud and using visual cues on 4/5 occasions with 80% accuracy, demonstrate comprehension by orally answering what questions after listening to a text read aloud and using visual cues on 4/5 occasions with 80% accuracy, demonstrate comprehension by orally answering where questions after listening to a text read aloud and using visual cues on 4/5 occasions with 80% accuracy, and demonstrate comprehension by orally answering who, what, where

questions after listening to a text read aloud and using visual cues on 4/5 occasions with 80% accuracy. See P. Ex. p. 222. Student's behavior goal for first grade was to demonstrate improved behavior and social skills by: demonstrate improved behavior by completing assignments/tasks within the allotted time frame with no more than 3 verbal cues from the teacher; demonstrate organization by completing the check in process each morning with not more than 3 verbal cues; demonstrate understanding of his daily schedule by changing his schedule pieces throughout the day and before every transition independently with no more than 2 verbal cues by the teacher; demonstrate whole body listening during small group settings by facing the teacher, keeping hands and feet still, and eyes looking at the teacher on 4/5 opportunities; and demonstrate whole body listening during large group settings by facing the teacher, keeping hands and feet still, and eyes looking at the teacher on 4/5 opportunities. See P. Ex. p. 223. Goal progress would be measured by teacher testing and work samples. See P. Ex. p. 221-223. Parent reported that Student had begun taking Focalin for attention deficit, and Student was continuing ABA therapy in his home daily for 3 hours per day. See P. Ex. p. 211. It was noted that Mother agreed with all recommendations and felt that all her concerns were addressed. See P. Ex. p. 211.

6. During kindergarten, Student progressed in Speech Therapy and was then able to label many basic objects and actions, answered simple "what questions," increased joint attention, and improved eye contact when his name was called. See P. Ex. p. 213. His biggest gain was using phrases to vocalize wants and needs and spontaneously asking for help and to go to the bathroom. See P. Ex. p. 213. He would transition from task to task and place to place and also use greetings and farewells. See P. Ex. p. 213. Participating in group activities remained challenging for Student. See P. Ex. p. 213. Speech Therapy was continued at 120

minutes per week to target receptive and expressive language skills and social skills, such as joint attention, eye contact, engagement in the group, turn taking, and play skills. See P. Ex. p. 213. His first grade Speech goals were: answer what and where questions with 70% accuracy, label objects and actions with 70% accuracy, follow 1 step directions with 70% accuracy when no model is given, give joint attention when called to a task and/or eye contact when his name is called with 70% accuracy, identify objects when described by one characteristic with 70% accuracy, demonstrate 2 of 3 play skills (imitate pretend object use, turn taking, and appropriate use of toy object) with 70% accuracy, and identify emotions based on facial expression with 70% accuracy. See P. Ex. p. 218-219.

7. While in kindergarten, Student also progressed in PT and met or partially met 9 of 10 his goals. See P. Ex. p. 213. He continued to exhibit deficits in gross motor strength, higher level balance skills, total body and bilateral coordination skills, agility, and age-appropriate gross motor and functional mobility skills. See P. Ex. p. 213. Student's time in PT was reduced to 30 minutes for first grade based on his progress. See P. Ex. p. 213, 217.

8. For OT in kindergarten, Student also progressed by improving his fine motor skills including a more functional pencil grasp and greater accuracy with tasks such as drawing in simple paths, copying shapes, and coloring. See P. Ex. p. 213. Student could write his name and form most letters legibly but immaturely with inconsistent letter size and line orientation. See P. Ex. p. 213. Student met or partially met 4 of 6 of his OT goals, and Student would continue to receive 30 minutes per week of OT in first grade. See P. Ex. p. 213. Student's OT evaluation and records reflect he was cooperative during his therapy, although OT was challenging for him and he was distracted at times. See P. Ex. p. 545-546.

9. In the fall of 2019, Student received a 113 (2nd percentile) on the NWEA reading assessment and a 113 (4th percentile) on the NWEA math assessment. See P. Ex. p. 212, 742. In the winter of 2019, Student received a 123 (2nd percentile) on the NWEA reading assessment and a 116 (1st percentile) on the NWEA math assessment. See P. Ex. p. 212, 741-742. Student struggled to use the computer equipment for testing and with staying focused to complete testing. See P. Ex. p. 212. It was documented that extended time and breaking up testing into smaller chunks worked best for Student when possible. See P. Ex. p. 212.

C. First Grade (2020-2021 School Year)

10. In the Fall of 2020, Student began first grade at the District and remained in the Academic Linked classroom with Special Education Teacher Olson. See Tr. Vol. V p. 149-151.

11. As documented in his 2021 IEP, during first grade, Student made progress in the classroom. See P. Ex. p. 184. Reading and spelling were strengths for Student, he was able to write CVC words and sight words from dictation, and Parent shared that she saw him do so at home also. See P. Ex. p. 184. Student was able to answer “what” questions and was continuing to work on “where” questions, and Parent shared how she worked with him on comprehension at home. See P. Ex. p. 184. He was able to write his numbers 1-20 and all his letters, improved the size of his letters, but continued to work on spacing. See P. Ex. p. 184. In OT, Student made progress in writing letters in isolation and was working on writing words and sentences; he had the motor control for writing but struggled due to attention challenges. See P. Ex. p. 184. The PT stated that Student made progress, would continue working on jumping jacks, skiers, heel toe steps, and she stated he seemed to have improved focus this year. See P. Ex. p. 184. His Speech Therapist shared that he mastered answering “what” questions with her, and she was also working with him on “where” questions. See P.

Ex. p. 184. He had also mastered following one step directions without modeling, and she was moving on to working on 2 step directions. See P. Ex. p. 184. His Speech Therapist stated he is very prompt depended and needs each step prompted, and she was working on helping him figure out his next steps. See P. Ex. p. 184. Mother observed that he does the same at home, and she would share the information with his ABA for work on that area. See P. Ex. p. 184. Mother shared that Student's doctor increased his medication dosage, she is hesitant to give him the increased dose, but she has heard each person that worked with Student mention focus is a struggle. See P. Ex. p. 184. It was documented that Mother asked whether retention could be considered since Student was just beginning to learn basic skills, and the team discussed the possibility of a different classroom to meet those needs. See P. Ex. p. 184. Mother did not want to change Student's placement at that time. See P. Ex. p. 184. It was documented that Mother was told special education students were not typically retained, but it was not unheard of and the special education consultant would provide direction of what next steps should be and reconvene the committee to discuss. See P. Ex. p. 184.

12. On April 7, 2021, Student's IEP team convened to create his IEP for second grade ("2021 IEP"). See P. Ex. p. 185. Student had mastered the goals of writing numbers 1-20 in order unassisted, writing lowercase letters a-z in order, and writing 10 CVC words from teacher dictation. See P. Ex. p. 185. Student had not mastered: adding and subtracting numbers 1-10 independently (could do so only when counting pictures or very focused); writing numbers to 30 unassisted; writing capital letters A-Z unassisted; answering who, what, when, where, and why questions after a text was read aloud; completing the check-in process daily unassisted (requires reminders almost daily); completing assignments/tasks within the allotted time with no more than 3 reminders (takes consistent reminders to

complete all assignments), and demonstrating whole body listening during small and large group settings (Student is very easily distracted and requires lots of direction to stay focused). See P. Ex. p. 185. The team noted that Student was making academic progress, although the progress was very slow. See P. Ex. p. 185. He worked best in small group or one to one and required direct prompts throughout a lesson or task in order to continue working. See P. Ex. p. 185. He made great progress on navigating the computer and would complete an iReady lesson on the computer independently. See P. Ex. p. 185. His fine motor skills improved in that his writing is legible, but his letter spacing and sizing are still inappropriate for his age. See P. Ex. p. 185. He was able to read K and 1st grade sight words and sounds out CVC words, but he continues to struggle with reading or listening for comprehension. See P. Ex. p. 185. He was doing well in all core classes except PE, and he was continuing to go to PE and participate with motivation from incentives. See P. Ex. p. 185. He was not showing initiative for most learning activities, struggled to listen to directions, and struggled to work independently, but he was happy most of the time, kind to others, and followed school rules. See P. Ex. p. 185. OT evaluations and records reflect that Student was cooperative, participated well, and met some goals in OT during the 2020-2021 school year, although he was still easily distracted. See P. Ex. p. 543-544. His Speech Therapist reported that he mastered answering “what” questions but would continue work on “where” questions (55% achieved); mastered labeling objects and actions; mastered following 1 step directions with no model; needed to continue work on joint attention (30% achieved); mastered identifying objects when described by one characteristic; needed to continue work on demonstrating play skills (10% achieved); and mastered identifying emotions based on facial expression but would continue with more abstract emotions like embarrassed or

worried. See P. Ex. p. 186. Student's Speech goals in the 2021 IEP were: answer "where" questions with 70% accuracy, provide category names with 70% accuracy; understand prepositions and spatial concepts (top, above, etc.) with 70% accuracy; demonstrate 2 of 3 play skills (imitate pretend object use, turn taking, appropriate use of toy object) with 70% accuracy; identify emotions based on facial expression with 70% accuracy; provide an adjective about an object with 70% accuracy; sort objects into categories with 70% accuracy; follow 2 step directions with 70% accuracy and no model; describe the function of an object with 70% accuracy; and give joint attention when called to a task and/or give eye contact when name is called with 70% accuracy. See P. Ex. p. 188-191. To be measured by clinical observation, Student's behavior goals were: following verbal directions the first time with no more than one reminder prompt 80% of the time; show appropriate place skills such as turn taking, joint attention for 5 minutes interacting with classmates during group activities 80% of the time; work independently for 10 minutes on a familiar task with no more than 1 reminder prompt 80% of the time; and respond within 5 seconds to bids for joint attention by switching his gaze between the partner and object by following the partner's gestures or eye gaze, looking in the direction of a noise made, or following other attention directing tactics. See P. Ex. p. 193-195. To be measured by data collection sheets, teacher tests, and work samples, Student's math goals were: telling time to the hour at 80%; telling time to the half hour at 80%; sorting coins into coin type at 80%; and counting coins to equal \$1.00 at 80%. See P. Ex. p. 196-198. His ELA goals were: demonstrating understanding by answering where questions after listening to a short paragraph at 80%; demonstrate understanding by answering who questions after listening to a short paragraph at 80%; after listening to a story read aloud, demonstrate comprehension by putting 5 picture details in sequential

order at 80%; after text is read aloud, he will answer why questions with 80% accuracy; and after text is read aloud, he will answer when questions with 80% accuracy; and after listening to a short paragraph, demonstrate understanding by answering what questions at 80%. See P. Ex. p. 199-200. Student's writing goals were: writing to complete the five whole words dictated from the phonics 1st curriculum with no more than one prompt at 80%; writing one complete sentence dictated from the phonics 1st curriculum with no more than one prompt at 80%; writing two complete sentences dictated from the phonics 1st curriculum with no more than one prompt at 80%; given steps to complete a written work task and an example, independently complete the task with no more than one prompt at 80%; using nouns to form a complete sentence in writing at 80% on 4 of 5 opportunities; using verbs to form a complete sentence in writing at 80% on 4 of 5 opportunities; using adjectives to form a complete sentence in writing at 80% on 4 of 5 opportunities; capitalizing the first word of a sentence on 4 of 5 opportunities; and adding punctuation at the end of sentences on 4 of 5 opportunities. See P. Ex. p. 202-204. Student's accommodations remained: opportunity to respond orally, emphasis on major points, short (1-2 step) instructions, opportunity to repeat and explain instructions, allow edibles as incentives, provide visual schedule to routines of classroom, break work into chunks (work-play), and provide sensory breaks when needed. See P. Ex. p. 207. Extended time and small group computer-based testing with text to speech were added. See P. Ex. p. 206-207. Student would receive 85 minutes of special education for each subject in reading, writing and math, and 30 minutes for each subject in science and social studies. See P. Ex. p. 205. Student would continue to receive 120 minutes of Speech Therapy weekly, 30 minutes of OT weekly, and 30 minutes of PT weekly. See P. Ex. p. 205.

13. On the DIBELS in the 2019-2020 school year, Student received a 19/42 for letter naming fluency in fall 32/57 in winter; 5/21 for nonsense word fluency in winter, and 4/87% accuracy. See P. Ex. p. 185. Student was able to correctly identify beginning sounds of words 5/5, ending sounds 4/5, and middle sounds 3/5. See P. Ex. p. 185. On CVCe, Student was still missing the “e” on the end. See P. Ex. p. 185. In the fall of 2019, Student received a 113 SS (2nd percentile) on the NWEA reading assessment and a 113 SS on the NWEA math assessment (4th percentile). See P. Ex. p. 732. In the winter of 2019, Student received a 123 (2nd percentile) on the NWEA reading assessment and a 116 (1st percentile) on the NWEA math assessment. See P. Ex. p. 731-733.

D. Second Grade (2021-2022 School Year)

14. In the fall of 2021 (2021-2022 school year), Student began second grade at the District and remained in the Academic Linked classroom with Special Education Teacher Olson. See Tr. Vol. V p. 149-151.

15. On March 15, 2022, Student was re-evaluated by the District when he was 9 years and 9 months old and in the second grade. See D. Ex. p. 475. Student’s Full Scale IQ score on the Wechsler Intelligence Scale for Children (“WISC”) was 50 (“significantly below average”), with his highest scores of 61 in the areas of fluid reasoning and visual spatial. See D. Ex. p. 475; P. Ex. p. 289-290. Student’s Wechsler Individual Achievement Test (“WIAT”) results were SS of 76 in Word Reading, SS of 73 in Reading Comprehension, SS of 54 in Oral Reading Fluency, SS of 79 in Numerical Operations, SS of 56 in Math Problem Solving, SS of 80 in Spelling, and SS of 66 in Sentence Composition. See D. Ex. p. 475. On the ABAS, Parent rated his conceptual composite at SS 63, his social skills composite at SS 60, his practical composite at SS 63, and his general adaptive composite at SS 59, while teacher rated his conceptual

composite at 69, his social skills composite at SS 61, his practical composite at SS 78, and his general adaptive composite at SS 69. See D. Ex. p. 475-476. 6. Student was being picked up from school at 12:30 every day to attend private ABA therapy. See P. Ex. p. 142; D. Ex. p. 7.

16. In the fall of 2021, Student received a SS of 310 (Lexile BR305L) on the iReady reading assessment (phonological awareness SS 317, phonics SS 337) and a SS 313 on the iReady math assessment (level emerging K). See P. Ex. p. 748. See P. Ex. p. 748. In the spring of 2022, Student received a SS 357 on the iReady reading assessment (Lexile BR 90L-Kindergarten level) (phonological awareness SS 366 and phonics 358) and a SS 332 (Kindergarten level) on the iReady math assessment. See P. Ex. p. 746-747.

17. On April 5, 2022, Student's IEP team convened to draft his IEP for his upcoming third grade year ("April 2022 IEP"). See P. Ex. p. 141-183. Mother attended the conference. The PE teacher shared that Student was doing great with hand eye coordination, was participating more in PE, and is great at dribbling a basketball. See P. Ex. p. 142. In PT, Student was progressing in gross motor skills but hopping one foot to two and jumping jacks without pausing were challenging, and Student needed verbal and visual cues for throwing. See P. Ex. p. 142. Due to his progress, the team decided to decrease his time in PT, and Mother wondered if he would continue to progress if his PT time was decreased. See P. Ex. p. 142. Student would be monitored, and if there was a decline in skills, time would be increased. See P. Ex. p. 142. PT and OT evaluations and records reflect that Student was cooperative and participated well in PT during the 2021-2022 school year. See P. Ex. p. 614-619; 538-542. In OT, Student had improved in writing smaller and copying letters legibly, but it was noted that Student worked very slowly. See P. Ex. p. 142. In his OT evaluation dated 2/15/22, it was noted on multiple pages that Student's "scores should be interpreted with

caution as he may not have fully understood the standardized directions,” his “responses often appeared random as he did not visually scan the figures before making choices,” and he struggled with distraction. See P. Ex. p. 540-542. Mother asked about working on tying shoes and was advised that different colored shoe strings might help. See P. Ex. p. 142. Student’s re-evaluation was discussed, particularly that Student’s receptive vocabulary was stronger than his expressive and that Student’s academic scores were higher than his IQ score. See P. Ex. p. 142. Mother shared that ABA was wanting more time with Student and wondered if a one-on-one aide would help Student progress in placement. See P. Ex. p. 142. The team discussed the variety of placements and pros and cons of each. See P. Ex. p. 142. Due to his progress and familiarity of the classroom, the team agreed that Student would remain in the K-2 classroom for his third-grade year and “remain all day.” See P. Ex. p. 142. Special Education Teacher Olson “completed communication checklists that showed what [Student] was doing in the classroom as opposed to standardized test scores.” See P. Ex. p. 142. He was making progress on his goals and was able to answer “who” at 25%, “what” at 20%, and “why” at 0%. See P. Ex. p. 143. No progress was made on writing sentences with nouns, capitalizing the first word in a sentence, adding punctuation at the end of the sentence, or writing with adjectives and verbs. See P. Ex. p. 144. He was telling time to the hour at 20%, telling time to the half hour at 15%, telling time in 5-minute intervals at 0%, and no knowledge of am or pm. See P. Ex. p. 144. Progress on behavior goals included working on assignments/tasks independently for 5 minutes at 25%, working independently for 10 minutes at 20%, joint attention in a large group at 5%, joint attention in a 3–4-person group 5%, follow two step directions at 30% (in practiced and rehearsed daily tasks). See P. Ex. p. 144. On the DIBELS, Student had 21 correct sounds, 6 correct words, ORF words read

12, accuracy 70%, MAZE comprehension 0, and Student lacked comprehension needed to complete the PAST. See P. Ex. p. 144. On the iReady math, Student received a 306 (K placement), and on iReady reading, Student received a 318 (K placement). See P. Ex. p. 144. On his report card, Student's reading summary score was 2; he could read many sight words and sound out CVC words but struggled to sound out words with blends and CVCe. See P. Ex. p. 144. He struggled to comprehend what he read or what had been read to him. See P. Ex. p. 144. His writing summary score was a 1; Student could write a short sentence from dictation but could not put his own thoughts in writing. See P. Ex. p. 144. He was capitalizing the first word in a sentence and placing punctuation. See P. Ex. p. 144. His speaking and listening score was 1; Student only spoke when directly spoken to, did not raise his hand to ask or answer questions and needed prompts to know what to say. See P. Ex. p. 144. His handwriting score was 2; his writing was legible but letters might be different sizes and all over the lines. See P. Ex. p. 144. Student's math score was 1; he could add and subtract within 10 with pictures and cues, could count by 5s, 10s, and 1s to 100, needed help adding numbers to 20, needed help with measurement, data, time, and money. See P. Ex. p. 144. Student made no progress in social studies or science because he "leaves early every day to receive ABA therapy." See P. Ex. p. 143-144. Regarding behavior, he did not demonstrate consistent effort for most learning activities, struggled to listen to directions, and struggled to work independently. See P. Ex. p. 144. However, he was happy most of the time, kind to others, and followed school rules. See P. Ex. p. 144. The team discussed Student's time in Speech and agreed to reduce his time and change his service minutes to 60 minutes weekly to provide more one on one time because he was not engaging in group therapy sessions. See P. Ex. p. 142-144, 182. In speech, Student was answering "where" at 60% (continue),

sorting objecting into categories at 65% (continue), providing category names at 50% (continue), provide an adjective about an object at 25% (continue), describe the function of an object at 40% (continue), follow 2 step directions with no model at 50% (continue), understand prepositions and spatial concepts at 65% (continue), identify emotions based on facial expression at 65% (continue), demonstrate 2 of 3 play skills at 0% (continue), give joint attention at 30% (continue). See P. Ex. p. 145. At the end of second grade, Student had 186 tardies and 18 absences. See P. Ex. p. 716. Mother asked that Student be retained, thinking Student had not progressed enough to move to third grade. See Tr. Vol. VI p. 52.

E. Third Grade (2022-2023 School Year)

18. In the fall of 2022, Student began third grade at the District, and the District permitted Student to remain in the K-2nd grade Academic Linked classroom with Special Education Teacher Olson at Parent's request. See Tr. Vol. V p. 149-151. Special Education Teacher Olson testified that Student was allowed to remain in her classroom for third grade based on the understanding that Student would begin attending school for full days. See P. Ex. p. 142; Tr. Vol. V p. 224-225. Student's April 2022 IEP reflects this understanding in noting that Student would "remain in the K-2 classroom for his third-grade year and remain all day," which was 7:30 to 2:45, but in a following paragraph, the IEP states that Mother decided to "keep his schedule the same." See P. Ex. p. 142; Tr. Vol. V p. 224-225. Mother testified it was not her understanding that remaining in Special Education Teacher Olson's class for third grade was conditioned on Student attending all day. See Tr. Vol. VI p. 137-138. During third grade, Mother picked up Student from school at 12:30 p.m. everyday to attend ABA therapy because he began ABA Therapy at Hopebridge, which had a strict schedule; Student had not received ABA therapy during the summer of 2022. See P. Ex. p. 142. Over

the summer, Mother saw Student's gain in using more sentences and getting through books on his own. *Id.* He had a medication change and had been able to gain some weight. *Id.*

19. On August 29, 2022, Student's IEP was amended ("August 2022 IEP"). See P. Ex. p. 141. It was documented that Student knew the routine of the classroom, but he was still very prompt dependent. See P. Ex. p. 142. The team discussed the attendance policy and that the school day was 7:30 am to 2:45 pm, but it was parent's right to pick up their child whenever they chose. *Id.* Mother was informed that Student would get 5- and 10-day letters for missing school per District policy though school knew Student was being taken out for ABA therapy. *Id.* Three options of possible schedules for Student were discussed in an attempt to give Student the most academic time, and Mother decided to keep Student's schedule the same. *Id.* The team would review Student's progress and schedule after the first 9 weeks. *Id.* Mother signed the consent for the District's BCBA to speak with Hopebridge and for the District's speech therapist to speak with Fuzion Therapy. See P. Ex. p. 142; D. Ex. p. 30. Student's accommodations were: opportunity to respond orally, emphasis on major points, opportunity to repeat and explain instructions, visual schedule, encourage participation in class activities, and extra time to complete assignments. See P. Ex. p. 147-148. Accommodations removed were short (1-2 step) instructions, allow edibles as incentives, break work into chunks (work-play), and provide sensory breaks when needed. See P. Ex. p. 147-148, 207. In addition to his 30 minutes of OT weekly, 60 minutes of PT weekly, 60 minutes of speech weekly, 85 minutes of writing daily, 30 minutes of science/social studies daily, 85 minutes of math daily, and 85 minutes of reading daily, Student also received 30 minutes of adaptive behavior time daily. See P. Ex. p. 182. Student's behavior goals were: following verbal directions the first time with no more than one

reminder at 80% (progress: 5/28/22-20%, 10/18/22-35%, 1/10/23-50%, 3/30/23-50%); showing appropriate play skills by turn taking or joint attention with classmates during a group activity at 80% (progress: 5/28/22-0%, 10/18/22-25%, 1/10/23-20%, 3/30/23-30%); working independently for 10 minutes with no more than one prompt at 80% (progress: 5/28/22-25%, 10/18/22-50%, 1/10/23-25%, 3/30/23-25%); and responding to bids for joint attention by switching his gaze within 5 seconds at 80% in a small group (progress: 5/28/22-0%, 10/18/22-0%, 1/10/23-25%, 3/20/23-25%). See P. Ex. p. 149-152. In math, Student's goals were to tell time to the half hour at 80% (progress: 5/26/22-0%, 10/18/22-0%, 1/10/23-10%, 3/30/23-20%), tell time to the hour at 80% (progress: 5/26/22-25%, 10/18/22-50%, 1/10/23-60%, 3/30/23-58%), count coins that had been sorted by type to equal \$1 at 80% (noting he could count pennies, nickels and dimes) (progress: 5/26/22-0%, 10/18/22-0%, 1/10/23-25%, 3/30/23-50%), and sort coins into their type at 80% (progress: 5/26/22-25%, 10/18/22-80%, 1/10/23-80%, 3/30/23-80%). See P. Ex. p. 153. (WHY NOT DISCONTINUED DUE TO MASTERY?) Student's writing goals were: writing five whole words from phonics 1st from dictation with no more than one reminder at 80% (progress: 5/26/22-40%, 10/18/22-40%, 1/10/23-30%, 3/30/23-50%); write one complete sentence dictated from phonic 1st from dictation with not more than one prompt at 80% (progress: 5/26/22-20%, 10/18/22-30%, 1/10/23-20%, 3/30/23-25%); write two complete sentences dictated from phonics 1st with no more than one reminder at 80% (progress: 5/26/22-0%, 10/18/22-0%, 1/10/23-0%, 3/30/23-0%); and given steps to complete and example, Student would independently complete the task with no more than one prompt at 80% (progress: 5/26/22-25%, 10/18/22-25%, 1/10/23-26%, 3/30/23-25%). See P. Ex. p. 157-160. Student's ELA goals were: answering where questions at 80%

(progress: 5/26/22-0%, 10/18/22-0%, 1/10/23-20%, 3/30/23-20%), answering who questions at 80% (progress: 5/26/22-15%, 10/18/22-30%, 1/10/23-25%, 3/30/23-40%), placing pictures in sequential order after listening to a story to demonstrate comprehension (progress: 5/26/22-20%, 10/18/22-0%, 1/10/23-30%, 3/30/23-40%), and answering what questions at 80% (progress: 5/26/22-10%, 10/18/22-35%, 1/10/23-20%, 3/30/23-25%). See P. Ex. p. 161-165. Student's speech goals were: answering where questions at 70% (progress: 5/26/22-60%, 10/13/22-65%, 12/20/22-65%, 3/17/23-65% CONTINUED), providing category names at 70% (progress: 5/26/22-60%, 10/13/22-65%, 12/20/22-70%, 3/17/23-75%-MASTERY), understanding prepositions and spatial concepts at 70% (progress: 5/25/22-55%, 10/13/22-70%, 12/20/22-70%, 3/17/23-MASTERY), demonstrating 2 of 3 play skills (turn taking, use of toy, etc.) at 70% (progress: 5/26/22-0%, 10/13/22-0%, 12/20/22-0%, 3/17/23-0%), identify emotions based on facial expression at 70% (progress: 5/26/22-55%, 10/13/22-50%, 12/20/22-65%, 3/17/23-70%-MASTERY), provide an adjective about an object at 70% (progress: 5/26/22-30%, 10/13/22-40%, 12/20/22-50%, 3/17/23-50%-CONTINUED), sort objects into categories (progress: 5/26/22-67%, 10/13/22-70%-MASTERY), follow two step directions with no model at 70% (progress: 5/26/22-0%, 10/13/22-50%, 12/20/22-50%, 3/17/23-60%-CONTINUED), describe the function of an object at 70% (5/26/22-55%, 10/13/22-60%, 12/20/22-70%-MASTERY), and give joint attention or eye contact when called to a task at 70% (5/26/22-40%, 10/13/22-30%, 12/20/22-30%, 3/17/23-30%-CONTINUED). See P. Ex. p. 175-181.

20. On February 21, 2023, Student's IEP team met to review his progress, discuss whether or not he would continue going to ABA therapy during the school day, and to discuss Student's schedule since he was leaving school early every day, and his IEP was amended

("February 2023 IEP"). See D. Ex. p. 31-53. Exploration of the use of an AAC device was also discussed, and paperwork was completed for an AAC device. See D. Ex. p. 31-32. The Notice of Action documented that Student would return to "full day programming no later than after spring break 2023" and restated that Student had full day programming available to Student at any time, while family tried ABA therapy outside of school. See D. Ex. p. 32.

21. On March 31, 2023, Student's IEP team met to review and revise his IEP ("March 2023 IEP"). See P. Ex. p. 1-2; D. Ex. p. 54. Documentation reflected that the team discussed that Mother was trying to combine the medical and psychological advice with the educational setting regarding outside supplementary services [referencing ABA therapy], there would be an "ongoing discussion with Dr. Perry at a later date," and she was still gathering information on the use of an AAC. See D. Ex. p. 55, 61. Student was able to read 92 of 100 kindergarten sight words and 72 of 100 first grade sight words. See P. Ex. p. 2, 4. He was reading 20 words per minute on a Kinder level passage of CVC words and sight words. See P. Ex. p. 4. He had learned to walk himself to the classroom and the speech room by himself. See P. Ex. p. 4. He had begun to show interest in whole group activities and participate by following actions on the screen and what peers were doing. See P. Ex. p. 4. He was following 1 step directions and could answer basic questions such as: what is today, what is tomorrow, how many days in a week, how old are you, what is your sister's name, and was doing well with communication used on a daily basis. See P. Ex. p. 2-4. He was still unable to write or state his opinion verbally, or express what he is learning about. See P. Ex. p. 4. He would ask for help with self-help skills like tying his shoes, etc. See P. Ex. p. 4. He continued to struggle with distractions, and the time to complete familiar tasks varied based on his ability to focus at the time. See P. Ex. p. 4. Since Student had been coming full days, he

was no longer whining or watching the clock, and Mother said that Student was expressing that he could not handle the previous schedule. See P. Ex. p. 2. It was documented that Mother shared that she had asked if Student wanted a full day at school or to go to Hope Bridge, and Student said “full day.” See P. Ex. p. 2; Tr. Vol. V p. 155. Student was eating a school lunch and following the cafeteria procedures. See P. Ex. p. 2. Mother reported that Student seemed happier at home at first. See P. Ex. p. 2. The team discussed having him attend Kirksey Middle School instead of his assigned school. See P. Ex. p. 2. Money/coins were a strength for Student, and he enjoyed naming each coin, telling its value, and was working on totaling them. See P. Ex. p. 2-4. However, his addition and subtraction were not consistent. See P. Ex. p. 2. For the coming year, Student would work on engagement, answering questions from a passage and not just pictures, writing from dictation, addition, subtraction, and multiplication. See P. Ex. p. 2. Student did not master these goals but had achieved the following percentages: telling time to the half hour (20%), telling time to the hour (58%), demonstrate his ability to count coins (was still struggling with counting quarters 50%), write 5 whole words dictated from phonics 1st with only 1 reminder (50%-usually needed a prompt between each word), write one complete sentence dictated by the teacher (25%-usually needed prompting after each word or each 2-3 words), complete a known activity or task with only 1 reminder (25%-reminders needed depended on the focus he had at the time), answer where questions (20%), answer who questions (40%), answer what questions (25%), put 5 pictures in sequential order (40%), follow verbal directions the first time with only 1 reminder (50% for a known rehearsed direction), show appropriate play skills like turn taking or joint attention (30%-mostly during Gonoodle or movement activities), work independently for 10 minutes on a familiar task with no more than 1

reminder (25%-he is distracted easily by his own body or something happening in the room), and respond to bids for joint attention by switching eye gaze (25%-many times he is in his own thoughts and requires multiple attempts to get his attention). See P. Ex. p. 4-5. Speech and Student's special education teacher would collaborate on Student's goals for the coming year including answering questions, joint attention, and interacting with others. See P. Ex. p. 2.

PT evaluations and records reflect that Student was cooperative and participated well in PT during the 2022-2023 school year, although he was occasionally distracted and difficult to keep focused. See P. Ex. p. 611-613. Student had continued to do well and achieved 9 of 10 PT objectives, so the team reduced his PT time to 30 minutes per month. See P. Ex. p. 2, 6, 14. Student had continued to progress in OT, met 1 of 4 goals, and made good progress toward the remaining goals. See P. Ex. p. 6. In OT, Student's goals were: complete a multi-step visual motor ("VM") activity (like color-cut-paste) at 80% with no more than 3 redirections (PARTIALLY MET-Student could complete most VS tasks at 70-80% accuracy, but his accuracy was inconsistent and required multiple reminders to maintain attention); complete 2 of 3 Visual Skills ("VS") activities with minimal assistance (PARTIALLY MET-Student required minimal to moderate assistance with most VS tasks); copy 4 of 5 words using legible letter form, consistent size, spacing, and line orientation with minimal cues (MASTERED); and copy a 3-4 word sentence using legible letter formation and 80% accuracy for size, spacing, and line orientation with minimal assistance (PARTIALLY MET-Student is able to form all letters legibly but continues to have difficulty adjusting letter size and using proper spacing and line adherence). See P. Ex. p. 6. It was documented that Student demonstrated sensory differences consistent with autism such as difficulty with self-regulation, limited social interaction, sensory sensitivity, very distractible, required frequent

redirection to maintain attention and complete tasks, and work independently, and those delays were interfering with Student's participation in functional and academic tasks. See P. Ex. p. 6. Student would continue to receive school-based OT, and OT would work in collaboration with his teacher to address related goals. See P. Ex. p. 6. Student's behavior objectives were: demonstrate classroom engagement by completing tasks in a timely manner with only 2 reminders at 80% (collaborative goal for special education and OT); demonstrate engagement by following verbal directions with only 1 prompt at 80% (collaborative goal for special education and OT), demonstrate engagement by asking for items needed to complete a task at 80% (collaborative goal for special education and Speech); acknowledge an interaction initiated by others by giving an appropriate response verbally or with eye contact 80% (collaborative goal for special education and Speech); and engage in appropriate cooperative social play interactions initiated by others 4/5 opportunities to do so at 80% (collaborative goal for special education and Speech). See P. Ex. p. 7. Student's ELA objectives toward the goal of improving comprehension were: answer who questions at 80% accuracy after listening to or reading text (collaborative goal for special education and Speech); answering what questions at 80% after listening to or reading text (collaborative goal for special education and Speech); answering when questions at 80% after listening to or reading text (collaborative goal for special education and Speech); answering where questions in complete sentences at 80% after listening to or reading text (collaborative goal for special education and Speech). See P. Ex. p. 8. Student's ELA objectives toward the goal of improved writing skills were: complete a 3-4 word dictated sentence in a timely manner with no more than 1 reminder at 80% (collaborative goal for special education and OT); use appropriate letter size at 80% (collaborative goal for special

education and OT); adhering to line orientation at 80% (collaborative goal for special education and OT); and using proper spacing within and between words at 80% (collaborative goal for special education and OT). See P. Ex. p. 9. Student's math objectives were: writing his numbers by 10s to 100 at 80%; writing numbers by 5s to 100 at 80%; fluently subtracting numbers within 20 at 80%; and fluently adding numbers within 20 at 80%. See P. Ex. p. 10. Student's behavior goals were to be measured by data collect sheets and clinical observation; his other goals were to be measured by teacher tests, data collection, and work samples. See P. Ex. p. 7-10. Student's PT goals were to improve skier jumps, one leg/two leg hops, ascent stairs and slide down a slide, swing on the playground swing; kick a playground ball; and throw a tennis ball at the wall and catch it. See P. Ex. p. 11. Student's behavior goals were to be measured by data collect sheets and clinical observation; his other goals were to be measured by teacher tests, data collection, and work samples. See P. Ex. p. 7-11. Student's accommodations were: emphasis on major points, encouragement for classroom/appropriate activity participation, extended time, extra time for assignments, opportunity to repeat and explain instructions, opportunity to respond orally, special grouping, text to speech, allow edibles as incentives, break work into small chunks, small group testing and class computer work when available, and visual aids including cues and a visual schedule. See P. Ex. p. 13. Student would receive 80 special education minutes daily in writing, math, and reading; 28 minutes daily in science-social studies; and 30 minutes daily in adaptive behavior, as well as 30 minutes of OT weekly, 30 minutes of PT monthly, and 60 minutes of Speech weekly. See P. Ex. p. 14.

22. In the fall of 2022, Student received a SS 349 (Lexile BR125L-Kindergarten level) on the iReady reading assessment and a SS 343 (Kindergarten level) on the iReady math

assessment. See p. Ex. p. 745. In the winter of 2022, Student received a SS of 367 on the iReady reading assessment receiving the max score and testing out of phonological awareness with his lowest area in reading comprehension, Student received a SS 338 (Kindergarten level) on the iReady math assessment. See P. Ex. p. 5, 745. In the spring of 2023, Student received a SS 350 (Kindergarten level) on the iReady reading assessment (SS 384 Phonics) and a SS 324 on the iReady math assessment. See P. Ex. p. 713-715, 744-746.

23. On April 28, 2023, Student's IEP team met again as a continuation of the March 31, 2023 IEP meeting to continue his annual review and to discuss Parents' request for private ABA therapy at school. See P. Ex. p. 3. See D. Ex. p. 91. The team discussed Student's participation in standardized testing, and Student had tolerated it well. See P. Ex. p. 3. The team "discussed the possibility of having a human reader reading the math portion of the [test] instead of the computer reading and see if it assists [Student] in his ability to answer the questions instead of just clicking and moving on. See P. Ex. p. 3. Student's Oral Reading Fluency was reported to be 31/141 words correct with 8 errors for an accuracy of 77%. See P. Ex. p. 5. It was reported that Student was working at the Kinder level at the time based on classroom assessments. See P. Ex. p. 5. Spelling remained a strength for Student, and he was able to write CVC words, demonstrate that he knows some blends like "sl", and demonstrate that he recognizes the first sound in all words called out. See P. Ex. p. 5. In math, Student was able to recognize the number of objects within 10 on 7/12 attempts at 58%, he understood the concept of numbers up to 10 on his hands, he could add within 20 known facts at 76%, he could subtract within 20 at 0%, although he could do so after practicing a few times using a drawing to find the answer. See P. Ex. p. 5. In Speech therapy, it was reported Student had been receiving his therapy primarily in individual sessions to limit

distractions and provide ample response time, as Student continued to struggle with distractions in the room or within his body, for example if his sock was uncomfortable, he will fix it and then participate. See P. Ex. p. 5. Student completed 5 of his speech objectives and made the following progress toward his goals: answer where questions at 70% (achieved 65%), sort objections into categories at 70% (MASTERED), provide category names at 70% (MASTERED), provide an adjective about an object at 70% (achieved 50%), describe the function of an object at 70% (MASTERED), follow 2 step directions at 70% with no model (achieved 60%), understand prepositions and spatial concepts at 70% (MASTERED), identify emotions based on facial expressions at 70% (MASTERED), demonstrate 2 of 3 play skills (0%), and give joint attention when called to a task or give eye contact when name is called at 70% (achieved 30%). See P. Ex. p. 5. His Speech Therapist noted that his ability to focus limits his progress, he was able to progress, but it takes Student longer to progress than his peers. See P. Ex. p. 5. Student still struggled to function in a group environment. See P. Ex. p. 5. Direct speech services would be continued for 60 minutes weekly, and the speech goals would be collaborative with the special education goals to target improved ability to answer questions, use sentences, complete tasks, and engage with others, "See Reading and Behavior Goals." See P. Ex. p. 5. Student would participate in the Extended School Service program ("ESY") for the coming summer. See P. Ex. p. 3.

24. Also, in the April 28, 2023 meeting, as stated in the Notice of Action, Parents again requested that the District permit Student's private ABA therapist to provide Student ABA therapy at school during his education. See D. Ex. p. 55. ABA Therapist Dr. Mrla was present to support Parent's request and advised that Student's medically mandated needs should be addressed as supplementary services and provided by Student's outside providers, and the

documentation refers to attached summary of recommendations by Learning and Behavior Consulting. See P. Ex. p. 3; D. Ex. p. 55; Tr. Vol. III p. 103. The District responded that it was able to provide RBT services with its own personnel and that contracting with outside service providers was not needed or permitted under District policy due to confidentiality, HIPAA, and FERPA at this time. See P. Ex. p. 3; Tr. Vol. III p. 104-105. ABA Therapist Dr. Mrla replied that she would develop a Memorandum of Understanding (“MOU”) to address the confidentiality issues, and the District responded that Student was making progress, did not need additional support, and a private ABA provider was not permitted. See Tr. Vol. III p. 104-107. Mother replied that what Student needs medically is not provided at school, and Student had more stemming and sounds since he had not been receiving outside ABA daily. See P. Ex. p. 3. Mother was also concerned with having continuity in services between home and school. See P. Ex. p. 3. The District replied it was willing to collaborate with the outside agency and provide the services needed. See P. Ex. p. 3. Sarah Hollman had observed Student by agreement at the March 31, 2023 meeting, her observations were discussed, and the team agreed to continue them through the end of the school year. See D. Ex. p. 55, 91. Mother and the rest of the team agreed to a meeting with Dr. Perry to further discuss “integrating medical services with the school model under supplementary services with an outside agency.” See P. Ex. p. 3; D. Ex. p. 91. The team discussed mediation. See P. Ex. p. 3. It was documented that Mother was trying to combine the medical advice, psychological advice with the educational setting; his medical BCBA would be permitted to come observe at different times of day to make sure his outside treatment plan was integrated with school. See P. Ex. p. 2.

25. In the spring of 2023, Student received the following scaled scores (“SS”) and percentiles on the ACT Aspire: English 409 SS and 11th percentile, Math 405 SS and 4th

percentile, Reading 406 SS and 12th percentile, Science 406 SS and 10th percentile, and Writing 408 SS. See P. Ex. p. 744-746.

Fourth Grade (2023-2024 School Year)

26. In the fall of 2023 (2023-2024 school year), Student began fourth grade at the District and was placed in the Academic Linked classroom with Special Education Teacher Gibbs. See Tr. Vol. I p. 19-20. The District offered to provide Student a one-on-one RBT, who would be supervised by a District BCBA. See D. Ex. p. 604; Tr. Vol. III p. 106-107.

27. On September 21, 2023, Student's IEP team met and amended his IEP ("September 2023 IEP"), as Mother requested to discuss Student's medical and educational needs and the District had hired an aide to serve as Student's RBT at school. See P. Ex. p. 19-35; D. Ex. p. 90-109. Mother brought a letter from APRN Heather Humphrey recommending that Student be allowed to receive ABA therapy in school. See P. Ex. p. 314. ABA Therapist Dr. Mrla provided a letter requesting that the District permit Student to receive private ABA therapy in school, stating that it was necessary for Student to receive his full day of education as well as a full day of ABA therapy to ameliorate the symptoms of Student's autism, as he needed medically. See D. Ex. p. 315-316; Tr. Vol. III p. 104-109. The signature page of the September 2023 IEP reflects that consultant Kelly Perry was in attendance. See P. Ex. p. 35. The September 21, 2023 Notice of Action does document the District's decision to provide Student an RBT. See D. Ex. p. 90, 93. Mother asked when she would be able to observe in the classroom, and the team agreed to arrange for Mother to observe as long as prior notice and confidentiality were in place. See P. Ex. p. 90, 93. Mother requested "access to any data taken so that she can keep up with [Student's] progress/lack of progress," and the District agreed. See D. Ex. p. 90, 93. Mother requests to revisit the Hopebridge treatment plan to define

Mother's goals for social behavior, and District agreed to receive the Hopebridge report. See D. Ex. p. 90-91, 93. Mother also asked what platform the BCBA would use to collect data, and the BCBA responded that it would be a Google sheet and incorporate ABLLS to support measured progress. See D. Ex. p. 90. At Mother's request, the District agreed to track data that would help Student become more academically independent. See D. Ex. p. 90, 93. The District also stated that behavior goals implemented by the RBT "may be outside of the IEP goals." See D. Ex. p. 90. Goals would include prompting for school routines, prompting to educational tasks, and prompting in social situations. See D. Ex. p. 90-91, 93. District staff would continue to collaborate to ensure Student's progress would generalize to all areas and that Student is encouraged to ask/speak appropriately for things needed. See D. Ex. p. 91, 93. District staff stated Student is very compliant. See D. Ex. p. 93. After taking baseline data for four weeks, the team would reconvene to discuss the data. See D. Ex. p. 91, 93. The signature page for the September 2023 IEP meeting reflects that consultant Kelly Perry attended the meeting, along with the Assistant Superintendent for Elementary Education, Kristy Brown. See P. Ex. p. 35; D. Ex. p. 109.

28. On the September 2023 IEP, most of Student's goals remained, but some were adjusted. See P. Ex. p. 19-35; D. Ex. p. 103-109. Student's ELA objectives toward the goal of demonstrating comprehension remained: answer who questions at 80% accuracy after listening to or reading text (collaborative goal for special education and Speech); answering what questions at 80% after listening to or reading text (collaborative goal for special education and Speech); answering when questions at 80% after listening to or reading text (collaborative goal for special education and Speech); answering where questions in complete sentences at 80% after listening to or reading text (collaborative goal for special

education and Speech). See P. Ex. p. 31-32; D. Ex. p. 105-106. Student's ELA objectives toward the goal of improved writing skills remained: complete a 3-4 word dictated sentence in a timely manner with no more than 1 reminder at 80% (collaborative goal for special education and OT); use appropriate letter size at 80% (collaborative goal for special education and OT); adhering to line orientation at 80% (collaborative goal for special education and OT); and using proper spacing within and between words at 80% (collaborative goal for special education and OT). See P. Ex. p. 29; D. Ex. p. 103. The September 2023 IEP had an additional OT goal of writing with proper spacing within words and between words, line adherence, appropriate letter size, and writing to complete a short 3-4-word sentence with only 1 reminder at 80%. See P. Ex. p. 28; D. Ex. p. 103. Student's math objectives remained: writing his numbers by 10s to 100 at 80%; writing numbers by 5s to 100 at 80%; fluently subtracting numbers within 20 at 80%; and fluently adding numbers within 20 at 80%. See P. Ex. p. 28; D. Ex. p. 102-103. Student's behavior objectives were adjusted to: demonstrate engagement by asking for items needed to complete a task at 80% (collaborative goal for special education and Speech); acknowledge an interaction initiated by others by giving an appropriate response verbally or with eye contact 80% (collaborative goal for special education and Speech); and engage in appropriate cooperative social play interactions initiated by others 4/5 opportunities to do so at 80% (collaborative goal for special education and Speech). See P. Ex. p. 32; D. Ex. p. 106. Student's PT goals remained to improve skier jumps, one leg/two leg hops, ascent stairs and slide down a slide, swing on the playground swing; kick a playground ball; and throw a tennis ball at the wall and catch it. See P. Ex. p. 30-31; D. Ex. p. 104-105. Student's goals were to be measured by work samples or by demonstration/performance using data sheets. See P. Ex. p. 107-112.

Student's services were 80 minutes daily in special education for math, written expression, and reading; 30 minutes daily in behavior, science-social studies; 60 minutes weekly of Speech, 30 minutes weekly of OT, and 30 minutes monthly of PT. See P. Ex. p. 33; D. Ex. p. 106-107. Student's BCBA and RBT support was added to the existing list of accommodations, which were: emphasis on major points, encouragement for classroom/appropriate activity participation, extended time, extra time for assignments, opportunity to repeat and explain instructions, opportunity to respond orally, special grouping, text to speech, allow edibles as incentives, break work into small chunks, small group testing and class computer work when available, and visual aids including cues and a visual schedule. See P. Ex. p. 27.

29. On November 15, 2023, Student's IEP team met "to discuss RBT services now in place," and his IEP was amended ("November 2023 IEP"). See P. Ex. p. 36; D. Ex. p. 116-133. BCBA Hindergardt explained her findings. See D. Ex. p. 116, 119; P. Ex. 36. Mother asked for access to the Google document where the RBT would take data and if she could observe Student in the classroom. See P. Ex. p. 36. If something is working in the classroom, she would like to know the techniques in order to reinforce them at home. See P. Ex. p. 36. At home, they are encouraging Student to play with others and using a time to lengthen the time he will play with others, and the staff discussed how the school is encouraging social interactions. See P. Ex. p. 36. The November 2023 IEP again documented that Student "receives support from a BCBA and an RBT trained paraprofessional. See D. Ex. p. 125.

30. In the November 2023 IEP, Students goals and objectives were set forth. Student's ELA objectives toward the goal of demonstrating comprehension remained: answer who questions at 80% accuracy after listening to or reading text (collaborative goal for special education and Speech); answering what questions at 80% after listening to or reading text

(collaborative goal for special education and Speech); answering when questions at 80% after listening to or reading text (collaborative goal for special education and Speech); answering where questions in complete sentences at 80% after listening to or reading text (collaborative goal for special education and Speech). See P. Ex. p. 31-32; D. Ex. p. 105-106. Student's ELA objectives toward the goal of improved writing skills remained: complete a 3-4 word dictated sentence in a timely manner with no more than 1 reminder at 80% (collaborative goal for special education and OT); use appropriate letter size at 80% (collaborative goal for special education and OT); adhering to line orientation at 80% (collaborative goal for special education and OT); and using proper spacing within and between words at 80% (collaborative goal for special education and OT). See P. Ex. p. 44. The separate OT goal was writing with proper spacing within words and between words, line adherence, appropriate letter size, and writing to complete a short 3-4-word sentence with only 1 reminder at 80%. See P. Ex. p. 44. Student's math objectives remained: writing his numbers by 10s to 100 at 80%; writing numbers by 5s to 100 at 80%; fluently subtracting numbers within 20 at 80%; and fluently adding numbers within 20 at 80%. See P. Ex. p. 43-44. Student's social/behavior objectives were: demonstrate engagement by asking for items needed to complete a task at 80% (collaborative goal for special education and Speech); acknowledge an interaction initiated by others by giving an appropriate response verbally or with eye contact 80% (collaborative goal for special education and Speech); and engage in appropriate cooperative social play interactions initiated by others 4/5 opportunities to do so at 80% (collaborative goal for special education and Speech). See P. Ex. p. 47. Student's PT goals remained to improve skier jumps, one leg/two leg hops, ascent stairs and slide down a slide, swing on the playground swing; kick a playground ball; and throw a tennis ball

at the wall and catch it. See P. Ex. p. 45-46. Student's goals were to be measured by work samples or by demonstration/performance using data sheets. See P. Ex. p. 43-47. Student's services were 80 minutes daily in special education for each subject in math, written expression, and reading; 30 minutes daily for each of behavior and science-social studies; 60 minutes weekly of Speech, 30 minutes weekly of OT, and 30 minutes monthly of PT. See P. Ex. p. 48. Student's BCBA and RBT support was documented, along with his other accommodations, as: emphasis on major points, encouragement for classroom/appropriate activity participation, extended time, extra time for assignments, opportunity to repeat and explain instructions, opportunity to respond orally, special grouping, text to speech, allow edibles as incentives, break work into small chunks, small group testing and class computer work when available, and visual aids including cues and a visual schedule. See P. Ex. p. 42.

31. On November 29, 2023, Student received a private OT evaluation at Post Pediatric Therapies, which reflected severe deficits in fine motor skills. See P. Ex. p. 527-534. Private OT examiner noted that Student was cooperative and attempted every item requested of him during the evaluation, and noted that he struggled to pay attention to the task. See P. Ex. p. 528, 532.

32. In the fall of 2023, Student received a SS 368 (Kindergarten level) on the iReady reading assessment and a SS 321 (Kindergarten level) on the iReady math assessment. See P. Ex. p. 708-709. In the winter of 2023, Student received a SS 325 (Kindergarten level) on the iReady reading assessment and a SS 322 (Kindergarten level) on the iReady math assessment. See P. Ex. p. 743-744. In the spring of 2024, Student received a SS 369 (Kindergarten level) on the iReady reading assessment and a SS 338 (Kindergarten level) on the iReady math assessment. See P. Ex. p. 743-744. On the ATLAS in the spring of 2024,

Student received a SS 1037 (level 1) for reading, a SS 1011 (level 1) for math, and a SS 1025 (level 1) for science. See P. Ex. p. 698-706, 743-744.

33. On March 15, 2024, Student's IEP team convened to draft his IEP for the coming year ("March 2024 IEP"). See P. Ex. p. 59. General education teacher reported that Student was doing well in P.E., was watching other kids to see what to do, following directions with some new activities, has become more aware of his surroundings, and enjoyed basketball. See P. Ex. p. 69. The team discussed an adaptive basketball league for Student. See P. Ex. p. 59. Student was able to break words down and answer questions about information read aloud. See P. Ex. p. 59. BCBA Hindergardt reported that Student needed little prompting for classroom routines and was showing interest in whole group activities. See P. Ex. p. 59. Student was able to add and subtract single digits, and he is using upper- and lower-case letters. See P. Ex. p. 59. Student is able to answer questions orally, and staff highlights his answer for him to go back and fill in the circle. See P. Ex. p. 59. Student is given one verbal prompt and then some time to process questions; visual prompts are also used. See P. Ex. p. 59. Student's ELA objectives toward the goal of demonstrating comprehension remained: answer who questions at 80% accuracy after listening to or reading text (collaborative goal for special education and Speech)(MASTERED and continued with higher level verbiage); answering what questions at 80% after listening to or reading text (collaborative goal for special education and Speech)(MASTERED); answering when questions at 80% after listening to or reading text (collaborative goal for special education and Speech)(achieved 30% and continued with higher level verbiage); answering where questions in complete sentences at 80% after listening to or reading text (collaborative goal for special education and Speech)(achieved 60% and continued with higher level verbiage). See P. Ex. p. 65.

Student's ELA objectives toward the goal of improved writing skills remained: complete a 3-4 word dictated sentence in a timely manner with no more than 1 reminder at 80% (collaborative goal for special education and OT)(80%-MASTERED); use appropriate letter size at 80% (collaborative goal for special education and OT)(80%-MASTERED); adhering to line orientation at 80% (collaborative goal for special education and OT)(80%-MASTERED); and using proper spacing within and between words at 80% (collaborative goal for special education and OT)(80%-MASTERED). See P. Ex. p. 65-66. Student's math objectives remained: writing his numbers by 10s to 100 at 80% (80%-MASTERED); writing numbers by 5s to 100 at 80% (80%-MASTERED); fluently subtracting numbers within 20 at 80% (achieved 60%); and fluently adding numbers within 20 at 80% (80%-MASTERED). See P. Ex. p. 66. Student's progress on social/behavior objectives were: completing a task in a timely manner with only 2 reminders (achieved 60%)(Collaborative goal with OT-); follow verbal directions with only 1 prompt at 80% (Collaborative goal with OT)(achieved 50%); demonstrate engagement by asking for items needed to complete a task at 80% (collaborative goal for special education and Speech) (achieved 80%-MASTERED); acknowledge an interaction initiated by others by giving an appropriate response verbally or with eye contact 80% (collaborative goal for special education and Speech)(achieved 70%); and engage in appropriate cooperative social play interactions initiated by others 4/5 opportunities to do so at 80% (collaborative goal for special education and Speech)(achieved 50%). See P. Ex. p. 65. In Speech Therapy, Student's goal progress was: answering where questions at 70% (reached 65%), sorting objects into categories at 70% (MASTERED), provide category names at 70% accuracy (MASTERED), provide an adjective about an object at 70% (reached 50%), describe the function of an object at 70% (MASTERED), follow two

step directions at 70% (reached 60%), understand prepositions and spatial concepts at 70% (MASTERED), identify emotions based on facial expressions at 70% (MASTERED), give joint attention when called to a task or give eye contact when name is called at 70% (reached 30%). See P. Ex. p. 62-63. Speech Therapist explained that Student's responses were limited by his ability to focus, and he has difficulty engaging with others in his environment. See P. Ex. p. 63. OT Sutton expressed that Student was very cooperative, worked well with her, redirected easily, has the skill to write at time but not the will to do so. See P. Ex. p. 59. Student has some perfectionism, as he will erase writing until it is correct. See P. Ex. p. 60. As Student met his OT goals, the team discussed what new school goals could be, which Mother requested spacing, letter size, and letter placement. See P. Ex. p. 60-61, 64-65. Instead of moving to OT consult minutes, the team decided to reduce OT minutes to 30 minutes monthly, and it was documented that Mother was comfortable with this. See P. Ex. p. 60, 64-65; D. Ex. p. 139. OT and Speech would collaborate with Special Education Teacher on Student's goals. See D. Ex. p. 139. Student was dismissed from PT services due to Student's meeting all of his goals, and Mother asked that Student be monitored in case he has a need for PT in the future. See P. Ex. p. 59; D. Ex. p. 139. Student's services were 80 minutes daily in special education for each subject in math and reading; 60 minutes daily in written expression; 40 minutes daily for science-social studies; 30 minutes daily for behavior; 60 minutes weekly of Speech, 30 minutes monthly of OT, and no PT, as Student was dismissed from PT. See P. Ex. p. 72. The team determined Student was not a candidate for ESY based on the regression/recoupment data. See D. Ex. p. 139. Student's BCBA and RBT support was documented, along with his other accommodations, as: tangible reinforcers, emphasis on major points, encouragement for classroom/appropriate activity participation, access to

brain breaks/theraputty, reduce distractions to student, structured learning environment, reduce number of items on a task, extra time for oral responses, opportunity to repeat and explain instructions, have student repeat directions, use manipulatives, small groups/special grouping, text to speech, allow break work into small chunks, extra time and small group testing, and visual aids including cues and a visual schedule. See P. Ex. p. 67. It was documented that Mother was encouraged with Student's progress and did not want to change Student's programming. See P. Ex. p. 60. The team discussed sharing the richer data from the classroom IEP goals rather than the ABLLS goals. See P. Ex. p. 60. RBT services would be continued for the 5th grade. See P. Ex. p. 60.

34. In the March 2024 IEP, in light of his progress the previous year, Student had many new goals. In reading, Student's objectives were: to identify who the text is about when text was read aloud at 80%; identify the setting when text was read aloud by 80%; demonstrate comprehension of grade-leveled and domain specific vocabulary words at 80%. See P. Ex. p. 70. In writing, Student's objectives were to demonstrate knowledge of grammar by creating simple sentences with appropriate subject-verb agreement and functional legibility at 80% (collaborative with OT); demonstrate knowledge of grammar by identifying parts of speech (nouns, verbs, etc.) at 80%. See P. Ex. p. 71. In math, Student's objectives were: fluently subtracting double digit numbers at 80% and adding double digit numbers at 80%. See P. Ex. p. 68. Student's behavior objectives were: completing a task in a timely manner with only 2 reminders at 80%; following verbal directions with only 1 prompt at 80%; acknowledge interaction initiated by others by giving an appropriate verbal or nonverbal response at 80% (collaborative with Speech); and engage in appropriate cooperative social play interactions initiated by others 4/5 opportunities to do so at 80%.

See P. Ex. p. 69. Student's Speech objectives were: compare two items or texts and contrast them by stating a similarity and a difference at 70%; state a complete sentence to express the main idea following auditory presentation at 70%; express the sequence of an event or retell a story using a graphic organizer or sentence stems at 70%; and participate in a scripted conversation by telling someone something about himself and asking the communication partner a question at 70%. See P. Ex. p. 72. Student's goals would be measured by work samples or by demonstration/performance. See P. Ex. p. 68-72.

35. In the spring of 2024, Student received a 1037 (1st percentile-1st grade level) on the Atlas ELA assessment and a 1001 (1st percentile-1st grade level) on the Atlas math assessment. See P. Ex. p. 743. However, it was noted that testing is not a preferred task for Student, and he typically chooses a letter and quickly clicks through formal assessments. See P. Ex. p. 127. Also, in the spring of 2024, Student received a 369 on the iReady reading assessment and a 338 on the iReady math assessment. See P. Ex. p. 743-744. In the winter of 2024, Student received a 325 on the iReady reading assessment (Kindergarten level) and a 322 on the iReady math assessment (Kindergarten level). See P. Ex. p. 62.

36. PT evaluations and records reflect that Student was cooperative and participated well in PT during the 2023-2024 school year, although some distraction was noted. See P. Ex. p. 638-673.

Fifth Grade (2024-2025 School Year)

37. On October 30, 2024, Student received an OT evaluation at Post Pediatric Therapies, which reflected that Student was pleasant and cooperative during his evaluation. See P. Ex. p. 517-522. The examiner noted his fine motor skills had improved, but he was still delayed. See P. Ex. p. 522.

38. On January 9, 2025, Student's IEP team met at Mother's request ("January 9 2025 IEP") because she was "frustrated with [Student] not being able to access his medically prescribed ABA therapy at school," and [Mother] "has not been allowed to follow his treatment plan." See P. Ex. p. 98; D. Ex. p. 189-207. Parent provided her participation statement at this meeting; in addition to stating her concerns, she also attached her comments on the District's behavior summary graphs. See P. Ex. p. 98; D. Ex. p. 527-541, The District documented that Student "is checked out from school at noon to receive private therapy services as she believes this is needed to address his medical needs. Rogers Public Schools is ready, willing, and able to provide a full day of educational services." See P. Ex. p. 98; D. Ex. p. 189. Student's goals, accommodations and services minutes were unchanged from the March 2024 IEP. See P. Ex. p. 98-116; D. Ex. p. 158-174, 189-207.

39. On January 16, 2025, Student's IEP team convened again to review his IEP. See D. Ex. p. 208. At the meeting, Mother again requested that Student be allowed to receive private ABA therapy at school. See D. Ex. p. 208. Mother continued to check Student out from school at noon to receive private ABA therapy, as she believed it was necessary to address Student's medical needs. See P. Ex. p. 189. The District noted Mother "would like to have his private ABA services in the school setting which is not in alignment with school policy at this time. [Student] has a school provided Registered Behavior Technician with him during the school day." See D. Ex. p. 208. Mother gave her consent for the District to obtain records and to collaborate with outside service providers. See D. Ex. p. 208. No other changes were made to Student's IEP. See D. Ex. p. 208.

40. On January 29, 2025, Student received an OT evaluation from the District. See P. 506-512. The OT examiner noted that his "score should be interpreted with caution as his

ability to follow multi-step directions may have interfered with his ability to complete the task accurately.” See P. Ex. p. 507-512. She also noted that Student’s pegboard fine motor score on the Wide Range Assessment of Visual Motor Ability (“WRAVMA”) score had improved from a SS of 60 to a SS of 85, and his overall VMA score is 80, which is in the “mild delay range” (9th although his individual subtests all fell in the “average range” for his age. See P. Ex. p. 507. His overall assessment on the Test of Handwriting Skills Revised (“THS-R”) was SS 90 (25th percentile), while his score on this test in 2022 was SS 75. See P. Ex. p. 508-509. This assessment was completed by Student in his usual therapy room with his familiar therapist and RBT who sat to the side of the room during testing. See P. Ex. p. 510. Upon arriving in the room for evaluation, Student was “dysregulated” and was given a sensory item, which he was able to transition away from to complete testing in a calm and ready manner. See P. Ex. p. 367-505, 510.

He was able to complete all tasks given extra verbal, visual and tactile cues due to his decreased attention, and the examiner found that the results should be viewed as a valid indication of Student’s skills. See P. Ex. p. 510. Student was able to manage his self-care needs at school independently based on Special Education Gibb’s observations, including toileting, dressing, feeding, washing/drying hands, wiping nose, and making clothing adjustments. See P. Ex. p. 511. She found his handwriting to be in the average range, although he often floats letters above the lines. See P. Ex. p. 511. Based on his results, his OT minutes were reduced to 30 minutes per month as he would be transitioning to middle school. See P. Ex. p. 512.

41. On March 3, 2025, Student was reevaluated by the District. See D. Ex. p. 472-483; P. Ex. p. 286-297. The examiner noted that he received special education under the category

of Autism, as well as school-based speech-language therapy (“Speech Therapy”) and Occupational Therapy (“OT”). See D. Ex. 473. Student also has been diagnosed with generalized anxiety disorder, attention deficit hyperactivity disorder, and unspecified intellectual disabilities. See D. Ex. p. 474. Student passed his vision screening on 9/23/2024 but was unable to follow directions during a hearing screening at school. See D. Ex. p. 474. The examiner also noted that parent rating scales were sent via email on 1/22/2025 and had not been completed at the time of the report. See D. Ex. p. 473. Student has not been retained. See D. Ex. p. 474. Student received special education support in an academic linked classroom, and he received support at school from a board-certified behavior analyst (“BCBA”) and registered behavior technician (“RBT”). See D. Ex. p. 474. Per parent choice, Student was leaving school early every day to receive ABA therapy from a private clinic. See D. Ex. p. 474. The examiner noted that she deviated from standardization in order to facilitate Student’s responses, such as having the RBT provide familiar prompts and teaching tasks in nonstandardized ways. See D. Ex. p. 476-477. She observed that he was distracted by the novelty of her office for a portion of testing but participated better in his classroom setting. See D. Ex. p. 476. Student’s 2025 evaluation noted that his IQ was “significantly below average” with a SS of 55 for his Verbal Comprehension Index and a SS of 64 for fluid reasoning See P. Ex. p. 289-290, 295. On the Kaufman Test of Educational Achievement (“KTEA”), Student received a SS of 47 for Reading Composite, 60 for Math Composite, and 42 for Written Language Composite. See P. Ex. p. 295. On the BASC, Special Education Teacher Gibbs rated Student at risk in the areas of withdrawal, atypicality, social skills leadership, study skills, and functional communication. See P. Ex. p. 292. Special Education Teacher Gibbs rated Student based on his “behavior in a small classroom with continuous access to a

RBT throughout the day.” See P. Ex. p. 292. During the examiner’s evaluation, she observed Student in the classroom, and he followed instructions without being told, answered questions from staff verbally and nonverbally, responded to verbal prompts and requests, sit at his desk and table appropriately, and complete academic work with prompting. See P. Ex. p. 293. Student was observed making brief eye contact with staff, fidgeting, making noises, staring off, and engaging in repetitive behaviors of body rocking and circling the table before sitting down. See P. Ex. p. 293.

42. On March 5, 2025, Student’s IEP team met for his annual review and to revise his IEP (“March 2025 IEP”). See P. Ex. p. 124-140; D. Ex. p. 221-237. The team discussed the results of Student’s March 2025 psychological evaluation by the District, and the examiner explained that she permitted Student’s RBT to join him in the testing sessions and completed a portion of the testing in Student’s classroom, which were not the standardized procedures. See P. Ex. p. 124. During the first two testing sessions, Student oriented to the RBT for cues, but during the last session, Student oriented to the examiner. See P. Ex. p. 124. Student responded slowly during testing, even with encouragement and prompting. See P. Ex. p. 124. His IQ assessment was similar to prior IQ assessments. See P. Ex. p. 124. The examiner noted that pencil-paper tasks were not preferred; he preferred to respond verbally, and if tasks are pencil-paper, Student does better with multiple choice than open responses where he has to write. See P. Ex. p. 124. Student strength was in reading and decoding. See P. Ex. p. 124. 35. As reflected in the spelling record spanning from 8/25/23-5/9/25, Student’s spelling was a strength for him. See P. Ex. p. 690-692. Mother asked if there were risks to veering from the standardization, and the examiner explained the alterations were done to get Student to respond and see what he could do. See P. Ex. p. 124. Student March 2024 IEP goals were

discussed. See D. Ex. p. 226-227. In reading, Student was able to: identify who the text is about when text was read aloud at 80% (MASTERED); identify the setting when text was read aloud by 80% (MASTERED); demonstrate comprehension of grade-leveled and domain specific vocabulary words at 80% (achieved 60%). See D. Ex. p. 227. In writing, Student's objectives were to demonstrate knowledge of grammar by creating simple sentences with appropriate subject-verb agreement and functional legibility at 80% (collaborative with OT)(MASTERED); demonstrate knowledge of grammar by identifying parts of speech (nouns, verbs, etc.) at 80% (MASTERED). See D. Ex. p. 227. In math, Student's objectives were: fluently subtracting double digit numbers at 80% (MASTERED) and adding double digit numbers at 80% (MASTERED). See D. Ex. p. 226. Student's behavior objectives were: completing a task in a timely manner with only 2 reminders at 80% (MASTERED); following verbal directions with only 1 prompt at 80% (achieved 60%); acknowledge interaction initiated by others by giving an appropriate verbal or nonverbal response at 80% (collaborative with Speech)(MASTERED); and engage in appropriate cooperative social play interactions initiated by others 4/5 opportunities to do so at 80% (achieved 50%). See D. Ex. p. 226. Student's Speech objectives were: compare two items or texts and contrast them by stating a similarity and a difference at 70% (Student is able to provide similarities in objects at 60% and working toward texts with differences); state a complete sentence to express the main idea following auditory presentation at 70% (achieved 40% with max cues); express the sequence of an event or retell a story using a graphic organizer or sentence stems at 70% (achieved at 70% accuracy when visual prompts are given for each step of a sequence or story); and participate in a scripted conversation by telling someone something about himself and asking the communication partner a question at 70% (achieved 50%-

Upon direction, Student would approach a communication partner, ask them a question, listen to their answer, wait on a conversational question from the communication partner, and answer it). See D. Ex. p. 227. Speech Therapist Martin reviewed his recent Speech evaluation. See P. Ex. p. 124. Student's standardized scores on the OWLS-II were still very low and the same as his previous assessment; however, his raw scores have increased, especially in receptive language. See P. Ex. p. 124. Student's response time is delayed when giving verbal responses. See P. Ex. p. 125. Speech Therapist Martin explained that much of her report is a narrative instead of standardized testing because many standardized tests do not show Student's full ability. See P. Ex. p. 125. Speech Therapist Martin raised that Student had made progress on his Speech goals but would be entering middle school, which could be stressful for him, so she did not want to make a lot of changes to his Speech goals at the time in order to allow him to demonstrate the skills he has in a new environment. See P. Ex. p. 125. OT Sutton reviewed the OT evaluation, and Student's scores on the VMA were in the average range or just below the average range. See P. Ex. p. 125; D. Ex. p. 222, 224. His SS on the Handwriting test was a 95. See P. Ex. p. 125; D. Ex. p. 222, 224. His sensory profile indicated moderate delay; Student uses regular classroom supplies and does not require supplemented materials. See P. Ex. p. 125; D. Ex. p. 222, 224. Mother asked about shoe tying and was told shoe tying was not targeted at school but can be accommodated by elastic laces or Velcro. See P. Ex. p. 125; D. Ex. p. 222. Student mastered his OT goal, which was writing legibly. See D. Ex. p. 227. BCBA Hindergardt presented data on progress toward goals tracked by the RBT at school including personal care (flushing and washing) was mastered, and Mother gave permission to discontinue data taking on the goal. See P. Ex. p. 125; D. Ex. p. 222. Student was progressing on responding to name, making eye contact, answering

personal questions, saying “thank you.” See P. Ex. p. 125; D. Ex. p. 222. Consistent with Student’s adaptive behavior goal, new goals to be worked on and tracked by the RBT were adapting to changes in routine, seeking assistance, waiting appropriately, and turn taking. See P. Ex. p. 125; See D. Ex. p. 222, 230. Mother asked if there had been collaboration following her signed release to talk to other providers; BCBA Hindergardt replied she had emailed but not heard back from the private BCBA provider. See P. Ex. p. 125; Tr. Vol. VI p. 236. The District offered to do parent training and work in the home. See P. Ex. p. 125. Mother was exploring options to meet Student’s needs fully. See P. Ex. p. 125. Mother had some concern with Student missing some school due to his ABA services, but she was in agreement not to pursue ESY. See P. Ex. p. 125. Mother also requested that Student spend an extra year in elementary school; LEA DeVore explained the decision process for retention at the District; Mother asked to see and understand the objective information that goes into the decision and what input parents and private providers would have. See P. Ex. p. 125. LEA agreed to ask the Superintendent of Elementary Education to contact Mother to discuss that process. See P. Ex. p. 125.

43. At the March 2025 IEP meeting, Special Education Teacher Gibbs presented Student’s draft IEP goals, and the team discussed them. See P. Ex. p. 125. Mother asked that double digit addition and subtraction be included as objectives because he was not demonstrating those skills at home. See P. Ex. p. 125. The District agreed to provide Mother with a set of manipulatives to use at home to work toward carry over of that skill. See P. Ex. p. 125. Student’s March 2025 IEP set forth his educational plan for 3/5/2025 to 3/4/2026 and was in effect for approximately one month in the time frame at issue in this matter. See D. Ex. p. 221. In reading, Student’s objectives were: to answer comprehension questions

when text was read aloud at 70%; identify details after text was read aloud by 70%; demonstrate comprehension of grade-leveled and domain specific vocabulary words at 70%. See P. Ex. p. 230-231. In writing, Student's objectives were to select an event from a text and use drawing, dictating, or writing to share comprehended information at 70%; dictate or write with good legibility a list of words, facts, details related to a give topic at 70% (collaborative with OT). See D. Ex. p. 231. In math, as Student had mastered all his prior objectives, Student's objectives were: using arrays and visual models to demonstrate the connection between repeated addition and multiplication of whole numbers at 80% and illustrate the concept of division using fair and equal shares at 80%. See D. Ex. p. 226, 229. As Student had mastered or nearly mastered all of his prior behavior objectives, Student's behavior objectives were: improving joint attention by making an on-topic comment at 80%; utilize visual schedules and charts to work more independently through the day at 80%; and utilize sensory supports/ strategies in the classroom for regulation and given instruction demonstrate engagement by following verbal directions with only 1 prompt at 80%. See D. Ex. p. 226-227, 230. Student's Speech objectives were: compare two items or texts and contrast them by stating a similarity and a difference at 70%; state a complete sentence to express the main idea following auditory presentation at 70%; express the sequence of an event or retell a story using a graphic organizer or sentence stems at 70%; and participate in a scripted conversation by telling someone something about himself and asking the communication partner a question at 70%. See D. Ex. p. 232. Student's goals were all to be measured by demonstration/performance. See D. Ex. p. 229-232. From 3/5/25-6/30/25, Student's services were 80 minutes daily in special education for each subject in reading and math; 60 minutes daily in written expression; 40 minutes daily for science-social studies; 30

minutes daily for behavior; 420 minutes per quarter of Speech (approximately 35 minutes weekly), 30 minutes monthly of OT, and no PT, as Student was dismissed from PT. See D. Ex. p. 232-233. From 7/1/25 to 3/4/2026, Student's services were 45 minutes daily in special education for each subject in reading, math, and written expression; 420 minutes per quarter of Speech (approximately 35 minutes weekly), 30 minutes monthly of OT, and no PT and no special education minutes for behavior. See P. Ex. p. 232-233. The team determined Student was not a candidate for ESY based on the regression/recoupment data. See D. Ex. p. 139. Student's BCBA and RBT support was documented, along with his other accommodations, as: tangible reinforcers, emphasis on major points, encouragement for classroom/appropriate activity participation, access to brain breaks/theraputty, reduce distractions, structured learning environment, reduce number of items on a task, extra time for oral responses, opportunity to repeat and explain instructions, have student repeat directions, use manipulatives, small groups/special grouping, text to speech, allow break work into small chunks, extra time and small group testing, and visual aids including cues and a visual schedule. See P. Ex. p. 67. It was documented that Mother was encouraged with Student's progress and did not want to change Student's programming. See P. Ex. p. 60. The team discussed sharing the richer data from the classroom IEP goals rather than the ABLLS goals. See P. Ex. p. 60. RBT services would be continued for the 5th grade. See P. Ex. p. 60.

44. Student took several standardized assessments in the 2024-2025 school year. In the fall of 2024, Student received an ATLAS SS 1020 (level 1-below mastery) in reading with a reading fundamentals and vocabulary SS of 1021 (below mastery), reading informational text SS of 1042 (at/near mastery), reading literacy text SS of 1000 (below mastery), and a writing and language SS of 1019 (below mastery). See P. Ex. 681, 694-695. Student's fifth

grade reading level report reflected he was reading 14 words per minute with 61% correct, and his Lexile was 480L. See P. Ex. p. 127, 693. The fifth grade reading level report appears to have been taken from Student's Fall 2024 DIBELS data taken on 8/27/24, which reflects that his Oral Reading Fluency ("ORF") score was 14 with 9 errors (61 percent accuracy). See P. Ex. p. 127, 693. However, 1/13/25, Student's DIBELS score was 37 with 4 errors (90% accuracy). See P. Ex. p. 127, 682. Student's DIBELS score for winter 2024 was reported as 40 words correct with 3 errors and 93% accuracy; however, he was unable to read fourth grade text and circle the correct work to finish the passage and made random guesses instead. See P. Ex. p. 62. Based on consistency with other measures cited herein and videos demonstrating Student reading, this Hearing Officer finds Student's August 2024 DIBELS score was likely an aberration and that Student's January 2025 score better reflects Student's reading ability and progress.

45. Special Education Teacher Olson was Student's teacher for kindergarten, first, second, and third grades in an academic linked classroom. See Tr. Vol. I p. 149. She has her Masters in Special Education and Special Education hearing specialist pre-K to 12, an endorsement in Special Education H-12, and she was in her 20th year of teaching special education. See Tr. Vol. I p. 150. Student is in general education for Encore (art, music, library, and PE), plus lunch and recess and is with her the rest of the time. See Tr. Vol. I p. 151. Student has autism and was the easiest student she had in her classroom in years. See Tr. Vol. I p. 153. He was very compliant, happy, followed directions, needed a lot of cues at first but has been working on fading cues. See Tr. Vol. I p. 153-155. He might get a little anxious every once in a while, like when he knew he was going to be picked up, but all kids do. See Tr. Vol. I p. 153, 155. His gross motor skills seem fine, OT would work with him on

handwriting, but she thought it was really good. See Tr. Vol. I p. 154-155. Student could memorize, spell words, and was learning to read. See Tr. Vol. I p. 155. He could read all 100 of the kindergarten sight words, at least 72 of 100 of first grade sight words, write/spell CVC words. See Tr. Vol. I p. 155. When Mother stopped pulling him out half days, he was happy, and Mother reported that Student verbally expressed he preferred “school all day” to going to Hopebridge. See Tr. Vol. I p. 155-156. She testified Student attended school for the full day from after spring break in March of 2023 to August of 2024 and did not leave for ABA therapy. See Tr. Vol. VI p. 305; Tr. Vol. V p. 156-157. Special Education Teacher Olson testified Student flourished, was happy, and quit whining during this time. See Tr. Vol. V p. 155-156. Special Education Teacher Olson testified Mother started advocating for private ABA therapy in her classroom during this time, but she did not think Student needed ABA therapy. See Tr. Vol. V p. 156-159. Special Education Teacher Olson testified that the District was able to accommodate any ABA Student needed because the District had BCBA Hindergardt. See Tr. Vol. V p. 159. She taught Student adaptive behavior skills for ten years using a lot of the same things the ABA people do; she uses a lot of visuals, discrete trials, prompting, repeating, small group, social stories. See Tr. Vol. I p. 168-169. Student did not have an RBT in her room, but she had aides to help prompt Student. See Tr. Vol. I p. 169, 229-230. Social skills teaching in her class were focused on how to be in a classroom, sit at a desk, raise your hand, answer questions in class, and skills related to the classroom. See Tr. Vol. V p. 232. She testified her rating on the ABAS-3 was a comparison to the other children in her classroom. See Tr. Vol. I p. 199-200. Student did not have any big behavior concerns, was not aggressive, but needed a lot of reminders. See Tr. Vol. V p. 200. She has a schedule and teaches reading for a time, then math, then writing, and then social studies and

science. See Tr. Vol. I p. 151-152. Special Education Teacher Olson taught Student reading using Phonics First, which follows the Science of Reading protocol, and Student did really well in reading words, though sentences were more difficult for him. See Tr. Vol. V p. 161, 213-219. He maxed out on phonological awareness in spring of second grade, and Student's DIBELS and MAPS scores went up in third grade. See Tr. Vol. I p. 222-223; P. Ex. p. 185. Testing out of phonological awareness means Student was really good at reading phonemes and sight words, but he had trouble comprehending what he read or when a paragraph was read to him. See Tr. Vol. V p. 241-242. Moving from a 318 to a 367 on the iReady reading test was a big jump. See Tr. Vol. V p. 241. Student's reading goals were harder each year; she was continuing to teach him to read using Phonics First, although the goals may be oriented to comprehension to relate to standards/curriculum and passages could be read to him. See Tr. Vol. V p. 247-252. She is aware that Special Education Teacher Gibbs is still working on reading with Student. See Tr. Vol. V p. 251. Though he was not on grade level, Student learned to read, but he had difficulty showing it on a test due to his weakness in comprehension. See Tr. Vol. I p. 219-222. Student was beginning to copy down a word or sentence dictated to him. See Tr. Vol. V p. 162. Student's primary challenge in reading was his comprehension and being able to answer questions. See Tr. Vol. V p. 220. Although Student was on kindergarten level in phonological awareness, phonics, high frequency words, and vocabulary, Student was making progress, and that was the most important thing. See Tr. Vol. V p. 223-224, 243-244, 258. He was not catching up to grade level, but he was making progress as fast as he could do it. See Tr. Vol. V p. 226, 245-253. His achievement performance was higher than his IQ, which suggests Student could probably do some things that did not show. See Tr. Vol. V p. 246-247. In her experience, a student with a 50 IQ does

not read on grade level. See Tr. Vol. V p. 267. When examining Student's scores, Special Education Teacher Olson acknowledged that Student was still testing at the basic reader level on the iReady, but she asserted his scores still show progress toward standards. See Tr. Vol. V p. 254-258; See P. Ex. p. 711-717. When Student stopping being pulled out of school, Student started doing better. See Tr. Vol. V p. 225. Mother wanted Student to remain in her room for third grade because Mother saw that Student was making progress. See Tr. Vol. V p. 237-243. She recalled Mother asking for Student to be kept in her room for third grade, Mother being asked if she would keep Student at school full days if Student remained in her class, and Mother saying yes. See Tr. Vol. V p. 225. However, when school started in third grade, Mother did not keep Student in school full days and continued to pull him out of school to take him to ABA therapy. See Tr. Vol. V p. 225. Special Education Teacher Olson did not see any reason that Student medically needed ABA therapy, although she admitted she is not a medical person and does not know. See Tr. Vol. V p. 226. Student was able to physically function at school and just needed prompts to keep working and work on fading them, and she had two paras in her room that could remind him to keep going. See Tr. Vol. V p. 225, 229-230. She acknowledged that ABA was not allowed to come into her classroom due to confidentiality of other children in the room. See Tr. Vol. V p. 233-234. She has seen ABA therapy in a school because the District has an ABA therapist, and she has seen the District BCBA work with students in her class. See Tr. Vol. V p. 234-237. Special Education Teacher Olson recalled ABA Therapist Dr. Mrla sending her BCBA Sarah Hallman into her classroom for observation on one occasion in April of 2023. See Tr. Vol. V p. 268. Special Education Teacher Olson spoke with BCBA Hallman after the observation, and BCBA Hallman said, "you know what, I don't see a problem." See Tr. Vol. V p. 268-270. BCBA Hallman told Special

Education Teacher Olson that Student did not need anything, there was not a problem that needed ABA therapy, he seemed fine.” See Tr. Vol. V p. 270. A report from BCBA Hallman or ABA Therapist Dr. Mrla was never provided to the District; Special Education Teacher Olson asked ABA Therapist Dr. Mrla for a report from the observation and was told “I can’t find it.” See Tr. Vol. V p. 268-269. Special Education Teacher Olson was at an IEP meeting that ABA Therapist Dr. Mrla attending and stated Student needed ABA therapy, then she sent BCBA Hallman to observe, and at the next meeting ABA Therapist Dr. Mrla attended, she did not have the report from BCBA Hallman and stated she did not have the email or anything from BCBA Hallman. See Tr. Vol. V p. 270-271. However, ABA Therapist Dr. Mrla continued to advocate for ABA therapy in the classroom for medical reasons. See Tr. Vol. V p. 271-272.

46. ABA Therapist Dr. Mrla has a Ph.D. in Curriculum and instruction, focusing on ABA and Special Education services. See Tr. Vol. III p. 50-51. She was certified as a reading specialist and as a general education teacher in Kentucky and Arkansas for P-12 general education for language arts and P-12 for special education. See Tr. Vol. III p. 51. She currently works as a BCBA and has a company called Integrative Learning Consultants that provides services to children in their school settings; she previously worked for an autism service provider named Learning and Behavior Solutions that became SageWay Behavioral Health. See Tr. Vol. III p. 51. Before that, she was the district BCBA for Springdale Schools and set up the district-wide behavior support program. See Tr. Vol. 51-53. She also set up autism classrooms in the district starting in 2008 in Springdale, Gravette, and Malvern. Id. Integrating ABA treatment into schools is important for the generalization of skills for students with autism, and students make significant gains when ABA is integrated into their school setting, resulting in being able to reduce hours of ABA service after a year. See Tr. Vol.

III p. 81-84. She took BCBA coursework as part of her Ph.D., but she is not officially certified by the Behavior Analyst Certification Board because she did her dissertation on special education teacher evaluations, but she is working on that certification. See Tr. Vol. III p. 54. She has published articles regarding education and autism and has presented at the National Council for Exceptional Children and other training workshops. See Tr. Vol. III 56-63. She is not a lawyer or a school psychology specialist. See Tr. Vol. IV p. 131-132 See Tr. Vol. IV p. She has known Student since she evaluated Student in August of 2017 when she began providing his first ABA therapy, and since July of 2024, she has been providing some services for Student. See Tr. Vol. III p. 50, 65; P. Ex. p. 227-297. During preschool, she used the VB-MAPP, which is mostly mastered, and the ABLLS, which were skills criterion-referenced assessments to set Student's treatment goals. See Tr. Vol. III p. 67-69. During preschool from 2017 to 2019, Student did an amazing job of making progress and generalizing when he was provided ABA therapy in the school setting and the ABA Therapist worked collaboratively with the teachers, school-based providers, private providers, speech and OT, and family. See Tr. Vol. III p. 71, 79; Tr. Vol. IV p. 50. When Student transitioned to kindergarten, his parents requested her team be allowed to provide services to Student in the District alongside other students, but the District denied the request. See Tr. Vol. III p. 71. During kindergarten, Student left school around 2 pm to receive ABA services with her, in the clinic or home and sometimes on weekends. See Tr. Vol. III p. 72-74. There is a window of time prior to age 8 when children can gain skills more rapidly; Student can still gain skills at age 12 but will take longer. See Tr. Vol. III p. 77-78; Tr. Vol. IV p. 51-52. In her opinion, Student falls in level 2 of autism, which is the middle level of severity. See Tr. Vol. III p. 75-77. Student had a gap in ABA services in the summer of 2022 based on her review of documents, and then he began

receiving 20 hours a week of services at Hopebridge, which was when Student switched to a half day at school. See Tr. Vol. III p. 79-80. Between 2022 and 2024, Student's IEP team discussed that Student needed to transition back to a full day at school. See Tr. Vol. III p. 80. In the fall of 2022, Mother contacted ABA Therapist Dr. Mrla, and Mother attended an advocacy conference with ABA Therapist Dr. Mrla in October of 2022. See Tr. Vol. III p. 102. In the spring of 2023, Student no longer received services at Hopebridge because he started going to school for the full day. See Tr. Vol. III p. 80, 99. In March and April of 2023, ABA Therapist Dr. Mrla got involved in Student's IEP meetings because Mother wanted to find a way for Student to receive "his medically prescribed" ABA therapy and attend school the full day. See Tr. Vol. III p. 102-103. ABA Therapist Dr. Mrla testified that the District response to Parent's request for private ABA Therapy at school was that it was a District policy that they did not allow private ABA therapy in the school setting, particularly in the classroom, stating it would violate confidentiality, HIPAA, FERPA and that Student did not need it. See Tr. Vol. III p. 104-108. See Tr. Vol. III p. 104. ABA Therapist Dr. Mrla recalled offering to create an MOU to address confidentiality, but the District still would not allow it. See Tr. Vol. III p. 35-37; 103-104. ABA Therapist Dr. Mrla did not attend additional meetings with the District after attending by zoom in August of 2023 with the superintendent and attorney for the District because she did not want to cause more problems for Mother. See Tr. Vol. III p. 119; Tr. Vol. IV p. 33. In August of 2023, the District allowed one of ABA Therapist Dr. Mrla's BCBAs to come into the school to observe Student, and the District also offered to provide Student an RBT supervised by the District's BCBA, which she felt was a unilateral decision. See Tr. Vol. III p. 106-110; Tr. Vol. IV p. 34. She also felt the decision to deny ABA therapy in the school setting was unilateral and was made by the LEA. See Tr. Vol. IV p. 35-37. She

testified it is the child's right to receive medical services in the school setting and that schools allow school-based mental health services, PT, OT, social workers, counselors, etc. to provide services in schools. See Tr. Vol. IV p. 39-40. In reviewing Student's March 3, 2025 evaluation by the District, she noted that Student has a slow processing speed and needs longer to process a request and to come up with a response. See Tr. Vol. IV p. 70-71. Student struggles with short-term memory, long term memory, and his overall level of skills with a full-scale IQ score of 50, which is at the lower extreme range, although it is hard to know if the IQ is accurate when a student has language delays. See Tr. Vol. IV p. 72, 80. Student's academic skills show greater potential than his IQ score. See Tr. Vol. IV. 82. The difference between Mother's rating on the ABAS and the teacher rating appears to have resulted from the teacher comparing Student to other students in her self-contained classroom. See Tr. Vol. IV p. 84-85. She found it interesting that the examiner noted she administered Student's evaluation outside of standardization by changing questions and allowing the RBT to prompt, which reflects that Student is very prompt dependent, which she testified may cause the test results to be invalid, although she admitted the results are consistent with prior testing. See Tr. Vol. III p. 85-86; Tr. Vol. IV p. 6, 87-89. Since January of 2025, Student has been receiving private ABA therapy again, and he has been regaining skills, including waiting for 20 minutes, handling changes in routine, seeking assistance, reducing self-injurious behaviors and aggression that had resurfaced in the last three or four weeks. See Tr. Vol. III p. 86, 120-121, 125, 133-138; Tr. Vol. IV p. 25-28, 46, 53. As a child goes through developmental stages, it is common to see resurgences of behavior, and Student is entering sixth grade, which is one of those developmental times where behaviors can show up. See Tr. Vol. IV p. 54-55. She testified that the District added Adaptive Behavior therapy for Student, which she explained

as another term for ABA therapy, which meant Student had an RBT collecting data on targeted goals identified by the BCBA. See Tr. Vol. III p. 113-116. She did not believe there was a benefit to Student from the RBT because there was no treatment plan in place. See Tr. Vol. III p. 118. However, the District BCBA stated in IEP meetings, that the District could provide services to Student, so there was no need for the ABA provider to come in. See Tr. Vol. III p. 118-119. ABA Therapist Dr. Mrla testified that ABA therapy is the most effective intervention for children with autism and that ABA therapy at school is necessary for Student to benefit from special education, based on what she saw as Student's failure to meet behavior goals from year to year. See Tr. Vol. III p. 123; Tr. Vol. IV p. 91-94. She advised Student's ABA treatment plan must be implemented consistently across settings such as clinic, home, and school, which is important for learning to generalize behaviors across different settings. See P. Ex. p. 230; Tr. Vol. IV p. 26, 50, 123. ABA Therapist Mrla testified the accepted standards of care for ABA therapy require assessments/evaluations, development of a treatment plan with specific measurable goals, evidence-based interventions, gathering ABC data, and modifying those interventions based on that data. See Tr. Vol. III p. 107-112, 117. See Tr. Vol. IV p. 21, 93. ABA Therapist Dr. Mrla testified, in her opinion, that Student was not receiving ABA therapy at school because the District had no ABA therapy treatment plan, there were no ABA therapy goals on Student's IEPs, the District's RBT was not consistently gathering ABC data to facilitate adjustments to decrease the frequency of maladaptive behaviors. See Tr. Vol. III p. 107-08; Tr. Vol. VI p. 64-65, 87-88. She testified that Student needed an independent evaluation, District and ABA team to collaborate, ABA therapy that meets the standard of care in Student's school setting, compensatory education utilizing extended school year services, and progress monitoring

by BCBA. See Tr. Vol. IV p. 67, 126. She did not believe Student had not benefitted from ABA techniques in the school setting, although ABA Therapist Dr. Mrla had not observed Student in his educational setting at the District and had no knowledge from her BCBA's observation in the classroom. See Tr. Vol. III p. 123; Tr. Vol. V p. 270-271.

47. District BCBA Hindergardt is the District BCBA. See Tr. Vol. VI p. 161. She received her Masters' degree in Special Education, worked as a paraprofessional, became an RBT, got her certification as a BCBA, and has been the BCBA for the District for three years. See Tr. Vol. VI p. 161-162. For her BCBA training, she was supervised by ABA Therapist Dr. Mrla. See Tr. Vol. VI p. 162. She is on Student's IEP team and supervises his RBT, who has an associate's degree and is a trained and certified. See Tr. Vol. VI p. 162-167, 177, 189-190. She testified that, in her opinion, Student was benefiting educationally, and he was making progress on his behavior goals. See Tr. Vol. VI p. 204, 268-270. For example, Student needs less redirection to get on track now, and he calms and returns to work fairly quickly. See Tr. Vol. VI p. 204-205. In her opinion, Student does not need an RBT with him because Student does well in the normal flow of his classroom, his redirection rate is average, he does not have or need a Behavior Reduction Plan, and having a one on one is restrictive for him and causes prompt dependency. See Tr. Vol. VI p. 205-206. She collaborates on Student's behavior goals and has taken data on behaviors at Mother's request; Student is at the lowest level of need for behavior intervention in her opinion. See Tr. Vol. VI p. 164, 277, 285-286. She testified the RBT was hired because Mother wanted an RBT for Student. See Tr. Vol. VI p. 190. He primarily needs prompting to work or follow instructions, which they are working to fade, and she and the RBT work with Student on prompting him to use verbal language. See Tr. Vol. VI p. 175-179, 207-209. She did not initially provide the raw RBT data to Mother

because it was a communication between the RBT and herself, she provided summaries, but she will provide the raw data going forward. See Tr. Vol. VI p. 184, 210, 280; D. Ex. p. 1413-1580. She supervises the RBT 5 percent of the time the RBT spends with Student. See Tr. Vol. VI p. 283-285. She clarified that the District does not provide ABA therapy but applies ABA interventions for Student, while therapy utilizes a medical model and has a treatment plan. See Tr. Vol. VI p. 283. 33. The District has no ABA treatment plan, but she does use some parts of the Assessment of Basic Language and Learning Skills (“ABLLS”). See Tr. Vol. VI p. 285, 313. The District’s keeps ABC data of behaviors, like ABA therapy would do. See Tr. Vol. VI p. 221. She has worked in a clinic and school, and she testified that the most notable difference is that you work with a treatment plan in a clinic and an IEP in school, which are different but similar in that they both have goals, the methodology is the same, interventions are run with the same fidelity, and what the District is providing in school is similar to the ABA principles that might be provided in a clinic, though the documentation looks different. See Tr. Vol. VI p. 230-233. School based BCBA interventions and ABA methodologies are both evidence-based practices. See Tr. Vol. VI p. 233. In school, interventions are made to help students access education, reading, writing, and math, and clinics work on other skills. See Tr. Vol. VI p. 234-235. She explained that a Functional Behavior Assessment (“FBA”) is done to decrease interfering behaviors, and that Student does not need an FBA or a Behavior Intervention Plan because he does not exhibit that much interfering behavior. See Tr. Vol. VI p. 221-222, 282, 300. If Student is frustrated and, for example, slams his hand on the table, Student is checked to see if he needs help or a break; the District does keep ABC data because Mother requested it. See Tr. Vol. VI p. 222, 300; D. Ex. p. 1464-1559. If Student has some interfering behavior, ABC data is collected, but a slap

on the desk is not high magnitude and does not interfere with Student's ability to access his education because it might last 10 seconds and then Student is back on track. See Tr. Vol. VI p. 301, 307-308. When Student exhibits maladaptive behaviors, the RBT should prompt for a break and calming strategies, and the RBT does so up to ABA standards in her opinion. See Tr. Vol. VI p. 204. Student had 18 interfering behaviors records between December 2023 and August of 2024, but only five of those were between December of 2023 and May of 2024. See D. Ex. p. 1465; Tr. Vol. VI p. 300-308. Between August of 2024 and April of 2025, Student only had 13 behavior episodes. See D. Ex. p. 1465; Tr. Vol. VI p. 300-308. Student's rate of interfering behaviors is very low, there is no physical aggression, and his property destruction consists of banging items on the table like a pencil or toy. See Tr. Vol. VI p. 307-308. One fist bang is not self-harm, but Student did bite himself once and had once incident of spitting. See Tr. Vol. VI p. 309. Crying is not documented because it is normal for kids to cry. See Tr. Vol. VI p. 309. She collaborates with Special Education Teacher Gibbs on Student's adaptive behavior goal, but the behavior data is in addition to the educational goals in the IEP. See Tr. Vol. VI p. 309-311. Mother testified that ABA Therapy would work toward Student: being able to raise his hand to answer a question (which he still works on), toileting (MASTERED), and seeking assistance, working independently without multiple prompts, eye contact, and giving greetings (making progress), which are all things that BCBA Hindergardt, the RBT, and the teacher are working on with Student, along with the generalization of those skills with practice in different school settings. See Tr. Vol. VI p. 213-228. She received ABA Therapist Mrla's treatment plan for Student, and the District is working on the same objectives that ABA Therapist Dr. Mrla set forth as goals in her treatment plan, although she did not collaborate on it. See Tr. Vol. VI p. 239-245. ABA Therapist Dr. Mrla's treatment plan

recommends approximately 35 hours of ABA Therapy weekly for Student. See Tr. Vol. VI p. 236-238; 356, 392. Based on her discussions with colleagues that work in clinics, over 30 hours of ABA Therapy weekly is a very high number. See Tr. Vol. VI p. 239, 254. It was her opinion that Student is receiving adequate ABA interventions at school and making progress on his behavior goals. See Tr. Vol. VI p. 245. After receiving the treatment plan through the school, BCBA Hindergardt reached out to ABA Therapist Dr. Mrla twice by email, but ABA Therapist Dr. Mrla never responded. See Tr. Vol. VI p. 236. She last saw ABA Therapist Dr. Mrla at the IEP meeting she attended for Student. See Tr. Vol. VI p. 246. BCBA Hindergardt has spent more than 10 hours with Student and believes he is learning at a pace that is suitable for him. See Tr. Vol. VI p. 313-314. She recalls that Student likes to explore nature during recess and does not interact much with peers. See Tr. Vol. VI p. 316. She and the RBT are knowledgeable about school policies and procedures and interact and collaborate with teachers and other students a lot, which she does not believe a private provider would be able to do. See Tr. Vol. VI p. 172-173.

48. Special Education Teacher Gibbs, who was Student's teacher for fourth and fifth grades, testified that she taught Student in an Academic Link class, which is a special education classroom for third, fourth, and fifth grades focused on academics and following the State's curricular standards and is self-contained. See Tr. Vol. I p. 20, 25. She has a B.S. in psychology, a year toward an M.S. in counseling, worked at a residential facility for adults with severe disabilities, worked at a day habilitation center for adults, and then obtained her teaching certification. See Tr. Vol. I p. 22. She taught general education for four years, is certified in special education, and is in her eighth year as a special education teacher at the District. See Tr. Vol. I p. 23-24. She had up to 15 Students in her class at a time and has two

paraprofessionals. Id. Most of her students have autism but some are Other Health Impaired; she has no students who are nonverbal. See Tr. Vol. I p. 25. Most of her students with autism also have intellectual disability. See Tr. Vol. I p. 26. During fourth grade (2023-2024 school year), Student was in her classroom from a little before 8 am until about dismissal at 2:40 p.m. See Tr. Vol. I p. 21. During fifth grade (2024-2025 school year), in the first semester, Student was in her classroom from around 8 am to dismissal at 2:40 p.m., and in the second semester (January to April 2025), Student was in her class from about 8 am to noon each day to attend outside ABA and Speech therapies. See Tr. Vol. I p. 20-21. Student's RBT at school gathers data on his adaptive behavior goals, watches and takes data when Student is working with the whole group, counting how many prompts Student needs, etc., and paraprofessionals also may take data. See Tr. Vol. I p. 131-132. The RBT is with Student all day and does not work with any other students. See Tr. Vol. I p. 132. Special Education Teacher Gibbs has seen Student has exhibited maladaptive behaviors or meltdowns on rare occasions, although his meltdowns look completely different from the meltdowns of other children in her classroom; he is very respectful and does not exhibit a lot of task avoidance. See Tr. Vol. I p. 133-135, 149-150. He does not like loud noises and may use the headphones, and he dislikes anything in his sock or his socks being twisted. See Tr. Vol. I p. 136. He will say "Ms. Gibbs, help me." See Tr. Vol. I p. 136. Special Education Teacher Gibbs did not force a lot of social interaction for Student on the playground because Student needed the time to decompress. See Tr. Vol. I p. 133. Student has autism, and when he gets excited or sometimes to avoid tasks, he self-stimulates with behaviors such as vocalizations, hand flapping, jumping or pacing. See Tr. Vol. I p. 26-27, 135. When Student is frustrated, he screams out "No Daddy" and a few times "No Mommy," but she has never seen Student hit or bite. See Tr.

Vol. II p. 80-81, 127, 149. In response, Student will be prompted to stop and breathe, do the star breathing, or do finger breathing to get him to re-acclimate and calm, or he may go for a walk with the RBT. See Tr. Vol. II p. 150-151. Student takes Adderall in the mornings and is more distracted and less able to work if he has not had it. See Tr. Vol. II p. 152-153. He also has a slower processing rate. See Tr. Vol. I p. 26-27. Special Education Teacher Gibbs works with him on dual attention and joint focus. Id. Student communicates “quite well” with her, and he has improved tremendously from his expressive behavior from her first month with him to this last month with him. See Tr. Vol. I p. 27. He is now able to speak more clearly, in complete sentences, addresses her by name, and asks for what he wants in a way she can understand and help him access what he needs. Id. She does not see so much intellectual impairment in Student as she sees slow processing speed. See Tr. Vol. I p. 27. Student is now able to come in and do his spelling packet with no prompting. See Tr. Vol. I p. 29. Speech Teacher Martin pushes in for Speech and works on social skills, or Special Education Teacher Gibbs does so if Speech Teacher Martin is not there. See Tr. Vol. I p. 30-32. Special Education Teacher Gibbs teaches reading using Wit and Wisdom, and she supplements it with Epic, which does read-aloud and quizzes. See Tr. Vol. I p. 32-33. For phonics curriculum, the District uses UFLI. See Tr. Vol. I p. 33. Student’s reading level is lower than fifth grade, but she does not recall his reading level. See Tr. Vol. I p. 33. She understands that Student’s iReady and ATLAS scores do not illustrate much of Student’s ability, and she tries to ensure that Student is far more capable than what the standardized tests show. See Tr. Vol. I p. 37. Student can read quite well if it is something of his interest, so she tries to encourage Student’s reading with things he is interested in. See Tr. Vol. I p. 37. In the morning, Student starts with phonics/folder work, with tasks Student has mastered things like one-digit

addition and subtraction, identifying nouns and adjectives, and picking the correct verb to finish a sentence. See Tr. Vol. I p. 38-41, 45. Student has recess, then restroom and snack, then computer or individual time (sometime Speech for Student), and then eats in the lunchroom with nondisabled peers. See Tr. Vol. I p. 39-40. At 12:30 p.m. after second recess, she teaches math and Encore, where Student pushes in with general education peers for PE, art, music, and library, which his RBT attends with him. See Tr. Vol. I p. 41. Student does well in PE; he can run and climb stairs. See Tr. Vol. I p. 41-42. From 1:50 to 2:20 p.m., she teaches social studies and science, and then Student's pack up around 2:30 p.m. See Tr. Vol. I p. 42. Reading goals are addressed throughout the entire day, primarily in the phonics/folder, spelling, reading time, science/social studies, and some computer time. See Tr. Vol. I p. 45-46, 53-54. Writing goals are also addressed throughout the day, in phonics/folder work, and in the spelling packet. See Tr. Vol. I p. 45-47. She counts the spelling packet as writing because she observes him writing. See Tr. Vol. I p. 48. If quarterly progress is missing from an IEP, it can be found on their computer software, EdPlan. See Tr. Vol. I p. 49. Behavior goals are addressed throughout the day. See Tr. Vol. I p. 49-50. Her schedule shows 25 minutes daily for math, and the IEP reflects 80 minutes daily for math, which lines up because computer time gives Student extra math practice. See Tr. Vol. I p. 51. Student's 30 minutes daily for science and social studies lines up with his scheduled time for the subjects. See Tr. Vol. I p. 52. Student's most recent DIBELS testing utilized a fifth-grade passage. See Tr. Vol. I p. 56. As he advances through the grades, the DIBELS passages also advance in difficulty, they contain more words Student had not been exposed to, and there is a different test form given at the beginning, middle, and end of each year. See Tr. Vol. I p. 60-62. At the beginning of fifth grade, he read 14 words a minute on the DIBELS and at the end he read 36

words per minute, and both tests were with passages that he had never seen before. See Tr. Vol. I p. 62-65. Special Education Teacher Gibbs testified that Student made progress in reading during the fourth grade. See Tr. Vol. I p. 66. Only Student's math goals were not collaborative. See Tr. Vol. I p. 94. Goals were not changed or added immediately after Student mastered them, but they were changed at his annual review. See Tr. Vol. I p. 95-96; P. Ex. p. 57-59, 76. She collaborates with Speech or OT on some goals. See Tr. Vol. I p. 71-89. His behavior goal was implemented by all of his team; they all collected data. See Tr. Vol. I p. 81. She incorporates work on behavior goals into the classroom through cooperative play interactions and holding back items for him to request. See Tr. Vol. I p. 86. Student did have a spitting incident at the beginning of fourth grade, which may have been a result of transitioning to a new teacher, new room, and new expectations; by the end of fourth grade, he was less off task and needing fewer prompts. See Tr. Vol. II p. 145-146. In fifth grade, Student's behavior grew in developing social skills, speaking to people in complete sentence, working independently, and sitting and participating in a guided class activity. See Tr. Vol. II p. 147-148. Student's Present Level of Performance was not amended every time Student's IEP was amended. See Tr. Vol. I p. 77. Some of the old goals and information electronically populated on Student's IEPs in Parent's exhibits; however, the District's version of the document printed correctly. See Tr. Vol. I p. 91-123; P. Ex. p. 104, 124-140; D. Ex. p. 164, 221-237. Student's math goal was changed at the annual review in 2025; Student was adding and subtracting double digit numbers. See Tr. Vol. I p. 104. Sometimes, Special Education Teacher Gibbs would keep Student's goals the same but increase the complexity of tasks. See Tr. Vol. I p. 109, 199; Tr. Vol. II p. 29-30. Student's goals are related to grade level standards. See Tr. Vol. II p. 34-40. She testified that iReady did go past second grade. See Tr. Vol. I p.

111-112. She also testified that the drop in Student's DIBELS score from 40 words per minute at the end of fourth grade to 14 words per minute with 9 errors at the beginning of fifth grade was likely due to not being in the classroom through the summer. See Tr. Vol. I p. 114. At the end of fifth grade, Student was reading 36 words with 3 errors. See Tr. Vol. I p. 113-114. "Where and when" questions are harder for kids, as well as comprehension and learning grade level vocabulary across all subjects. See Tr. Vol. I p. 117. She also testified that some of Student's fourth grade goals mistakenly populated onto the fifth grade IEP due to a glitch in the EdPlan system that required technological assistance to correct, which may state they were discontinued. See P. Ex. p. 91; Tr. Vol. I p. 124-127, 195-199. Student memorizes words but can also sound out words. See Tr. Vol. I p. 129. Special Education Teacher Gibbs sometimes uses a highlighter to cover up everything but the line he needed to read because it helps him focus. See Tr. Vol. I p. 129-130. Student struggles with sounding out nonsense words because he knows they do not make sense. See Tr. Vol. I p. 130. It was her opinion that Student read at a kindergarten level of fluency in the fourth grade and was at a first-grade level currently, taking comprehension into consideration, and she opined that he also moved from kindergarten level in fourth grade to first grade level in fifth grade. See Tr. Vol. II p. 141-143. Although Mother testified that Student was no longer being taught to read, Special Education Teacher Gibbs testified that she continued to work with Student on foundational reading and math, even though his goals were directed toward grade level curriculum. See Tr. Vol. VI p. 61; Tr. Vol. I p. 209, 212. The Core Phonics Survey documenting Student's progress on 8/27/24, 1/13/25, and 5/12/25 in alphabet skills and letter sounds corroborates Special Education Teacher Gibbs' testimony. See P. Ex. p. 683. This Hearing Officer finds that Student did continue to receive instruction in foundational reading and

math into his fifth-grade year. Student was doing a great job of learning multiplication by creating visual models to demonstrate that multiplication is repeated adding, and she recently initiated the division goal with modeling. See Tr. Vol. I p. 208-210. In her opinion, Student is reading on about the first-grade level at this point, although he knows all his letters, sounds, and sight words to read words in isolation at a third-grade level. See Tr. Vol. I p. 211-212. When she gives the required annual reading report to Mother, she reports that Student is progressing but not proficient in anything, except place value in math. See Tr. Vol. I p. 212. This spring, Student received his Speech therapy at 10:20 a.m. before computer, and Special Education Teacher Gibbs moved up his math and taught it in the place of computer before he left. See Tr. Vol. I p. 213-215. When she administers the ATLAS and other standardized tests to Student, she is not allowed to communicate with the students, cannot prompt them, cannot tell them to slow down, cannot tell them to read, and cannot tell them to listen to the text to speech; testing is not a preferred task for Student and testing is “not a good representation of what Student can do.” See Tr. Vol. I p. 215-220. She invited Mother several times to come observe Student or do a Google meet to observe, but Mother never reached out to me to set up an observation and has not seen how Student can function in her structured classroom. See Tr. Vol. I p. 220-221. She keeps her raw data on Student’s goals in her binder. See Tr. Vol. II p. 19-20, 27. Speech Therapist Martin does social skills work with the entire class, including Student, to work on his behavior goals. See Tr. Vol. II p. 20. She disagreed with the characterization that the District was teaching Student to parrot and said they are providing sentence stems that Student can use to finish with his own words or ideas. See Tr. Vol. II p. 24-25. Student has work samples that demonstrate his mastery of independently performing two-digit and three-digit addition and subtraction with

borrowing, and Special Education Teacher Gibbs testified these are good examples of his ability to work independently. See D. Ex. p. 821, 822, 831, 847, 849, 857, 860, 864, 865, 866, 868, 870, 871, 879, 880, 881, 882, 895, 897, 898, 905, 907, 908, 913, 915, 916, 918, 925; Tr. Vol. II p. 53-75. Special Education Teacher Gibbs invited Mother to observe Student in the classroom to see what he could do and demonstrates techniques for Mother at conferences, but neither Mother or Father have observed or collaborated with her, despite weekly invitations to do so in person or via Google Meet. See Tr. Vol. II p. 78-80, 123. Mother does not communicate with Special Education Teacher Gibbs but communicates with the Assistant Principal on things that Special Education Teacher Gibbs is open to helping her with. See Tr. Vol. II p. 156. Student speaks in full sentences to Special Education Teacher Gibbs; for example, “Ms. Gibbs, may I have the log-in card?” See Tr. Vol. II p. 84. Special Education Teacher Gibbs provides Student with all the minutes possible for the four hours she has him and addresses each of his goals, but he does not receive all the minutes designated on his IEP. See Tr. Vol. II p. 99-103. School starts at 7:30, Student misses 30 minutes because he is dropped off between 8 am and 8:30 a.m. daily, and he is picked up at noon, which reduces Student’s progress. See D. Ex. p. 516-520; Tr. Vol. II p. 99-103, 124-125, 130-135. She stands by her assertion that Student has made significant progress academically and behaviorally over the past two years in her class. See Tr. Vol. II p. 126. She met ABA Therapist Dr. Mrla in meetings before Student transitioned to her; she completed rater scales for ABA Therapist Dr. Mrla. See Tr. Vol. II p. 131. ABA Therapist Dr. Mrla never observed in Special Education Teacher Gibbs’ classroom. See Tr. Vol. II p. 132. She candidly stated that her interactions with ABA Therapist Dr. Mrla have been negative because Dr. Mrla appeared to bring a lot of her personal feelings into the first meeting, she was 45 minutes

late for the second meeting and had not reviewed the correct proposed IEP. See Tr. Vol. II p. 136. ABA Therapist Dr. Mrla has had no communication with Special Education Teacher Gibbs except for sending her rating scales; the District team has tried to collaborate with ABA Therapist Dr. Mrla but have had no communication back. See Tr. Vol. II p. 139.

49. OT Sutton testified that Student was a “very pleasant child,” “worked willingly,” is cooperative,” and “takes redirection well.” See Tr. Vol. I p. 126. Although she has seen Student get a little weepy wanting Grandpa to pick him up, She has not ever observed any behavior issues with Student, no self-injurious behavior, no destructive behavior, and no aggressive behavior. See Tr. Vol. I p. 126, 135-144. She has heard him having echolalic moments or perseverating, usually repeating something he heard. See Tr. Vol. I p. 143. Student has made significant progress on the WRAVMA from 2019 (SS 73-4th percentile), to 2022 (SS 81), and then to 2025 (SS 85), although his scores might have been lower on the pre-K test due to poor engagement and an inability to follow standardized directions, his RBT sat with him during her recent OT evaluation to get the best test results possible. See Tr. Vol. I p. 126-134; P. Ex. p. 547-549, 539, 507. OT Sutton is extremely pleased with Student’s growth. See Tr. Vol. I p. 131.

50. District OT Sutton had never seen the calculation of OT minutes missed for the 2023-2024 school year; those notes did not belong to her. See P. Ex. p. 564. She explained that she covered several buildings and at times had to attend IEP meetings or other obligations that might result in Student missing minutes; there were also times when he was absent or she might have failed to make a log entry for a session. See P. Ex. p. 564; Tr. Vol. V p. 44-55. She may have pushed in for Student’s May 2024 session. See Tr. Vol. V p. 54-55. Student’s OT time was reduced to 30 minutes per month on March 15, 2024, so the

calculation of OT minutes missed in the spring of 2024 was inaccurate, as it calculated 24 weeks times 30 minutes weekly for the entire 2023-2024 school year, instead of tabulating all log entries. See P. Ex. p. 101, 564-588; Tr. Vol. V p. 44-555. As Student's minutes were reduced to 30 minutes monthly on March 15, 2024, by this Hearing Officer's calculation, instead of receiving 24 weeks times 30 minutes in 2023-2024, Student should have received approximately 18 sessions of 30 minutes instead of 24, and approximately 240 minutes (30 minutes times 6 sessions) should be subtracted from the minutes missed on this basis. Additionally, Student received OT on 10/18/23, but the date was not included in the calculation on P. Ex. p. 564. See P. Ex. p. 564, 574. Further on, on 11/17/23, Student was on a field trip with his class, but the entry appears as if Student refused to meet with the OT. See P. Ex. p. 564, 577-578. On one occasion, 2/2/24, therapist did note she was unavailable due to consulting for another student's IEP. See P. Ex. p. 585-586. Subtracting 240 minutes from Parent's calculation of 435 missed minutes leaves 195 minutes of OT missed in the 2023-2024 school year and 720 minutes provided based on Parent's calculation. See P. Ex. p. 564-588.

51. Based on Parent's calculation, with regard to the 2024-2025 school year, Student should have received 270 minutes of OT (30 minutes times 7 months), but he received 210 minutes. See P. Ex. p. 564. Again, OT Sutton had never seen the calculation of OT minutes missed on P. Ex. p. 564; those notes did not belong to her. See P. Ex. p. 564. OT Sutton explained that she covered different buildings, and if Student was absent or she had other obligations, there might have been times when he missed minutes. See Tr. Vol. V p. 44-48. In addition to documenting the dates services were provided on 8/21/24, 9/18/24, 11/6/24, 12/4/24, 1/22/25, and 4/23/25, OT Sutton's logs reflected Student was

unavailable on 10/16/24, Student received an OT evaluation on 1/15/25, Student received OT evaluation on 2/12/25, OT attended Student's IEP meeting on 3/5/25, Student received push-in services on 3/19/25 that were not noted on P. Ex. p. 564, and Student was on a field trip on 5/9/25. See P. Ex. p. 589-610.

52. Private Speech Therapist Totten testified as Student's private Speech therapist. See Tr. Vol. I p. 140. He had never observed Student in the classroom, spoken to Student's teachers, conferred with the District's Speech therapist, or attempted to collaborate with the District on Student's behalf. See Tr. Vol. I p. 169. He did not attempt collaboration with the District because it was his understanding that the District's therapy framework was different from his; he agreed that he would have no way of knowing what is happening in Student's classroom without asking the District but he did not ask. See Tr. Vol. I p. 169-170. He had not reviewed Student's IEPs, did not submit a communication questionnaire to the District, but he did note that Student made progress on the goals in Speech Therapist Totten's treatment plan. See Tr. Vol. I p. 174-176. He has a graduate degree in Speech/language and had been practicing for about two years. See Tr. Vol. I p. 166-167. He had been seeing Student since July of 2023 after being provisionally licensed since May 15, 2023 and received his full license in June of 2024. See Tr. Vol. I p. 141, 166-167, 185. He explained the difference between typical or analytic language processing and Gestalt Language Processing ("GLP"). See Tr. Vol. I p. 142. It is his analysis that Student learns language through GLP, which starts in Stage 1 as learning chunks of script and echolalia; for example, Student says, "say no thank you" instead of just "no thank you." See Tr. Vol. I p. 142-143. Student falls back to Stage 1 at times when he is upset or frustrated. See Tr. Vol. I p. 143. Student also operates in Stage 2, meaning he can start to adapt the Gestalt script; for example, Student can say, "Let's make a

video” by cutting pieces from a Gestalt he learned and moving them around to make more functional utterances. See Tr. Vol. I p. 144. Student also operates a little bit in Stage 4, meaning that he can start to chop up the large scripts he knows enough to recognize that single words represent a unit, and he can start to use single words appropriately, for example, “wobbly fan” or “dirty fan.” See Tr. Vol. I p. 144. The stages go all the way up to stage 6, but Student’s highest level currently is Stage 4, which is also where self-generated language starts to occur, instead of repeating scripts. See Tr. Vol. I p. 144-145. Speech Therapist Totten testified the best thing that can be done to support Student’s academic goals, like literacy, is to be working to give him supports to work on Stage 4. See Tr. Vol. I p. 146. He does not see a processing speed issue in Student. See Tr. Vol. I p. 148. He does not believe Student was ready or able to work on the goals of answering “who,” “what,” “when,” and “where,” as that tends to come in Stages 4, 5, and 6, while Student still needs support in Stages 1-4. See Tr. Vol. I p. 147-148. Speech Therapist Totten has not worked with him on WH questions, any kind of social inferencing, or body language. See Tr. Vol. I p. 148-149. He also testified that reading and writing are not a priority for Student from the Gestalt neurodiversity affirming framework he is using; it was his opinion that teaching Student writing was not beneficial if Student is still working on being able to verbalize, which would be a reason that Student might lack progress. See Tr. Vol. I p. 149. Writing is a higher-level skill than reading. See Tr. Vol. I p. 149. He opined that teaching writing was not detrimental to Student, but it would be more productive to focus on Gestalt Speech therapy. See Tr. Vol. I p.149-150. He testified that time with a Speech pathologist at school would be beneficial and missing speech time would be detrimental. See Tr. Vol. I p. 152. Exposing Student to new vocabulary is very important to his progress, but it needs to be in a way he is invested in and

play-based. See Tr. Vol. I p. 151-152. He does not believe work sheets with vocabulary would benefit Student. See Tr. Vol. I p. 153, 165. Speech Pathologist Totten has seen a few instances where Student became frustrated, either because Speech Pathologist Totten is not understanding what Student needs or Student is having difficulty building a project or manipulating his physical environment in a way that is not possible. See Tr. Vol. I p. 161-162. During times of frustration, he has seen Student throwing toys, breaking toys, hitting the therapist once or twice, and bit in frustration on one occasion. See Tr. Vol. I 160-161. Speech Therapist Totten has observed that Student's receptive language is better than his expressive language. See Tr. Vol. I p. 162. Standardized tests are not designed for neurodiversity, they are necessary to get Student services through insurance, but they are not the best ways to fully reflect his strengths or weaknesses. See Tr. Vol. I p. 163. He does not base his treatment goals on standardized test results; observation of Student's performance is a better measure of his strengths and weaknesses. See Tr. Vol. I p. 163, 177, 183. He recently prescribed that Student needs 120 or up to 180 minutes of Speech therapy weekly for one year, and he sees Student outside of school and cannot see him the entire prescribed time due to scheduling around school. See Tr. Vol. I p. 150. Teaching Student using video would be more effective. See Tr. Vol. I p. 163-164. He believes Student's communication will remain very limited if he does not receive the prescribed Gestalt speech therapy in the prescribed amount. See Tr. Vol. I p. 184-188. He would not dispute that his February 28, 2024 evaluation may not have been provided to the District until January 14, 2025. See Tr. Vol. I p. 190-192. He sees Student from 4:30 to 5:15 p.m. on Thursdays and from 3:45 to 4:30 p.m. on Fridays, and he does not know that Student leaves school at noon each day. See Tr. Vol. I p. 192-193.

53. Speech Therapist Martin had been Student's Speech therapist since he was in kindergarten. See Tr. Vol. II p. 167. She received her Masters in Communication Disorders in December of 2003, got her certifications in the fall of 2004, and has been practicing since then, about 21 and a half years. See Tr. Vol. II p. 167. When she first started working with Student in kindergarten, Student used more 1-word phrases, gestures, and pointing to communicate. See Tr. Vol. II p. 169-170. He was "limited verbal" and would say "cookie" to request a cookie. See Tr. Vol. II p. 170. Speech Therapist Martin's first evaluation of Student was in 2022, and he understood classroom vocabulary, used plurals, used pronouns, used correct word order in sentences, speech was intelligible 70 percent of the time, and used age-appropriate articulation. See P. Ex. p. 336-340; Tr. Vol. II p. 171-178. In 2022, Parent reported Student was difficult to understand, slower speech and motor skills, gets angry easily, upset when disappointed, day-dreams, is disorganized. See Tr. Vol. II p. 179-180. Student's expressive and receptive language skills are fairly equal because his inattention affects his receptive abilities, and he is profoundly delayed in both areas. See Tr. Vol. II p. 182-187. The decrease in Student's scores on the OWLS reflects that Student is not gaining language at the rate of an average child, so the deficit is getting larger. See Tr. Vol. II p. 195-204. However, his lower scores do not reflect lower skills; to determine if he is gaining skills, she would look at his production on a day-to-day basis. See Tr. Vol. II p. 204. She testified she was providing Student with the time prescribed on the IEP. See P. Ex. p. 143; Tr. Vol. II p. 206. In the April 2022 IEP, Speech Therapist Martin recommended Student's minutes decrease to 60 because he would be getting one on one sessions instead of group; he was too distracted in group therapy. See Tr. Vol. II p. 213-215. Speech Therapist Martin's OWLS evaluation in 2025 was consistent with the evaluation done by Post, so there was no practice

effect. See P. Ex. p. 308; Tr. Vol. II p. 216-222. Speech Therapist Martin asserted that Student made progress; she values raw scores instead of standard scores because they show the increase in skills. See Tr. Vol. II p. 224-229. She frankly admitted that she did not know how many missed sessions there were and that she is required to provide the minutes on the IEP. See P. Ex. p. 359-364; Tr. Vol. II p. 229-238. For fifth grade, she believed Student had 4 or 5 Speech goals and admitted he met none of them; his IEP prescribed 60 minutes weekly for Speech therapy. See P. Ex. 367-505; Tr. Vol. II p. 238-241. She could not confirm Parent's math regarding minutes missed. See Tr. Vol. II p. 240-241. She also pushed in once weekly for 30 minutes for Student, but she does not document those as one-on-one sessions. See Tr. Vol. II p. 242. If Student was not progressing, she would consider adjusting minutes, trying a different therapist, or dismissing them from Speech. See Tr. Vol. II p. 244-245. For Speech practice like in the favorite candy video, Student first required a lot of prompting, and now, she only has to tell him "this is what we are going to ask." See Tr. Vol. II p. 246-247. She was familiar with the Gestalt language development, using phrases first, and she would like to know how Speech Therapist Totten is measuring his progress. See Tr. Vol. II p. 248. Later, she recalled using Gestalt theory to treat children 20 years ago, although she did not know if it was a generally accepted method of providing Speech therapy. See Tr. Vol. II p. 271-272. Speech Therapist Martin emails Mother when Student does something that would bring her joy or has been a success, but Mother never communicates things Student has done back to Speech Therapist Martin. See Tr. Vol. II p. 259. Student has never had maladaptive behavior with her other than stemming. See Tr. Vol. II p. 260-265. She is really proud of his progress over the past two years, especially his development of conversational skills. See Tr. Vol. II p. 262-263. He is now excited to go ask questions to practice. See Tr. Vol. II p. 269-270. He can

sequence pictures now or re-tell a story; then she will fade the visuals. See Tr. Vol. II p. 268.

54. Speech Therapist Martin's logs reflect many sessions of services and also many sessions in which Student was absent, in testing, or involved in other school activities. For the 2023-2024 school year, Parent calculated that Student received 840 minutes of Speech therapy and missed 1,320 minutes of Speech therapy. See P. Ex. p. 357-358. This Hearing Officer finds Parent's 2023-2024 speech therapy calculation to be inconsistent with the available dates for speech therapy as reflected by the speech therapy logs. See P. Ex. p. 359-364. Speech Therapist's logs reflect 42 sessions of services provided and 59 missed sessions. See P. Ex. p. 359-364. There were 10 sessions in which Student was absent (11/7/23, 11/8/23, 2/5/24, 2/19/24, 2/22/24, 5/22/24, 5/23/24, 5/24/24, 5/25/24, 5/26/24), 14 in which Student was testing or involved in other school activities (9/18/23, 10/26/23, 10/31/23, 11/9/23, 11/14/23, 1/18/24, 2/21/24, 3/7/24, 3/12/24, 4/29/24, 4/30/24, 5/1/24, 5/2/24, and 5/12/24), and 5 snow days (1/16/24, 1/17/24, 1/22/24, 2/12/24, 2/13/24). See P. Ex. p. 359-364. Other times, Student missed speech service minutes because therapist was absent on two occasions (11/2/23, 4/8/24), in conference for Student on 3 occasions (9/21/23, 11/15/23, 3/15/24), in professional development or other District duties on 19 occasions (8/28/23, 9/22/23, 10/19/23, 11/29/23, 12/4/23, 12/5/23, 12/11/23, 12/13/23, 1/29/24, 1/30/24, 3/28/24, 4/3/24, 4/8/24, 4/9/24, 4/15/24, 4/18/24, 4/23/24, 5/6/24, 5/10/24). See P. Ex. p. 359-364.

55. For the 2024-2025 school year, Parent calculated that Student should have received 1800 minutes of Speech therapy based on the multiplication of 30 weeks times 60 minutes per week; however, this Hearing Officer finds Parent's calculation of total minutes that should have been provided, and therefore, Parent's calculation of minutes missed to be

inconsistent with the available dates for Speech therapy as reflected by the Speech therapy logs. See P. Ex. p. 365-505. Parent calculated the number of minutes provided at 980 minutes, which was calculated by tabulating the sessions from the Speech therapy logs. See P. Ex. p. 365-366. Speech Therapist's logs reflect 47 sessions of services provided and 11 missed sessions (20 minutes per session times 11 missed sessions equals 220 minutes missed). See P. Ex. p. 367-505. The logs reflected 1 session from which Student was absent (4/10/25), 4 in which Student was testing or involved in other school activities (10/15/24, 1/27/25, 2/11/25, 2/24/25), and 2 snow days (2/18/25, 2/20/25). See P. Ex. p. 365-505. On four dates, Student missed speech service minutes because therapist was absent on 3 occasions (10/28/24, 2/4/25, 2/6/25), or in professional development or other District duties on 1 occasion (2/10/25). See P. Ex. p. 367-505.

56. Private OT Smith testified that she provides Student OT services outside of school. See Tr. Vol. III p. 7. She received her doctorate in OT from University of Arkansas and University of Arkansas for Medical Sciences in 2022, and she passed her boards and started working as an OT with Post in February of 2023. See Tr. Vol. III p. 8, 31. Student was referred to her by Speech Therapist Totten at Post because Student was having emotional regulation issues while working with Speech Therapist Totten. See Tr. Vol. III p. 31-32. She first evaluated and began treating Student in November of 2023. See Tr. Vol. III p. 8. She has focused OT services on helping Student stay in a room and work longer at the table using a timer and allowing him to take a break after working for five minutes, which increased his ability to attend to 15 or 20 minutes. See Tr. Vol. III p. 9, 15-17. They worked on buttoning his shirt, which he mastered about six months ago, and they are working on tying his shoes, focusing on what the parents wanted to develop his activities of daily living ("ADL") for

independence. See Tr. Vol. III p. 9, 17. She last evaluated Student in October of 2024, and he continued to score well below average in all fine motor and visual motor areas that she assessed using the BOT-2. See Tr. Vol. III p. 10; P. Ex. p. 517-520. For fine motor skills, he struggled with copying simple and complex shapes accurately, which she sees as one of his main deficits, and to work on that, she will do activities like mazes and folding paper. See Tr. Vol. III p. 11. Attention is one of his biggest deficits, especially with completing tasks for the assessment. Id. She has worked with him on writing his name but not on writing from dictation. See Tr. Vol. III p. 12, 18. At his age, she is looking more at the functional things he needs to do in school or after school. Id. Learning keyboarding might benefit him more than work on writing and work on typing began but has not gotten far; it will be a struggle for him. See Tr. Vol. III p. 12-14. Student's handwriting is legible and fine. See Tr. Vol. III p. 13. She has never seen Student's handwriting samples from school, has never observed Student at school in the classroom or on the playground. See Tr. Vol. III p. 33-34. Student stopped OT with her since January due to his schedule change not aligning with her schedule; he was working on shoe tying and doing well. See Tr. Vol. III p. 13, 27. Student is mostly nonverbal with her. See Tr. Vol. III p. 20. She had not had any interaction with the District, the OT there, and she has no knowledge of the services Student receives at school. See Tr. Vol. III p. 22, 33. In looking at the District's OT evaluation, her results were significantly lower (2 standard deviations below average) than their results on the WRAVMA in all areas (low average), but she was not super familiar with the WRAVMA. See Tr. Vol. III p. 23-26; P. Ex. p. 520, 507. Comparing the Sensory Processing Measure from the school to hers, she saw severe difficulties from the parent questionnaire, and the teachers scored him in the typical range or having moderate difficulties on the District assessment. See Tr. Vol. III p. 27-29; P. Ex. p.

509, 521. If she had observed Student in the classroom or on the playground, she admitted she would have actual knowledge of his abilities instead of having to infer them from her standardized testing. See Tr. Vol. III p. 35, 38. Mother asked her to focus on typing because his handwriting was illegible, but she found his handwriting to be legible. See Tr. Vol. III p. 35-36; D. Ex. p. 403. She agrees that she does not know if Student's attentiveness affects his ability to function in the class; her statement is an inference. See D. Ex. p. 320-323; Tr. Vol. III p. 37.

57. Videos were introduced into evidence, and some were reviewed during the hearing and accompanied by witness questions. The Apple Picking Video demonstrated Student's ability to decode/read words in a short passage about apple picking at home at Mother's request. See Apple Picking Video; Tr. Vol. I p. 153. In response to Mother asking "WH" questions, Student responded by repeating relevant phrases to the passage, like "pick apples next year" or vocally stemming, but Student did not exhibit comprehension of the text. See Tr. Vol. I p. 154-155. Special Education Teacher Gibbs states she has seen Student read better than that, depending on his level of interest. See Tr. Vol. I p. 222-223. Speech Pathologist Totten testified this meant that Student was not yet ready for "WH" questions. See Tr. Vol. I p. 155. In the Vocabulary Video, Mother was asking Student to identify the definition of words; Student demonstrated his ability sound out words like "arranged," but he guessed at the definitions from multiple choice answers and appeared not to understand the task, which Special Education Teacher Gibbs explained was because there were distractions. See Vocabulary Video; D. Ex. p. 983; Tr. Vol. I p. 157-158; Tr. Vol. II p. 116-120. Student has made videos doing weather reports on tornados and the Ceiling Fan Video was taken in April of 2025 at school, which demonstrated communication skills. See Tr. Vol. I p.

224-226. The Math Place Ten Video demonstrated Student independently adding to 46 using manipulatives. See Tr. Vol. I p. 227-228. Video IMG6092 demonstrated Student working in a small group on math despite distracting noises, and he no longer needed manipulatives. See Tr. Vol. I p. 229-231. Video PXL 2024 12 03 demonstrated Student working on Speech and social skills asking various people the name of their favorite snack. See Tr. Vol. I p. 229. In Video PXL 2024 12 16, Student was working with Speech Therapist Martin on a Speech goal. See Tr. Vol. I p. 229-232. Video Math 225251000 demonstrates Student playing with math manipulatives and upset at home; he is crying but correctly says 86 minus 68 is 22, although Mother does not use the terminology that Student is accustomed to in the classroom. See Tr. Vol. II p. 77-78. The Mars Concert Video reflected Student quiet and attending to a concert. See Tr. Vol. II p. 82. The Echolalia Video showed Student singing “around the world.” See Tr. Vol. II p. 83-84. In the Computer Video (IMG6095), Student sits in front of his computer for 20 seconds distracted by a playground visible to him through a window; he was prompted and returned to task. See Tr. Vol. II p. 85. Video IMG6059 was created on March 4, 2025 and shows him doing subtraction with regrouping at his desk in his classroom with no assistance and writing down the answers. See Tr. Vol. II p. 87-90; Ex. p. 898. In the Video taken on 3/6/2025, Student was receiving assistance with regrouping, and he was shown as mastering the goal on 3/15/25 because she reviewed his work over the whole year in determining if a goal was mastered, not just one work sample. See D. Ex. p. 898; Tr. Vol. II p. 90-95. Video PXL 2025 03 03, The Pidgeon Story demonstrates Student with Speech Therapist Martin; he is identifying characters in a story as pidgeon and duck, summarizing that Pidgeon wanted a hot dog, reading the sentence “Pidgeon doesn’t want to share his hot dog,” and then independently commenting “He likes hot dog. Puts on a bun. Uses mustard on

his hot dog. My favorite food is hot dogs.” The Pidgeon Story Video demonstrated Student reading and having some comprehension of what he read. See Tr. Vol. II p. 105. Speech Therapist Martin read the pidgeon book with Student, and she was working on comprehension to develop his receptive language. See Tr. Vol. II p. 253-254. In the Suffixes Video 1053, Student got seven of seven answers correct. See D. Ex. p. 982; Tr. Vol. II p. 107-115. The Tornado is Coming Video and the Christmas Taste Test Videos were taken before Christmas. See Tr. Vol. II p. 248-250. In the Tornado is Coming Video, Student says, “We gotta go to our house. See bout our house. It’s a thunder cloud. Go open the door. Get in the truck.”; Student communicated better on the video than in person. See Tr. Vol. II p. 250. In the Christmas Taste Test Video, Student says, “here doing Christmas taste test. It’s gross and that’s gross.” In the videos supplied by Parent (Earth Day and Suffixes), Special Education Teacher Gibbs noticed that Student had the same shirt on, suggesting he was being asked to do the tasks around the same time, which would lead to lower focus and performance. See Tr. Vol. II p. 121-122. Some videos were taken outside the timeframe of this matter, including DIBELS, Earth Day and Suffixes videos. See Tr. Vol. I p. 224-225; Tr. Vol. II p. 86.

58. Mother testified Student her experiences with Student and her concerns, and her primary concern was that Student was not receiving ABA therapy at school. See Tr. Vol. VI p. 64-65. Mother is an attorney and has advocated well for Student throughout his life, obtaining a diagnosis of autism for Student before age 2 and beginning ABA therapy for him at age 3. See Tr. Vol. VI p. 7-21. Student has to be taught things that most children learn naturally, and ABA therapy gave the family tools to work with him. See Tr. Vol. VI p. 12-21. In preschool ABA therapy helped Student learn to attend to a task, sit in a chair, toileting, making requests (manding), labeling, learning his sounds and letters, counting to 10. See Tr.

Vol. VI p. 21-24. When Student started kindergarten in the District, she requested ABA therapy in his school environment based on the recommendation of Student's ABA provider and was told that the District did not allow that. See Tr. Vol. VI p. 24-27. She does not believe that Student can benefit from ABA therapy as well if it is not in his natural environment including his school environment. See Tr. Vol. VI p. 36. In August of 2022, Mother expressed in an IEP meeting that a one-on-one aide might help Student progress. See Tr. Vol. VI p. 137-138. Because Student was too tired from doing therapy after school and was missing education, she stopped Student's "medically necessary ABA" for 16 months starting in March of 2023 to August of 2024 (last half of third grade through fourth grade), defying medical advice, so that Student could attend school full day at the school's request, and it weighed heavily on [her]. See Tr. Vol. VI p. 37, 104-108, 121-122. 44. She felt that the District scheduled special education services at times that Student would be absent from school receiving private ABA therapy and that the District pressured her not to take Student out of school for ABA therapy. See Tr. Vol. VI p. 36. Student expressed to her that he could not handle the half day of school and then therapies however he could, and when asked whether he preferred to go to Hopebridge or stay at school, Student said "full day." At a month into full days of school, Student was happier at home when he was attending school for the full day, but the negative behaviors and regression started manifesting later. See Tr. Vol. VI p. 121-122. She was not able to find an ABA provider for Student in the summer of 2024, so he went without ABA therapy that summer. See Tr. Vol. VI p. 122. While Student was not receiving ABA therapy, he wrapped a rope around his neck, his intolerance for the word "no" ticked up, Student began to hit himself and throw things when forced to do a nonpreferred activity, and he was more in his own world. See Tr. Vol. VI p. 39-40, 106-107. The doctor

saw his behaviors and said “get him back in ABA,” and it took four months to get him back into ABA therapy. See Tr. Vol. VI p. 41. When he went back to ABA therapy in January of 2025, Student went back to half days of school, though Mother never wanted to take Student out of school. See Tr. Vol. VI p. 106-107. Student’s outside providers were stressing that ABA therapy was the only evidence-based therapy for autism to remedy his deficits, and she took letters to the District from Dr. Jewel and Heather Humphrey. See Tr. Vol. VI p. 37-38. She has also seen Student benefit from ABA therapy throughout his life. See Tr. Vol. VI p. 38. It is important to Mother that Student learn to read, and they work on reading at home. See Tr. Vol. VI p. 41-44. She was concerned that Student’s recent reading goals include having text read to him, instead of him reading. See Tr. Vol. VI p. 45-46. She did not believe Student had progressed even one grade level in reading during his time at the District. See Tr. Vol. VI p. 46-47. She does get reading reports from the District but admitted she failed to look deeper to understand them. See Tr. Vol. VI p. 123-124. She was given access to Student’s Triand but did not access it to review his scores. See Tr. Vol. VI p. 126-128. She admitted she was offered in-home training with District BCBA Hindergardt, but she declined it. See Tr. Vol. VI p. 128. She first requested an AAC device and received training from the District on the device for Student but then decided against it because of concerns about Student becoming dependent on it. See Tr. Vol. VI p. 128-130. She agreed that the District offered her the opportunity to observe Student in the classroom in person or virtually but did not do so because she did not believe her observation would result in something actionable and meaningful for Student, so she has no knowledge of how Student performs in the classroom. See Tr. Vol. VI p. 130-133. She does not know, has never spoken with BCBA Hallman, and has not seen her findings, although she was aware that ABA Therapist Dr. Mrla did send someone to observe Student

in the classroom. See Tr. Vol. VI p. 133-135. ABA Therapist Dr. Mrla never observed Student in the class, and Mother admits she relied on ABA Therapist Dr. Mrla. See Tr. Vol. VI p. 134-136. None of Student's 11 private providers have observed Student in the classroom; they have observed him outside the classroom. See Tr. Vol. VI p. 135-136. She took videos of Student that she testified reflect that Student missed basic words, gets some words correct, but has no comprehension of what he read. See Tr. Vol. VI p. 48-49. She requested that Student be held back in second grade and again in fifth grade, and she testified she was told they do not hold kids back. See Tr. Vol. VI p. 60-63. She admitted she agreed to have Student move on from the second grade and fifth grades but remain in the same classroom. See Tr. Vol. VI p. 62-63. Mother testified about her concerns with Student's education, and they are summarized in her parental participation letter submitted on January 9, 2025. See D. Ex. p. 527; Tr. Vol. VI p. Mother's concerns were: District's refusal to allow medically prescribed ABA therapy in the classroom, inadequate progress on IEP goals, District's failure to align what the BCBA and RBT were providing with medical standards, lack of data collection and analysis. See D. Ex. p. 541. Mother has not met with the District's BCBA. See Tr. Vol. VI p. 65-66. Student is not being provided ABA therapy in Mom's opinion, as it is not being implemented properly, based on her observation that Student has become more prompt dependent. See Tr. Vol. VI p. 66-73.

59. Between August of 2024 through spring of 2025, Mother testified she was being sent home sheets with check marks indicating Student completed work perfectly and a smiley face, and she did not receive this behavior data until it was produced for the hearing. See Tr. Vol. VI p. 79-80. Mother testified she was "devastated" when she saw the behavior data gathered by the District, as these were missed opportunities to get help for Student;

Mother faulted the District's actions throughout her review of the data because it had not been shared with Parents and Mother at times stated that ABC data was not taken thoroughly. See Tr. Vol. VI p. 74-97; D. Ex. p. 1464-1559, 1598-1684. When asked a second time, she restated that Student's behavior data was not shared with her in any form. See Tr. Vol. VI p. 112-113. Mother reviewed the notes of the District's Registered Behavioral Technician ("RBT") reflecting behaviors that she interpreted as physical manifestations of his frustration, emotional distress, agitation, and needing to calm down. See D. Ex. p. 1598-1684. See Tr. Vol. VI p. 75-80. She testified Student had behavior incidents indicating distress, frustration, stress, being overwhelmed, and physical aggression approximately once per month over the eight months of data gathered, and she testified that was consistent with what she was seeing and was a truthful reflection of her child. See Tr. Vol. VI p. 79-80. On September 16, 2024, Student was completing a worksheet between first recess and lunch when he became distressed, cried, and hit the table; a timer was implemented, Student was comforted, and Student followed through with the sheet; then after 3 more sheets, Student became distressed, cried, hit the table, tried to throw his paper, spit on his paper, and remained distressed until time to go to lunch. See D. Ex. p. 1612; Tr. Vol. VI p. 81-82. On September 26, 2024, during morning table work, Student engaged in hitting his head one time after being prompted to attend to a spelling sheet, the RBT shifted Student to work on a different sheet, and Student completed it independently after minimal prompting, which Mother felt was an appropriate intervention by the RBT because it stopped the self-harming behavior. See Tr. Vol. VI p. 82-85; D. Ex. p. 1617-1618. On October 29, 2024, before Encore and after going to poop, Student was saying "Stop it. You're not going to grandpa's house." and grabbing his wrist repeatedly; after one sheet, Student was allowed to decompress,

which Mother also felt to be an appropriate response, and Student ate more than usual at lunch, causing the RBT to hypothesize that Student may not have taken his medication. See D. Ex. p. 1630; Tr. Vol. VI p. 85-86. On January 24, 2025, from morning table work time to recess, while taking a spelling test, Student became upset, hit his pencil on the table forcefully, scratched his paper forcefully, and began to cry while repeating the phrases “grandpa’s house is dead,” “daddy pick me up in a truck,” and “no more house.” See D. Ex. p. 1652-1653; Tr. Vol. VI p. 86-88. In response, the RBT completed the test with Student, prompted him to do folder work, which caused him to cry, so the RBT suggested a snack, drink, and walk, to which Student responded with “say no thank you,” so the RBT offered a five-minute break to see if it would create a conducive environment for working. Id. After the break, when Student was offered a different sheet to work on and Student agreed, Student began to cry again, hit the table, broke his pencil, and rushed through his speech. Id. The RBT offered a different sheet, which first seemed to ease Student’s behavior, but then, Student began to cry while continuing to do his work until time for recess. Id. Mother did not feel the RBT’s response was appropriate because it was not effective in her opinion. Id. On January 27, 2025, during morning table work and upon returning from the bathroom, Student bit his wrist but did not engage in the behavior again, the RBT took data on the occurrence, and then Student went on to complete two sheets of work. See D. Ex. p. 1652-1653; Tr. Vol. VI p. 86-88. On March 12, 2025, after first recess, Student was working on folder work, became upset, and hit the paper on the table to get the RBT’s attention when Student could not figure out how to solve the problem independently; the RBT prompted him to ask “help me” and the RBT assisted him, which Mother felt was an appropriate response. See D. Ex. p. 1667-1668; Tr. Vol. VI p. 90-91. On March 18, 2025, during morning

table work and during a brain break, Student became upset, hit his desk, and began to show signs of crying; he was prompted to mand for assistance if needed and did so, along with thanking the RBT to assistance, which Mother found was not appropriate because data was not taken when Student was hitting property. See D. Ex. p. 1669; Tr. Vol. VI p. 91-92. On March 19, 2025, during morning table work and while completing folder work, Student became upset, began to cry, and hit at his work; the RBT offered a different sheet, different location, and a break, which Student turned down and remained upset until the RBT prompted him to a quiet location where he calmed down and afterward completed his work before recess, which Mother found flawed because ABC data was not documented properly in her opinion and parents were not told. See D. Ex. p. 1670; Tr. Vol. VI p. 92-93. Mother believed that the District failed to properly gather Antecedent-Behavior-Consequence (“ABC”) data per ABA standards, so she believed the District lacked the data needed to respond to Student’s behaviors appropriately from an ABA therapy perspective. See Tr. Vol. VI. p. 87-93. Mother testified that District staff had consistently reported that Student made academic progress in reading, writing, and math and that his behavior was not impeding his academic progress. See Tr. Vol. VI, p. 71-81. 33. She also faulted Student’s fourth, fifth, and sixth grade IEPs because the reading goals permitted Student to listen to a text instead of reading it. See D. Ex. p. 231, 201, 67. Because Student could not perform the tasks at home at her request, Mother did not believe Student perform the academic skills that the District reported Student had mastered, such as adding and subtracting double digit numbers or his reading and writing goals. See D. Ex. p. 35, p. 226-27; Parents’ Videos re: Apple Picking, Earth Day, Math, Spelling, Suffixes, and Vocab; Tr. Vol. VI p. 47-81. She made the videos of Student to show that the District was saying Student could do things that he could not do, and she

shot the videos one after the other. See Tr. Vol. VI p. 142-143. Based on her experience with Student at home, Mother also testified that she believed Student had major behavioral issues that were impeding his learning. See Tr. Vol. VI p. 70-81. Mother also testified that there was a disconnect between what she saw at home and the District's reports regarding Student, and she had been confused that the District did not seem to be seeing what she saw at home. See Tr. Vol. VI p. 74. She believes Student would be a completely different child if he had ABA in the school setting since kindergarten, and she listed that he would have worked on toileting and washing his hands properly, opening food items, engaging with other children, using playground equipment, making eye contact, using eating utensils properly consistently, and accepting being told "no." See Tr. Vol. VI p. 99-102. Mother admitted Student was consistently 15 minutes late to school in fifth grade and fourth grade because Mother has to drop off his sister at a separate school, and Student is checked out of school at 11:30 a.m. daily. See Tr. Vol. VI p. 114-120, 143-144. She was not aware that Student would be eligible for a special needs bus. See Tr. Vol. VI p. 144-145. Mother explained Student missed eight of the first 36 days of school in the 2024-2025 school year because the family attended a work conference with Mother. See Tr. Vol. VI p. 117-118. She testified Student needs his prescribed ABA therapy of 35-40 hours weekly in his school environment, that follows a treatment plan, tracks real time data, and can make fluid adjustments to help him reach what he is capable of reaching, and then can be faded out. See Tr. Vol. VI p. 98-99, 108-110.

60. Parents filed the Complaint on April 24, 2025, and the Parties have remained in "stay put" since April 24, 2025. See Complaint. In the Complaint, Parents requested ABA therapy for Student at school, reimbursement for private ABA Therapy, ABA Therapy added

to Student's IEP, an Independent Educational Evaluation ("IEE") because Parent's disagreed with the District's last evaluation not being administered as standardized, and compensatory education See Complaint at p. 6.

CONCLUSIONS OF LAW AND DISCUSSION:

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children who are eligible for special education services. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.300(a). FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In 1982, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by hearing officers in determining whether a school district has failed to provide FAPE as required by federal law. *See Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982). First, a hearing officer must determine whether the State in the form of the local education agency or district, complied with the procedure set forth in IDEA. *Id.* Then, the hearing officer must determine whether a student's IEP was reasonably calculated to enable to the student to receive educational benefit. *Id.* The burden of proof falls on the party seeking relief. *See Sneitzer v. Iowa Dep't of Educ.*, 796 F.3d 942, 948 (8th Cir. 2015).

An IEP is a comprehensive program prepared by a child's "IEP Team," which includes teachers, school officials, the local education agency (LEA) representative, and the child's parents; an IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. §1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement of the special education and related services to be provided to the child." *Id.* § 1402(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child

with a disability”; “related services” are the support services “required to assist a child . . . to benefit from” that instruction. *Id.* §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services “in conformity with the [child’s] individualized education program,” or “IEP.” 20 U.S.C. §1409(9)(D). When formulating an IEP, a school district “must comply both procedurally and substantively with the IDEA.” *Rowley*, at 206-07.

I. IDEA Procedural Compliance

Pursuant to *Rowley*, a hearing officer must first determine whether the District complied with the procedures set forth in IDEA. For a child to be denied a FAPE, the procedural inadequacies must (1) impede the student’s right to an appropriate education, (2) seriously hamper the parent’s opportunity to participate in the decision-making process, or (3) cause a deprivation of educational benefits. *See K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804-805 (8th Cir. 2011); 20 U.S.C. § 1415(f)(3)(E)(ii)(I)-(III). The U.S. Supreme Court held that a school district cannot refuse to consider parents’ concerns when drafting an IEP and cannot predetermine the educational program for a disabled student prior to meeting with parents. *See Schaffer v. Weast*, 546 U.S. 49, 53 (2005). Predetermination could deprive parents of a meaningful opportunity to participate in the formulation process pertaining to the IEP. *See Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424 (8th Cir. 2010). “The IDEA explicitly requires school districts to include parents in the team that drafts the IEP to consider ‘the concerns of the parents for enhancing the education of their child’ and to address ‘information about the child provided to, or by, the parents.’” *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Cir. 2012) (citing 20 U.S.C. § 1414(d)(3)(A)(ii), (d)(4)(A)(ii)(III)). However, the IDEA does not require a school district

to accede to parents' demands without considering suitable alternatives; a district does not procedurally violate the IDEA simply by failing to grant a parent's request.

In this matter with regard to the procedural violations addressed below or any other procedural violations alleged, this Hearing Officer found the Parents failed to meet their burden of proving any procedural violation deprived Student of educational benefit or significantly impeded Parents' ability to participate in Student's education.

A. Request for Private ABA Therapy at School

Second, Parents allege that the District committed a procedural violation of IDEA in failing to document or consider Parents' request for private ABA Therapy at school in the September 2023 IEP and in each IEP thereafter. Although the September 2023 IEP and Notice of Action do not document Parents' continued request for private ABA Therapy in school; their request and the discussion of private ABA Therapy was documented in the April 2022 IEP and in the February 2023 IEP. In the March 2023 IEP and related Notice of Action, documentation reflected that Mother was trying to combine the medical and psychological advice with the educational setting regarding outside supplementary services [referencing ABA therapy]. There was to be an "ongoing discussion with Dr. Perry at a later date," and the meeting was continued in April of 2023, in which Parents' request and ABA Therapist Dr. Mrla's recommendation for private ABA in the school setting was discussed, the District offered to provide an RBT in response. When the team met for the September 2023 IEP, consultant Kelly Perry was in attendance.

The September 2023 IEP does include the notes from the prior to IEP meetings, reflecting that the team was discussing the provision of outside ABA therapy, District's decision to provide Student an RBT, and Mother's submitted a letter from ABA Therapist Dr.

Mrla and others requesting the District permit private ABA therapy in school for Student. The September 2023 IEP also documents Mother's participation and input in regarding the RBT, including that she would be allowed to observe, receive data taken, submission of goals from the Hopebridge treatment plan, and request for goals to help Student become more independent. Parents argue that the decision to decline to permit private ABA therapy to Student at school was predetermined, and the evidence was clear that the District had a policy prohibiting it. However, ABA Therapist Dr. Mrla admitted that Parents were also told that Student did not have a need for ABA Therapy in school, and the District permitted ABA Therapist Dr. Mrla to send an observer to confirm that. Special Education Teach Olsen credibly confirmed that BCBA Hallman did observe Student in her class and found Student had no need for ABA Therapy at school. The evidence reflects that Parents' request for private ABA therapy in school was well documented, discussed, and concluded with the District's providing an RBT for Student. Parents argue that the provision of the RBT was unilateral and not what they wanted, but based on the documentation and testimony of BCBA Hindergardt, it appears that the District's provision of the RBT was an attempt to reach a middle ground solution with Parents and that the District believed Parents wanted an RBT in the school. Further, in light of the process of considering Parent's request for Private ABA over the course of several IEPs and conferences and the accompanying exploratory actions of the District, this Hearing Officer finds the evidence does not support a finding of predetermination in the September 2023 IEP or the IEPs thereafter. This Hearing Officer further finds that the evidence does not substantiate a finding that the District failed to document Parents' request or failed to provide Parents' meaningful participation in Student's education. Therefore, the evidence does not support a finding of a procedural

violation of IDEA on this point. As discussed above, a district does not procedurally violate the IDEA simply by failing to grant a parent's request.

Moreover, additional mentions of predetermination by the District were made by Parents with regard to the District's denial of Parents' request to retain Student. However, Mother admitted she withdrew her requests and agreed to permit Student to move forward. Even if she had not, the evidence does not support that any educational deprivation resulted to Student from the denial of that decision.

B. School Day

Here, Parents allege that the District committed several procedural violations of the IDEA. The first allegation is that the District committed a procedural violation by failing to note Student's reduced time in his IEP, although the District was aware that Student was leaving school mid-day. However, several of Student's IEPs noted that Student was leaving school early, for example the August 2022 IEP and February 2023 IEPs. The District noted that it stood ready to offer full day programming to Student and that it was Parents' choice for him to leave early. Further, to the extent this was a procedural violation, this Hearing Officer finds it had no detrimental effect on Student's education or parental participation and does not amount to a denial of FAPE.

C. Reports to Parent

Parents argue that the District failed to report Student's progress to Parent in a meaningful way, as required by IDEA. However, Parent admits that she received reports on Student's progress and reading levels from the District. She just failed to dig deeper to understand what they meant. In addition, Mother admitted she failed to access Student's Triand results until April 9, 2025, despite being given access and instructions on how to do

so earlier. Mother's failures to understand or access the information given to her cannot retrospectively be held against the District as a failure on their part to provide information.

Further, Parents argue that the District violated IDEA in failing to report Student's behaviors to Parent. Although Parent stated she never received data from Student's BCBA and RBT, her Parental Participation letter includes comments on the behavior charts provided by the BCBA and RBT that summarizing Student's behaviors found in the RBT's data. Parent was not previously given the supervision communications between RBT and BCBA. This Hearing Officer does not find a procedural violation with regard to the District's reporting of information to Mother regarding education or behavior.

II. Allegations of Substantive Violations of the IDEA

Next, this Hearing officer must consider whether the District substantively provided FAPE in a timely manner to the Student.

A. Reasonably calculated for progress appropriate in light of the child's circumstances

In considering the application of the *Rowley* standard, the U.S. Supreme Court observed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *See Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017) stating: "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 1001. An IEP calculated to provide "merely more than *de minimis* progress from year to year" does not satisfy the substantive requirements of IDEA. *Id.* at 999. However, an IEP "need not be designed to maximize a student's potential commensurate with the opportunity provided to other children." *M.M. ex rel. L.R. v. Special School Dist. No. 1*, 512 F.3d 455 (8th Cir. 2008). "[T]he requirements of the IDEA are satisfied when a school

district provides individualized education and services sufficient to provide disability children with some educational benefit.” *Id. citing Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003).

The U.S. Supreme Court has held that related that medically necessary services, like ABA Therapy, can be a related service under IDEA if they are necessary to allow Student to access their education during the period at issue. *See* 20 U.S.C. §1401(29); 20 U.S.C. §1414(d)(1)(A)(i)(IV), and *Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 143 S.Ct. 859 (2023). However, “a school need not maximize a student’s potential or provide the best possible education at public expense.” *See Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2011). “It is ‘largely irrelevant’ if the school district could have employed ‘more positive behavior interventions’ as long as it made a ‘good faith effort’ to help the student achieve the educational goals outlined in his IEP.” *See CJN v. Minneapolis Publ. Sch.*, 323 F.3d 630, 639 (8th Cir. 2003).

As discussed in detail in *Van Dyun v. Baker School Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007), the IDEA does not require perfect compliance with a student’s IEP; the IDEA is violated when a school district materially deviates from a student’s IEP, which means more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. *See also Seth B. ex rel. Donald B. v. Orleans Parish School Bd.*, 810 F.3d 961, 978 (5th Cir. 2016). The Eighth Circuit Court of Appeals has noted: “we cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education if there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit.” *See Neosho R-V School Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003).

Here, Parents have alleged Student's IEPs were not reasonably calculated for Student to receive educational benefit in the following ways. First, Parents allege that Student's IEPs violated IDEA in failing to provide ABA Therapy to Student in the school setting. Second, Parents allege Student's goals were not "measurable." Finally, Parents allege Student's IEP is not reasonably calculated for him to make progress in reading because his goals permit him to listen instead of reading.

1. Private ABA Therapy in the School Setting

Based on the content of Parents' Complaint and the hearing, Parents' primary disagreement with the District was that Parents wanted Student to have his private ABA providers come into the school, classrooms, playgrounds, and lunchrooms with Student to provide Student with ABA Therapy in his educational setting. Based on the testimony of ABA Therapist Dr. Mrla and Mother, Parents' desire for this is understandable. They want to provide Student with anything and everything they can to help Student become the best that he can be, as any parent would, and the provision of ABA Therapy in every setting of an autistic child's life is the "gold standard" and is the best "evidence-based" intervention that Student could receive for his deficits.

However, as discussed above, IDEA does not require schools to provide the gold standard. As discussed above, "a school need not maximize a student's potential or provide the best possible education at public expense." *See Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 766 (8th Cir. 2011). A school may not be providing the best possible intervention, but if the school is in good faith, working to help Student achieve the goals on the IEP, it is meeting its duty under IDEA. *See CJN v. Minneapolis Publ. Sch.*, 323 F.3d 630, 639 (8th Cir. 2003). Medically necessary services, like ABA Therapy, can be a related service under IDEA if they

are necessary to allow Student to access their education during the period at issue. *See Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 143 S.Ct. 859 (2023).

In this case, this Hearing Officer finds that a preponderance of the evidence supports that Student was able to access his education and did access his education without private ABA Therapy in his school setting. District staff testified consistently that Student was pleasant, happy and did not exhibit many maladaptive behaviors. The maladaptive behaviors mentioned most often were inattention, which was handled by prompting, and vocal stemming. This is reflected in his behavior goals, which focused on working with fewer prompts, completing work timely, following directions, and so forth.

Interestingly, Student seemed to have exhibited more maladaptive behaviors while with Mother and outside providers than at school, which could be explained by fatigue, lack of structure, unfamiliar people or cues. OT Totten testified that Student's aggression toward him would result when he failed to understand what Student needed. Having known Student longer, perhaps this was less an issue for District staff.

Mother and ABA Therapist Dr. Mrla repeatedly referenced Student's ABA Therapy as "medically necessary" and testified to his medical need for ABA Therapy. As discussed above, IDEA only requires Districts to provide related services of a medical nature if they are necessary for Student to benefit from his education.

Although Mother and ABA Therapist Dr. Mrla further testified that Student required ABA therapy to access and benefit from his special education, their testimony held less weight than the opinions of the educators, as neither of them had observed Student in his educational setting at the District. Special Education Teacher Olson, Special Education Teacher Gibbs, and BCBA Hindergardt all testified that Student was progressing, had few to

no interfering behaviors, and did not need private ABA therapy at school in order to benefit from his education. ABA Therapist Dr. Mrla had BCBA Hallman perform an observation of Student at school on her behalf, and the only evidence from that observation is Special Education Teacher Gibbs' testimony that BCBA Hallman said she saw no problems that would require Student to have private ABA therapy at school. Despite District staffs' beliefs that Student does not even need the District provided RBT, the District provided an RBT and who has taken data on goals at Mother's request.

Although Mother was devastated when she learned of the 8 incidents in 8 months that she described as Student demonstrating that he was upset or aggressive and her protective nature was to be expected, District BCBA Sutton testified that that was a very low rate that would not warrant an FBA or BIP. Further, the testimony of BCBA Sutton and teachers established that Student was able to calm and return to work quickly after any such episodes.

For the above discussed reasons and based on the facts detailed above, this Hearing Officer finds that Student does not need private ABA Therapy in his school setting to benefit from or access his special education. In fact, Student consistently overachieves his IQ. His educational record is filled with goals mastered and slowly increasing test scores, including counting money, telling time, testing out of phonological awareness after second grade, interacting with classmates during Gonoodle, and now enjoying PE and sports. Whether Student was benefiting additionally due to the RBT or from attending school for the full day, considering his prior pace of goal acquisition, his goal progress leapt forward between the spring of 2023 and the spring of 2025. His videos demonstrate his ability to read/decode, the beginning of comprehension, his ability to perform double digit addition and subtraction independently, as well as his growth in social skills when interacting with others. In light of

his circumstances, including his diagnoses of autism, intellectual disability, and ADHD, Student's achievements are truly amazing, which is certainly a tribute to the efforts of Mother, the District, all the providers, and most of all, of Student.

2. Measurable Goals

Parents allege Student's goals were not measurable as required by IDEA; however, Parents rely on a Fourth Circuit Court of Appeals case in support of its argument that goals must be "objectively measurable" and argue that means that there should be some standardized or "objective" test demonstrating that a Student met each goal or objective. *See Sanchez v. Arlington Cnty. Sch. Bd.*, 58 F.4th 130, 133 (4th Cir. 2023). However, this Hearing Officer did not find that standard to have been adopted in the Eighth Circuit.

As listed and described in detailed above, Student had IEP goals on his March 2023 IEP, September 2023 IEP, November 2023 IEP, March 2024 IEP, January 9 2025 IEP, January 16 2025 IEP, and March 2025 IEPs. Each of goal had one or more objective with a concrete description of the behavior Student needed to exhibit and the percentage he needed to reach to achieve the goals and objectives. Further, for each goal and objective, there was a statement of how the goal or objective would be measured, for example, using demonstration/performance, work samples, teacher tests, clinical observation with data sheets, etc. This Hearing Officer finds the goals and objectives on each of Student's IEPs were measurable and that Student's IEPs did not fail to be reasonably calculated to provide Student educational benefit on this basis.

3. Reading Goals Permitting Listening

Parents argue that Student's ELA/reading goals and objectives beginning with the March 2023 IEP and in the IEP following that were not reasonably calculated to provide him

educational benefit because they permitted Student to answer “WH” questions after reading or listening to a paragraph read, and the March 2025 IEP solely stated that he would answer “WH” questions after listening to a paragraph read. The confusion on this point is understandable. However, the District educators repeatedly testified that reading/decoding was a strength for Student, even the examiner noted his decoding strength, but comprehension was his weakness. As of the hearing, Special Education Teacher Gibbs testified that Student could even read/decode words at a third-grade level, but taking comprehension into consideration, he was reading at a first-grade level. Student’s major challenge in comprehension explains why the educators were focusing Student’s ELA goals toward comprehension, as Student’s overall reading level could not advance if his comprehension did not advance.

Further, both Special Education Teacher Olsen and Special Education Teacher Gibbs testified that Student progressed in reading during his time with them, and they both testified that they continued to work with Student on reading fluency and decoding in addition to comprehension, even though his goals focused on comprehension. Special Education Teacher Gibbs’ Core Phonics Survey documentation for 2024-2025 confirms that she continues to provide fundamental reading instruction to Student.

Student’s mastery of reading goals reflects that Student made real progress in reading, although it was at a slow pace, which was to be expected based on his intelligence assessment. Based on Student’s intellectual disability, the suggestion that Student should catch up to grade level in a short time is not reasonable. Still, Student demonstrated that he could learn and progress and did so in reading, as well as math, speech, OT, and PT. Although testimony consistently reflected that standardized tests are not a good representation of

what Student could do because they were not preferred and Student would click through them or get distracted, Special Education Teacher Gibbs testified that Student moved up from a kindergarten reading level in the fourth grade to a first grade reading level in the fifth grade, and Student's ATLAS scores in the spring of 2024 reflected that Student reached a first grade level in reading and math. This Hearing Officer finds that the goals isolating Student's work on comprehension and vocabulary development were appropriate and reasonably calculated to provide Student educational benefit.

Educational Impact

This Hearing Officer finds that a preponderance of the evidence supports that Student's education has not been negatively impacted by the absence of private ABA Therapy at school, by the District's goals, or by the ELA goals focused on comprehension. This Hearing Officer additionally finds that Student's goals were directed toward his areas of need, calculated to provide Student with progress in areas meaningful to him and to Parent, and regularly updated.

CONCLUSION

This Hearing Officer concludes a preponderance of the evidence establishes that the District's IEPs did not fail to be reasonably calculated to provide benefit to the Student in light of his circumstances due to absence of private ABA Therapy in the school setting, the measurability of goals, or the comprehension-oriented ELA goals. This Hearing Officer does not find that the District failed to provide Student FAPE on any of these bases.

B. Implementation of the IEP

As discussed above, IDEA does not require perfect compliance with a student's IEP. IDEA is violated when a school district materially deviates from a student's IEP, which means

more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. See *Van Dyun v. Baker School Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007); see also *Seth B. ex rel. Donald B. v. Orleans Parish School Bd.*, 810 F.3d 961, 978 (5th Cir. 2016); see also *Neosho R-V School Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (stating that IDEA is violated if an essential element of the IEP is not implemented). Here, Parents alleged the District failed to implement Student's IEP because Parent could not replicate at home the progress that was being reported by the District and based on missed minutes of services.

Certainly, it must be frustrating for a parent to receive reports from the District of smiley faces and amazing progress and yet find Student does not reproduce those skills at home. That could understandably cause anyone to doubt that real progress was made. Whether due to exhaustion, taking or not taking medication, different surroundings, different verbiage in the requests, distractions, not waiting long enough for his delayed responses, or any number of other reasons, Student's performance varies, and this is visible even within Student's test results at school. For example, Student's DIBELS score in August of 2024 reflected his Oral Reading Fluency was 14 with 9 errors, and just a few months later, in January of 2025, Student's DIBELS score was 37 with 4 errors. There was testimony that the DIBELS test form increases in difficulty each year and has different test forms for fall, winter, and spring, so there was no practice effect at play. Failure to implement Student's IEP should not be presumed from his failure to perform on any given day, and Mother confirmed that the videos she took at home were all taken back-to-back, which could have caused Student to feel stressed or overwhelmed.

Further, failure to implement the IEP should not be established by standardized testing alone for this Student. Witnesses consistently testified that Student does not prefer and does not perform well on standardized tests. There was testimony that Student would become distracted, may not understand a task, or would just click to get through the task. Even Speech Therapist Totten testified that observation of Student's performance is the best measure of Student's strengths and weaknesses because standardized tests are not designed for neurodiversity, although they are required to qualify services through insurance. Still, viewed as a whole, Student's standardized tests do reflect slow steady growth in reading and math, particularly the DIBELS in light of the testimony that it increases in difficulty each year and fall, winter, and spring forms are different to avoid the practice effect. In addition, Student made modest gains on the ATLAS reading and math assessments, and finally in fourth grade, Student's reading and math levels reached first grade instead of kindergarten levels.

The testimony from Special Education Teacher Olsen, Special Education Teacher Gibbs, District OT Sutton, and District Speech therapist Martin was that they each implemented Student's IEP and service minutes to the best of their abilities to do so. However, each also admitted that Student missed minutes of service at times. Special Education Teachers Olsen and Gibbs missed minutes because Student left mid-day during some of his time with them, and Special Education Teacher Gibbs explained how she rearranged her schedule for Student to attempt to provide Student's special education math instruction before he left for the day. Despite Student's shortened days at times, Student continued to progress and even mastered many of his IEP goals in 2023-2024 and in 2024-2025. As in *Does v. Key*, Parents undoubtedly chose to pull Student out of school many of the

days per week during the timeframe at issue, but Parent's unilateral decision will not be held against the District to find a substantive violation of IDEA. 2021 WL 5441829. Based on the evidence of the efforts of educators to provide minutes and Student's progress, this Hearing Officer finds the District did not fail to implement any essential elements of Student's IEP during the timeframe at issue, and thus, Student was not denied FAPE on this basis.

OT Sutton explained that she covered several buildings and at times had to attend IEP meetings or other obligations that might result in Student missing minutes; there were also times when he was absent or she might have failed to make a log entry for a session. Based on OT Sutton's logs, in 2023-2024, OT Sutton provided 720 minutes and missed 195 minutes, of which five resulted from Student's unavailability. Despite the missed minutes, Student achieved all his OT goals for 2023-2024, and OT minutes were reduced to 30 minutes monthly in March of 2024. For 2024-2025, Student's IEP prescribed 30 minutes monthly, and two sessions were missed. Student's OT's progress in 2023-2024 and 2024-2025 and the OT's logs documenting the limited number of missed sessions evidences there was no educational deprivation to Student resulting from OT minutes missed for the 2023-2024 or 2024-2025 school years. Further, many missed sessions were due to Student unavailability, and there was little opportunity to make up sessions during the time that Student was leaving school around noon. Thus, this Hearing Officer finds the missed OT minutes do not amount to a denial of FAPE.

Speech Therapist Martin's logs also reflect many sessions of services and also many sessions in which Student was absent, in testing, or involved in other school activities, as well as some during which she was unavailable. For the 2023-2024 school year, Speech Therapist's logs reflect 42 sessions of services provided and 59 missed sessions. Out of the

59 missed sessions, Student was unavailable 30 of the missed sessions, and Speech Therapist Martin was unavailable on 29 of the missed sessions. For the 2024-2025 school year, Speech Therapist's logs reflect 47 sessions of services provided and 11 missed sessions (20 minutes per session times 11 missed sessions equals 220 minutes missed), and 7 of the 11 missed sessions resulted from Student's unavailability. Again, there would have been little opportunity to make up sessions during the periods that Student was leaving school at noon. In addition, Student continued to progress and master Speech goals in 2023-2024 and in 2024-2025, despite the missed sessions. As Student absences, Student's testing, conferences and other school activities, and snow days account for the majority of missed Speech sessions in and as Student continued to progress on his Speech goals, this Hearing Officer finds Parent did not meet its burden of proving the District materially failed to implement Student's Speech services, and therefore, there is no resulting denial of FAPE.

This Hearing Officer finds there was no deprivation of FAPE resulting from any deviation in the implementation of Student's IEPs. Parents argue that the District failed to implement Student's IEP in many ways resulting in substantive violations of the IDEA, and this Hearing Officer finds that those raised but not addressed herein also did not constitute a denial of FAPE.

III. Independent Educational Evaluation

Pursuant to 34 CFR § 300.502(b)(1), a "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency" and the District does not prove its assessment was appropriate in a due process hearing. *See Shaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 60 (2005); *See Seth B. ex rel. Donald B. v. Orleans Parish School Bd.*, C.A.5 (La.) 2016, 810 F.3d 961.

This Hearing Officer found no evidence that Parents requested an IEE until they did so in the Complaint. Parents state they disagree with Student's 2025 evaluation, but they do not state whether they dispute the results of Student's evaluation or any particular assessment. Although they did dispute the accuracy of the behavior rating scale completed by Special Education Teacher Gibbs in comparing Student with other students in her self-contained classroom, a Parent rating scale was also completed, which reflected greater deficits for Student. Other than the rating scale, Parents and ABA Therapist Mrla simply state they disagree with the evaluation because it is "invalid" due to the examiner's variance from standardization. There was no allegation that Student did not receive a needed assessment, that the District's failed to assess all areas of Student's disabilities, or that the evaluation was inaccurate in any way. ABA Therapist Dr. Mrla did not explain how or why the deviations from standardization invalidated the evaluation; she simply states that the deviations render the evaluation "invalid." Further, ABA Therapist Dr. Mrla admitted that she is not a Psychological Examiner and thus, her opinion of the evaluation's validity carries less weight.

The District's evidence consisted of the March 2025 evaluation and the IEP notes regarding the discussion of the evaluation. The examiner's qualifications were not in question, and in the psychological evaluation, she explained that she deviated from standardization facilitate Student's responses. To this Hearing Officer's recollection, all witnesses testified that Student was difficult to assess and that assessments might not reflect Student's abilities well. The examiner's deviations from standardization were that Student's RBT was present to encourage Student to respond, and parts of the evaluation were done in Student's classroom because Student appeared more distracted in the examiner's office. Eliciting more responses from Student's would make the evaluation more valid, not less.

The examiner reviewed each assessment tool, and there was no allegation that any of the assessment tools were inappropriate. The evaluation contains the statement that Student's scores are estimate of Student's performance at the time of the evaluation. Further, her results were commensurate with prior evaluations, which evidences that the examiner's deviation from standardization protocols did not invalidated Student's March 2025 evaluation.

As Student was evaluated comprehensively and his scores were commensurate with prior evaluations, which confirms their validity, this Hearing Officer finds that the District carried its burden of showing that its evaluation was appropriate and denies Parent's request for an IEE.

CONCLUSION

As this Hearing Officer found no denial of FAPE by the District during the timeframe at issue in this matter in any manner that would require a remedy, it is not necessary to conduct an analysis of remedies. Parent requests for tuition reimbursement, transportation, an IEE, and any other compensatory education are denied.

FINAL CONCLUSIONS AND ORDERS:

Upon consideration of all the testimony and evidence, this Hearing Officer finds that a preponderance of the evidence warrants the following:

1. This Hearing Officer finds no denial of FAPE to Student or substantive violations of IDEA by the District; therefore, Parents' requests for remedies are denied; and
2. Parents also alleged that the District's conduct constitutes disability discrimination in the Consolidated Case pursuant to §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a) or Title II of the Americans' with Disabilities Act, 42 U.S.C. § 12131-12165. This Hearing Officer

has no jurisdiction over disability discrimination claims. *See* ADE Spec. Ed. Rules §10.20.01. Therefore, to the extent Parents' due process complaints raise disability discrimination claims or other claims outside this Hearing Officer's jurisdiction, those claims are dismissed.

FINALITY OF ORDER AND RIGHT TO APPEAL:

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

IT IS SO ORDERED.

/s/ Debby Linton Ferguson

HEARING OFFICER

11/20/2025

DATE