

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT**

**XXXXXXXXXXXXXXXXXX
As Parent of
XXXXXXXXXXXXXXXXXX**

PETITIONER

VS.

NO. H-26-38

ARKANSAS SCHOOL FOR THE DEAF AND BLIND

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

Issue Presented:

1. Whether the District complied with IDEA with regard to Parent's meaningful participation in IEP meetings held November 11, 2025, December 10, 2025 and March 11, 2026.
2. Whether the District violated IDEA in changing Student's placement to Rogers School District.

Procedural History:

On January 20, 2026, the Arkansas Department of Education ("ADE") received a request to initiate an expedited due process hearing ("EH-26-29") from XXXXX ("Parent"), as parent of XXXXXXXXX (hereinafter referred to as "Student") against the Arkansas School for the Deaf and Blind ("District"), alleging Student's change in placement violated IDEA. In EH-26-29, this Hearing Officer found. In EH-26-29, this Hearing Officer found that Parent met her burden of proof in showing that the District changed Student's placement without meeting the requirements of IDEA, that the District's predetermination of Student's placement significantly impeded the parents' opportunity to participate in the decision-making process regarding placement at the January 2026 IEP meeting, and that the District failed to comply with IDEA in changing Student's

placement in the January 2026 IEP meeting without Parent's participation. Specifically, the District failed to follow procedures for Student's removal, including the failure to hold a manifestation determination or IEP meeting compliant with IDEA before removing Student from the District permanently and changing her placement to Rogers School District. 20 U.S.C. 1415(k)(2)(B) and 34 C.F.R. 300.532(b) establish the authority of a hearing officer to "order a change in placement" or "return a child with a disability to the placement from which the child was removed." This Hearing Officer ordered in EH-26-29 that the District permit Student to return to the District as a residential Student as of the day following the date of the order and to hold a facilitated IEP meeting for Student at a mutually agreed upon time and place by all members of the IEP team including Parent and her attorney.

Other allegations raised fell outside of the subject matter for an expedited matter, including whether the change in placement was appropriate. 34 C.F.R. § 300.532 limited the issues in the expedited hearing to the following:

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

Whether placement was appropriate and other matters beyond the bounds of the expedited hearing were bifurcated and preserved for Parent and/or District to raise in a non-expedited complaint.

On May 13, 2026, the Arkansas Department of Education ("ADE") received a request to initiate a due process hearing ("H-26-38") from XXXXX ("Parent"), as parent of XXXXX (hereinafter referred to as "Student") against the Arkansas School for the Deaf and Blind ("District"), which requested an order to "stay put" and alleged the District violated IDEA in

changing Student's placement to Roger's School District and violated IDEA by denying Parent meaningful participation in IEP meetings held on November 11, 2025 (the "November 2025 IEP Meeting"), December 10, 2025 (the "December IEP Meeting"), and March 11, 2026 (the "March 2026 IEP Meeting"). See Complaint in H-26-38. In response to the Parent's request for a Due Process hearing, the ADE assigned the case to this impartial hearing officer. In the District's Answer on March 19, 2026, it stated it did not contest the request for a Stay Put, and this Hearing Officer entered a Stay Put Order returning Student to school at the District. Thereafter, the Prehearing conference was scheduled for April 13, 2026, and the Due Process Hearing was initially scheduled for April 15-17, 2026, in compliance with federal and ADE regulations. On April 9, 2026, prior to the prehearing conference, Parent moved for a continuance because her vehicle required repair to allow her to travel from her residence in Rogers, Arkansas to Little Rock, Arkansas for the hearing at the District. The District did not object and the continuance was granted for good cause shown. The hearing was promptly rescheduled by agreement of the parties for June 8-9, 2026 with a prehearing conference scheduled for June 5, 2026.

Also on April 9, 2026, the District forwarded a request from its employee and witness Counselor Anna Snare requesting the following accommodations to assist her in providing the most accurate testimony due to her hearing loss: a) Communication Access Realtime Translation (CART), b) Consecutive interpretation, c) a team of three interpreters, d) attorneys to provide all questions to her in writing in advance of the hearing, and e) Video/Audio Recordings of the Proceedings with a note that this is not requested as an accommodation but to ensure the accuracy of the proceedings during her testimony. In response to Counselor Snare's requests, this Hearing Officer found a) the request for Communication Access Realtime Translation (CART) was reasonable and was granted; b) the request for consecutive interpretation was reasonable and was

granted; c) the request for a team of three interpreters is beyond what is necessary and reasonable to ensure the accuracy of Counselor Snare's testimony, as it would be impossible for Counselor Snare to watch both an interpreter and the requested third backup interpreter requested at the same time; however, a team of two interpreters will be provided; d) the request for attorneys to provide all questions to Counselor Snare in writing in advance of the hearing was not reasonable or appropriate for the hearing process and was denied; CART, the consecutive interpretation by two certified interpreters was sufficient to ensure the accuracy of witness Snare's understanding of questions and expression of responses; and e) the request for video/audio recording of the proceedings was not requested as an accommodation, and it was also denied, as the court reporter makes the only and official record of due process hearings. This Hearing Officer also ordered that the attorneys for the Respondent and Petitioner confer and determine a single day and timeframe on which they can each question Counselor Snare, so the accommodations can be made on that day and during that time and give this Hearing Officer notice by email of the specific day and what time witness Snare will be called to testify. The attorneys for the parties agreed to call Counselor Snare to testify at 1 pm on Monday, June 8, 2026. Prehearing Tr. p. 11.

At the prehearing conference held on Friday, June 5, 2026, the attorney for the Parent again requested a continuance due to one of Student's medical appointments, and the request was denied, as the dates were workable otherwise and Student's appointment could be rescheduled. Prehearing Tr. p. 9-11. The attorneys for both parties agreed to introduce the transcripts and exhibits from the last hearing into evidence in this hearing for efficiency, and they were admitted. Prehearing Tr. p. 17-19. The burden of proof was assigned to Petitioner, and the parties agreed to stipulate to the admissibility of the exhibits each side had produced, and they were admitted into evidence accordingly. Prehearing Tr. p. 21-23.

On June 8, 2026, at 9 am on the morning the hearing was to begin, Nicole Clark (attorney for the Parent), Brianne Franks (attorney for the District), Nicole Walsh (“Superintendent”) were present along with the following District staff as witnesses: Anna Snare (“Counselor Snare”), Beth Helms (“Case Manager Helms”), Sue Lyn Green (“BCBA Green”), Randi Leann Brazeal (“LEA Brazeal”), Kara Siemens (“Math Teacher Siemens”), Lenae (Haley) Sullivan (“Speech Therapist Sullivan”), Lendal Green (“Occupational Therapist Green”), Anfernee Floyd (“Physical Therapist Green”), Deana Shields (“Nurse Shields”), Patrick Hoover, Sarah Simpson, Tiffany Tackett Kell, Bill Buechler, Cynthia Buechler, Christopher Brown, Labria Brown, and Willow Culpepper. XXXXXXXX (“Parent”) was not present for the hearing at 9 am on June 8, 2026, although she confirmed to her attorney at 5 am that she was on her way to Little Rock. Tr. V. I p. 7-8. Her attorney related that Parent had experienced vehicle problems not far from Rogers and had returned home. Id. at p. 7. The District agreed to send a driver to pick up Parent in Rogers, so Parent could attend and the hearing could proceed. Id. Opening statements were presented by agreement of the parties, but testimony was postponed to 3 pm to allow time for Parent to arrive and Counselor Snare’s testimony to be taken in light of the previously scheduled interpreters and agreed upon time for her testimony. Id at p. 8. When the parties reconvened at 3 pm, the following interpreters and support staff were also present: Clayton Higgins, Will Gorum, John West, Tammie Foreman Realtime Court Reporter for CART, and Cora Majan. Tr. Vol. I p. 7-9. Parent’s attorney and District’s transport reported that a storm had delayed the District’s transportation of Parent to the extent that Parent would not reach the hearing location in time for Counselor Snare’s testimony to be completed that day, and the parties, witnesses, and interpreters agreed to continue the matter for a day and convene at 8:30 am the next morning, June 9, 2026, and meeting for additional time

later that week if needed. Id. at 13-23. At 8:30 am on June 9, 2026, the hearing proceeded, and Parent, along with the above listed persons, were present. Tr. V. II p. 7-13.

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, this Hearing Officer for the Arkansas Department of Education, conducted an open impartial hearing, as an open hearing was requested. Both parties were asked to provide post-hearing briefs, and both parties timely provided post-hearing briefs.

Findings of Fact

1. Student is an eleven (11) year-old girl who completed fifth grade in the spring of 2026 and who has attended the Arkansas School for the Deaf and Blind (“District”) as a residential student since kindergarten beginning in the fall of 2019; the District is classified as a residential school on the placement continuum. Tr. V. III p. 8; EH P. Ex. p. 93, 146; EH Tr. p. 16, 167-168. Student is diagnosed with epilepsy, asthma, Rubella, Cytomegalovirus (“CMV”), and bilateral hearing loss secondary to TORCH ((Toxoplasmosis, Other (like Syphilis), Rubella, cytomegalovirus, and Herpes simplex virus)), for which she wears two cochlear implants. Tr. V. II p. 278-279; EH Tr. p. 15, 216; EH P. Ex. p. 132-135. In addition, Student has a dairy intolerance and is in remission for nephrotic syndrome. EH Tr. p. 34; EH P. Ex. p. 135. Her primary mode of communication is American Sign Language (“ASL”) and has limited spoken language. EH P. Ex. p. 132-134. She has significant delays in English language, reading, and writing skills; her progress in math, social studies, and science is also negatively impacted by her diagnoses, and she received special education. EH P. Ex. p. 132.

2. Parent resides in the Rogers School District (“Rogers”), and Student stays with Parent and step-father when not at the District. EH Tr. p. 27.
3. Despite her residential placement at the District, Student was at home for periods of time when her seizures were being diagnosed over the past couple of years and when her dairy allergy was being diagnosed in April of 2025. EH Tr. p. 31, 167-169, 217. Attendance data reflected Student had excused absences in the 2024-2025 school year from September 10-13, 2024, unexcused absences from September 23-26, 2024, excused absences from October 14-18, 2024, excused absences from October 29-November 1, 2024, excused absence on November 18, 2024, unexcused absences from November 19-23, 2024, unexcused absences from December 17-20, 2024, unexcused absence on January 6, 2025, excused absences on February 3-7, 2025, unexcused absence on March 10, 2025, excused absences on April 4-8, 2025. EH D. Ex. p. 114-118.
4. In the Spring semester of 2025, Student experienced a high increase in seizures; Student was also seeing a kidney doctor and was diagnosed with a dairy allergy in April of 2025. EH Tr. p. 31, 162-166, 217-219; EH D. Ex. p. 23. Student had approximately 13 medication changes between September of 2024 and January of 2026; many medication changes were attempts to get better control over her seizures in the spring of 2025. EH Tr. p. 217-218. With the increased medications, Student experienced drowsiness, trouble staying awake, trouble getting up. EH Tr. p. 166, 218. Student was also being weaned from medications for nephrotic syndrome during the spring of 2025. EH Tr. p. 218. The happy child Student had been was rarely accessed during this time. EH Tr. p. 166.

5. The Notice of Action dated April 30, 2025 stated that Extended School Year Services (“ESY”) were discussed due to regression of skills after increased seizure activity. EH D. Ex. p. 73.
6. On April 30, 2025, the District’s Behavior Specialist conducted a Functional Behavior Assessment (“FBA”) for Student to determine the purpose of Student’s behaviors and the circumstances surrounding them, and it was determined that her primary motivation was access to peer and adult attention with access to preferred items and escape non-preferred tasks as secondary functions. EH D. Ex. p. 47-50, 206-222. The District then created a Behavior Intervention Plan (“Behavior Plan”) with strategies to implement with Student to decrease her maladaptive behaviors and increase her positive behaviors; her rewards were attention, outdoor play, certain toys, specific foods and drinks, and television shows. EH D. Ex. p. 51-55.
7. Student’s May 2, 2025 IEP (“May 2025 IEP”) stated that Student is a residential student at the school because the “state school is the only school with full provision in ASL with support services that meet[] [Student’s] specific needs; her continuum of placement was listed as “residential school” with 0% of the time per week in general education. EH D. Ex. p. 131, 158. Parent input reflects that Parent disagreed with the IEP team that Student did not qualify for ESY based on the data collected and presented and that Student would participate in the Rogers ESY program in the month of June. EH D. Ex. p. 150.
8. On May 19, 2025, documentation reflects that Student held a pillow over another student’s face, and Case Manager testified the behavior appeared to be an attempt to gain attention. EH Tr. p. 159-162; EH D. Ex. p. 4. Student was suspended for 7.5 days,

- and the District conducted a Manifestation Determination Review (“MDR”) on May 27, 2025. EH Tr. p. 173, 196-197; EH D. Ex. p. 183. The MDR team determined that Student’s behavior did not result from her disability, which was Deaf/Hard of Hearing and maintained Student’s 7.5 days of suspension out of school. EH D. Ex. p. 186-192. There was a complaint made to the Arkansas Department of Education (“ADE”) regarding the District’s moving Student to virtual instruction after that MDR, and the District was required to redo the MDR for that same incident. EH Tr. p. 173-175. Student returned to the District in the fall of 2025. EH Tr. p. 180.
9. In the Notice of Action dated June 3, 2025, the District documented an amendment to Student’s IEP, allowed Student to return to the District for the final 5 days of instruction in the 2024-2025 school year, and noted that Student had increase seizure activity, medical sedation, ongoing physical needs, a decrease in spontaneous language use, withdrawal, refusals, and perseveration despite use of previous motivators. EH D. Ex. p. 23, 31, 178-179, 247-248. It noted that Student had seizures at school and received medical attention from the nurse; there were two incidents when Parent took Student to the hospital for seizures while Student was at home during the spring. EH D. Ex. p. 178. Student’s IEP team discussed partial or hybrid programming and determined it was not feasible due to distance from home and transportation constraints. EH D. Ex. p. 24. It was also noted that Student had a “dramatic loss of responsiveness to reinforcers, decline in initiation, emotional expression, and interaction suggesting medical sedation is overriding behavioral motivation. EH D. Ex. p. 31.
 10. Rogers provided Student ESY in the summer of 2025, and Student returned to the District in August of 2025. EH Tr. p. 180; EH D. Ex. p. 1-3, 32. District LEA testified

that many school districts provide ESY for students who attend the District, as a courtesy. Tr. V. III p. 134.

11. On August 7, 2025, Student had a major behavior incident in which she was attempting to grab items from a teacher's desk, BCBA Green stepped in to block her and escorted Student into the hallway. EH D. Ex. p. 266. Student then ran into the girls' bathroom and attempted to close the stall door to lock it, and BCBA Green blocked full door closure to monitor her. Id. Student pooped, wiped, and threw toilet paper with fecal matter onto BCBA Green's hair and clothing. Id. Counselor Snare arrived and spoke with Student about her choices, and Student began to cry and request a Hello Kitty coloring book. Id. When told she would have to work first, Student resumed maladaptive behavior by falling to the floor, grabbing electrical wires, crawling under furniture, grabbing items and refusing to move. Id. Then, Student was transported to the calming area and fell asleep for 35 minutes. Id. After waking, Student FaceTimed with Parent and then walked to class and resumed her classwork. Id.
12. For the 2025-2026 school year, Student had a total of 22 behavior incidents with 12 classified as major and 11 classified as minor. P. Ex. p. 403. Between August 7 and August 25, 2025, Student had six behavior incidents in the 2025-2026 school year, with one major incident. EH Tr. p. 180; EH D. Ex. p. 1-3, 261-294. For comparison, from May 7 to May 20, 2025, Student had 9 behavior incidents, and 8 of the 9 incidents were classified as major behavior incidents requiring administrator intervention. EH D. Ex. p. 3-4.
13. On September 16, 2025, a new FBA was completed for the purpose of updating the Behavior Plan to address Student's behaviors. EH D. Ex. p. 303-311, 424-441. FBA

Green noted a decrease in the frequency of challenging behaviors of 76% occurred between the 2023-2024 school year and the 2024-2025 school year, which she attributed to increased absences, medication changes, seizure activity, and the behavior strategies in Student's Behavior Plan. EH D. Ex. p. 424. Her targeted behaviors were pulling objects off walls and shelves, throwing objects, destroying objects, touching other students, taking items belonging to others, turning over furniture, climbing or standing on furniture, pouring out liquids, turning lights off/on, forcefully hitting others, biting others forcefully, and throwing objects at others, moving her body away from or continuing to play with preferred items when asked to engage in a task, repeatedly asking the same question, repeatedly reviewing a schedule of events, requesting a preferred person/item/event. EH D. Ex. p. 425. Student's motivators continued to be gaining attention and preferred items with perseverance over items resulting in aggression. EH D. Ex. p. 303. It was noted that her seizure medication was decreased over the summer resulting in Student being more aware, alert, and communicative. EH D. Ex. p. 304. Also noted was that Student did not consistently exhibit desirable replacement behaviors and continued to be highly motivated by tangible reinforcers, which fueled the perseverance of items if the items were not attained. Id. Student's Behavior Plan was updated accordingly. EH D. Ex. p. 304-310; 434-441.

14. On September 18, 2025, Student's MDR team met to reconsider Student's May 27, 2025 behavior incident, as ordered by ADE. D. Ex. p. 330; EH D. Ex. p. 350; EH Tr. 173-175. The team again determined that Student's May 27, 2025 behavior was not a manifestation of her disability of Hearing Impairment, including Deafness. D. Ex. 330.

15. On September 30, 2025, Student's IEP team met to update Student's IEP in light of the new FBA, Behavior Plan, and Comprehensive Educational Assessment ("September 2025 IEP"). D. Ex. p. 228; EH D. Ex. p. 311-331, 315-316, 365-366. The IEP noted that Student "continued to demonstrate significant behavioral needs that interfere with her learning and the safety of others." EH D. Ex. p. 316. The September FBA reflected that Student was exhibiting on a weekly basis 4.33 occurrences of aggression, 7.16 occurrences of disruptive behavior, 5.5 occurrences of task refusal, and 1.33 occurrences of perseveration, which were maintained by access to tangibles, attention, and escape. EH D. Ex. p. 316, 330. Student's disabilities continued "to impact her regulation, communication, and peer interactions," and intensive adult support remained necessary for safe participation in academic and residential settings. EH D. Ex. p. 316. Student's placement continued to be "residential school" with no general education time, and her behavioral probationary period was lifted as of the meeting. EH D. Ex. p. 326, 350, 361. It was noted that Student had not adjusted to parental separation during her five years of residential placement and demonstrated stronger task completion and productivity during ESY at Rogers than at the District. EH D. Ex. p. 327. The team planned to use the comprehensive "evaluation results to determine whether continued placement at [the District], return to the resident district, or a hybrid model best represent [Student's] LRE." EH D. Ex. p. 362. The Comprehensive Evaluation reflected that Student's score on the WISC-V was in the Intellectually Disabled Range of Extremely Low, except that Visual Spatial Reasoning was in the Very Low Range. D. Ex. p. 230-231. Her achievement scores were below the first percentile in all areas, and her adaptive behavior scores, as rated by Case Manager

- Helms, were in the clinically significant ranges except in social skills, leadership, and attention problems. D. Ex. p. 231-235.
16. From kindergarten to November 11, 2025, Student received special education under the category of Deaf/Hard of Hearing. EH P. Ex. p. 81; EH D. Ex. p. 186-192.
 17. On November 11, 2025, Student's IEP team and several staff members from Rogers met to review her comprehensive three-year evaluation, discuss her eligibility category, and update her IEP ("November 2025 IEP"). EH Tr. p. 18; EH P. Ex. p. 125, 136; EH D. Ex. p. 340-341, 367, 385-404, 445-464. In light of her complex medical conditions, the Notice of Action documented that the team changed Student's eligibility "from Hearing Impairment, including Deafness, to Multiple Disabilities to reflect the integrated nature of her communication, cognitive, behavioral, and medical needs." EH P. Ex. p. 136; EH Tr. p. 367. Student's Occupational Therapy ("OT") Evaluation completed on October 15-16, 2025 reflected that Student scored higher overall on a test, but her individual skills did not improve significantly; she continued to cooperate most of the time in therapy and continued to be motivated by Hello Kitty stickers and praise. EH D. Ex. p. 406-407. Student's Speech Evaluation completed between September and October of 2025 noted that Student continued to benefit from a visual schedule, token board, frequent breaks, and random interval reinforcement using consumables to maintain cooperation with tasks she perceived as difficult, her verbal output was reduced, and she appeared to do her best, despite struggling to keep her eyes open due to seizure medication. EH D. Ex. p. 407-419. Student's Speech Evaluation Amendment dated November 11, 2025 and titled Demonstration of Speech-Language Plateau stated that Student had progressed since the November 2025 annual review but

the November 2025 comprehensive reevaluation reflected a plateau in expressive language growth, limited conversational reciprocity, and continued dependence on adult mediation during communication breakdowns; her goals were adjusted accordingly. EH D. Ex. p. 474-475. Her Physical Therapy (“PT”) assessment reflected that she could usually be motivated using a token board and Hello Kitty stickers; she continued to require PT but the report did not note that she was not cooperative with therapy. EH D. Ex. p. 419-424. Counselor Snare reported on April 14, 2025 that Student was making progress on her social-emotional goals and participates and cooperated during the social-emotional curriculum. EH D. Ex. p. 465-467. The District’s APRN wrote a letter dated November 6, 2025 stating her opinion that Student would benefit from returning to Parent since the transition from home to school was causing significant separation anxiety and behavioral concerns for Student, which complicate her medical issues including seizures. Tr. V. II p. 292; D. Ex. p. 2647; EH D. Ex. p. 476.

18. In the November 2025 IEP, Student’s placement continued to be “residential school” with zero time in general education and noted that Student “requires a comprehensive educational setting that provides coordinated access to Total Communication consistent adult support, and embedded health-related care throughout the school day,” and the District “currently offers the integrated structure needed to implement her IEP, [BIP], and Individualized Health Plan (IHP) with fidelity. Given her medical profile, developmental delays, and communication needs, this setting continues to support her access to instruction and safety.” EH P. Ex. p. 146-147. The November 2025 IEP stated that the team initiated a 60-day hybrid trial with Rogers to collect comparative

dated regarding communication access, behavioral regulation, and educational benefit.” EH P. Ex. p. 147. However, the Notice of Action documents that the team discussed changing Student’s placement to Rogers for a “hybrid 60-day trial,” but that option was “tabled” for further discussion at a meeting scheduled for December 10, 2025. EH P. Ex. p. 125; EH D. Ex. 367. Testimony established that the “hybrid” option was rejected because there was no agreement and no understanding of how it would work and confirmed the placement issue was tabled to be discussed at the next meeting. EH Tr. p. 19-20. The Notice of Action further reflects that immediate transition to Rogers was rejected because there was insufficient behavioral, academic, and medical data to support the placement at the time. EH D. Ex. p. 367. The November 2025 IEP Meeting was ended because Student was sick, and Parent needed to meet the bus transporting Student to Parent. EH P. Ex. p. 153.

19. On November 12, 2025, a second Notice of Action was provided from the November 2025 IEP meeting the day before. EH P. Ex. p. 127; EH D. Ex. 441. It stated that a change of placement to Rogers after Thanksgiving break was rejected due to hesitation by Parent and Rogers; the team would reconvene on December 10, 2025 to further discuss the “hybrid” placement in Rogers due to academic, health, anxiety, and emotional regression at the District. Id. It documented that Student was fixated on Parent and when she will get to go home. Id.
20. Also, on November 12, 2025, the November 2025 IEP Summary was issued, which noted that “reinforcement systems must be adapted to account for [Student’s] lack of initiation, limited affect, and reduced awareness of others. Traditional behavior

strategies, such as preferred items, praise, or peer interactions, are currently ineffective.” EH P. Ex. p. 129-130; EH D. Ex. p. 443-444.

21. On November 18, 2025, Rogers’ Assistant LEA emailed LEA Brazeal to raise questions about the accuracy of certain statements in the November 11, 2025 Notice of Action, including that Rogers did not agree to or understand the “hybrid trial,” that Rogers was not familiar with a “comparative psychoeducational evaluation,” whether the current re-evaluation met ADE requirements, that placement was not discussed at the November 2025 IEP meeting as described in the Notice of Action,” and Rogers asked to add an auditory goal for Student that was rejected by the District. EH P. Ex. p. 150-155; EH Tr. p. 51-55. LEA Brazeal did not agree to changes to the November 11, 2025 NOA, so the NOA remained unchanged. Id.
22. Between December 1 and 3, 2025, Parent and her advocate requested Student’s evaluations, progress reports, behavior data, grades, therapy notes, and any data that supports that Student is not making progress, so that she could review everything ahead of time. EH D. Ex. p. 558-559.
23. On December 10, 2025 (“December 2025 IEP Meeting”), Student’s IEP team reconvened to discuss a possible change of placement for Student (the “December 2025 IEP Meeting”). EH Tr. p. 20; EH P. Ex. p. 156-157; EH D. Ex. p. 477, 479-480. Parent brought a parent advocate (“Advocate”) with her, who requested that the meeting be tabled to allow time for Parent and Advocate to review records requested between December 1 and 3, 2025 and did not receive in their entirety before the beginning of the meeting. EH D. Ex. p. 479; EH Tr. p. 53-55, 156, 251-253. The District raised the issue of changing Student’s placement to Rogers, but there was no agreement. EH Tr.

- p. 20-22, 63-64, 153-156; EH P. Ex. p. 157; EH D. Ex. p. 479; 551-553, 549-550. The meeting was tabled in favor of a facilitated IEP meeting, which Parent later declined believing that a productive IEP meeting could proceed without facilitation, and placement was not changed. *Id.*
24. Also on December 10, 2025, Student had a major behavior incident that began when Student was asked to redo an assignment that she did not complete as instructed (the “December 10 Incident”). EH D. Ex. p. 484-495; EH P. Ex. p. 158-169. When handed another printed assignment, Student tore up the paper and requested a laptop; when presented with her Mom card, Student grabbed the card and threw it to the ground; and then, she grabbed another student’s laptop and threw it on the ground. *Id.* Then, she attempted to take the teacher’s phone and put her hand around the teacher’s throat and scratched the teacher’s face. *Id.* The teacher called BCBA Green who removed the sticky notes from Student’s hands that Student was marking on. *Id.* Student then crawled under teacher’s desk and threw a bag at BCBA Green. *Id.* When BCBA Green attempted to move Student toward the door, Student dropped to the floor grabbing at the legs of desks and BCBA Green’s clothing. *Id.* Counselor Snare arrived and began to attempt to give Student the choice to stand up and walk out of the room or be assisted to a safe area to calm. *Id.* When Student would not stand, another staff member assisted the BCBA Green in lifting Student to a standing position and walking her to the door. *Id.* Student dropped to the ground again and began to cry and then requested toilet and was told she could use the restroom in the dorm. *Id.* Student appropriately entered the restroom stall, locked it, urinated, and pulled up her pants, but then, she refused to unlock the stall door and held the slide lock in place with her hand. *Id.* BCBA Green

crawled under the stall to unlock the door, and then Student independently walked back into the hallway but refused to enter the safe room to calm. Id.

25. That same day, Student was suspended as a result of the December 10 major behavior incident; testimony was inconsistent on whether the suspension was 7.5 or 10 days. EH P. Ex. p. 159-171; EH Tr. p. 45, 159, 179-183, 234-241; EH D. Ex. p. 484. There was no manifestation determination review. EH Tr. p. 43-44, 239-240. Parent did not recall if Student had earlier suspensions in the fall of 2025 or the number of days that Student was suspended for the December 10 Incident. EH Tr. p. 21, 40-41. Parent recalled receiving a voicemail from Superintendent Walsh who said Student had grabbed at a teacher's neck and pulled hair, and Parent had to pick Student up. EH Tr. p. 40-41. She believed Superintendent Walsh said Student was suspended. EH Tr. p. 42. Parent also recalled the BCBA Green sent a text message saying Student was doing well and then things turned around and Student pulled at the teacher's hair and tried to grab her next. EH Tr. P. 41-42. BCBA Green did not know how long Student was suspended after the December 10 Incident. EH Tr. p. 183. Superintendent Walsh testified that she approved the principal's decision to suspend Student for 7.5 days after the December 10 Incident. EH Tr. p. 234-235. When asked what documentation shows Student was suspended for 7.5 days, Superintended Walsh replied that she made a phone call to Parent and that there should be a suspension record but that was not in the exhibits. EH Tr. p. 235. Superintendent Walsh did not testify that she informed Parent of the length of the suspension. EH Tr. p. 235-236. Superintendent Walsh testified that the suspension was until the end of the semester or 7.5 days and the length of the suspension did not require a manifestation determination review. EH Tr. p. 234-241.

- The last day of the semester was December 19, 2025. EH Tr. p. 241. Case Manager Helms testified that Student had a suspension of 2.5 days earlier in the year, which likely referred to spring of 2025, and then after reviewing results testified that Student had no suspensions in the fall of 2025 prior to December. EH Tr. p. 158, 179-180.
26. On December 11, 2025, based on the District's response, it appears that Parent emailed LEA Brazeal asking if Student's work would be sent home during the suspension, for copies of Student's attendance, the behavior incident report, pictures and video. EH D. Ex. p. 560.
27. Parent declined to move forward with a facilitated IEP meeting at that time. EH P. Ex. p. 156; EH D. Ex. p. 479; EH Tr. p. 22, 153-156, 250-251.
28. On December 17 and 23, 2025, the District sent Notices of Conference via email to Parent scheduling an IEP meeting for Student on January 6, 2026 at 10:30 am, which Parent testified she received. EH P. Ex. p. 170-173; EH D. Ex. p. 521-523; EH Tr. p. 23-25; 245-246.
29. On January 5, 2026, the District sent a Notice of Conference via email at 10:29 am reminding Parent of the IEP meeting on January 6, 2026 at 10:30 am, which Parent testified she received. EH P. Ex. p. 174-175; EH D. Ex. p. 521-523; EH Tr. p. 24-25; 245-246. About an hour later, at 11:43 am, Parent emailed LEA Brazeal stating: "I apologize that I will not be able to attend the meeting tomorrow. I am in the process of securing legal assistance. Also, when will [Student] be able to return to school." EH P. Ex. p. 174; EH Tr. p. 26-27. LEA Brazeal testified that Parent did not request that the meeting be rescheduled in Parent's email dated January 5, 2026. EH Tr. p. 257. Within eleven minutes, at 11:54 am on January 5, 2026, LEA Brazeal responded that

- the District would “go on with the meeting tomorrow and make the referral back to the school district. She will be able to start Rogers on Wednesday.” EH P. Ex. p. 174, 253-254. LEA Brazeal did not respond regarding when Student could return to school at the District. Id. In light of the email and other evidence, this Hearing Officer maintains the previous finding that the outcome of the January 2026 IEP Meeting was predetermined.
30. At 12:23 pm on January 5, 2026, Rogers’ Executive Director emailed the District’s LEA stating Rogers staff would not be attending the January 6, 2026 meeting without Parent present and suggested that the meeting be rescheduled at a mutually agreed upon time. EH P. Ex. p. 176-177; EH Tr. p. 107. An email from the Rogers’ Executive Director at 1:25 pm also confirmed that Rogers had a conflict with the January 6, 2026 because a site visit was scheduled. EH P. Ex. p. 176. She did not understand logistically how a hybrid model for Student would work. EH Tr. p. 112-113.
31. Based on the District’s response, on or before January 6, 2026 at 10:12 am, Parent’s legal counsel emailed the District requesting Student’s records and that the meeting be rescheduled. EH P. Ex. p. 189; EH Tr. p. 37-38. Superintendent Walsh responded on January 6, 2026 that the meeting would move forward, although she tries to be respectful of parental participation. EH P. Ex. p. 112-113, 189. Case Manager Helms testified that she was notified that Parent hired an attorney fifteen minutes before the January 6, 2026 IEP meeting. EH Tr. p. 151.
32. On January 6, 2026, Student’s IEP team convened (“January 2026 IEP Meeting”) without Parent or Rogers staff to “review the recent behavior that led to [Student’s] suspension on the afternoon of 12/10/2025 and to move forward the with Change of

Placement Meeting to refer [Student] to her home school district[] of Rogers.” EH Tr. p. 11; EH P. Ex. p. 190-212. Rogers’ School Psychology Specialist testified that the entire IEP team, including the parent, should make a placement decision. EH Tr. p. 112. The Notice of Action states that keeping Student at the District was “considered but rejected due to Student’s need to be in her home district, where she can go home to [Parent] nightly, as this was causing undo stress to [Student’s] health and wellbeing as well as academic progress decline.” EH P. Ex. p. 190. The meeting notes dated January 6, 2026 documented that the District had not received a notice of a due process complaint, so there were no stay-put protections in effect. EH P. Ex. p. 192. The January IEP Summary and January IEP reflect a change in placement from residential school to regular class less than 40%: 1/6/26-4/29/26. EH P. Ex. p. 193-194, 210. The January IEP states that “[m]ultidisciplinary data over multiple years demonstrate a plateau and periods of regression in the student’s communication, academic engagement, and behavioral regulation despite consistent access to specialized Deaf education services. During the current IEP term, the student exhibited increased emotional dysregulation and physical aggression toward staff, students and property, most recently 12/10/25, resulting in disciplinary removal and supporting previously documented significant safety concerns for herself and others. In light of these factors, the IEP team determined that the current placement no longer provides meaningful educational benefit and that a less restrictive setting closer to home may better support the student’s ability to access FAPE while maintaining closer family ties and support within her educational placement setting to improve personal health and safety.” EH P. Ex. p. 200. Parent’s understanding is that Student’s placement was changed due to

- her behavior. EH Tr. p. 38. District employees testified that the December 10 Incident was not the reason for placement at Rogers, although the incident was discussed at the January IEP Meeting, as it would have been a return after suspension. EH Tr. p. 211, 246-247. In EH-26-29, this Hearing Officer found that the District's attempt to change Student's placement to Rogers was due to disciplinary/behavioral issues, and this Hearing Officer maintains that finding in this matter.
33. Superintendent Walsh believed January 6, 2026 was the District's first day in which school was back in session, but she would have to look at a calendar to be sure. EH Tr. p. 236-235-237. Superintendent Walsh testified there was probably miscommunication about whether Student was able to return to school due to the IEP meeting on Tuesday, January 6, 2026, but Student did not get on the bus on Sunday, January 4, 2026. EH Tr. p. 236-237. The District usually picked Student up in Clarksville at Parent request, and Parent had not requested that the District pick Student up to Superintendent Walsh's knowledge for Sunday, January 4, 2026. Id. If Student had come to school on January 6th, the IEP meeting would have occurred, "and then, per the discussion during the IEP meeting [Student] would have been referred to [Rogers] to begin eligibility to enroll on Wednesday." EH Tr. p. 237. Superintendent Walsh agreed with the change in Student's placement to Rogers based on the recommendations of District professionals, her personal knowledge of Student's consistent requests for Parent, and data showing Student's progress is plateaued or regressing. EH Tr. p. 237-239.
34. On January 7, 2026, Parent received the Notice of Action, which did not note that Parent's attorney or Rogers had requested the meeting be rescheduled. EH Tr. p. 37; EH P. Ex. p. 190.

35. On January 20, 2026, Parent filed an expedited due process request. EH-26-29 Complaint. The expedited hearing was held on February 6, 2026, and Student was not enrolled at school in Rogers and was home with Parent, as of the date of the hearing. EH Tr. p. 39 and Final Decision in EH-26-29. A final order was issued on February 24, 2026 determining that the District had violated IDEA in changing Student's placement to Rogers School District in the January 2026 IEP Meeting because the outcome was predetermined. Final Decision in EH-26-29. The District was ordered to permit Student to return to the District as a residential Student the following day and to hold a facilitated IEP meeting for Student at a mutually agreed upon time and place by all members of the IEP team including Parent and her attorney. Id.
36. On February 26, 2026 pursuant to the February 24, 2026 Order, Student was permitted to return to the District, but Student did not return to attend and reside at the District until Monday, March 2, when Student could ride the District bus that was scheduled to pick her up on Sunday, March 1, 2026. D. Answer. Tr. V. III p. 113; D. Ex. p. 3948. After missing school from January 5 to March 2, 2026 due to the District's attempt to refer her to Rogers, Student returned to residence and received her education at the District between March 2 and March 11, 2026. D. Ex. p. 3948.
37. On March 11, 2026, a facilitated IEP meeting was held virtually ("March 2026 IEP Meeting"), and the IEP team decided that the "Student should change placement to the Rogers School District." Answer p. 4; Tr. p. 30. At the March 2026 IEP Meeting, the District staff reviewed their data, evaluations, and reports with Parent and her attorney, and District staff determined that Student be placed in the Rogers School District over Parent's objection. Tr. V. III p. 106-110. Counselor Snare was not in attendance, but

- her report was unchanged and had been discussed at a previous IEP meeting. Tr. V. II p. 42-43; Tr. V. III p. 57, 110-111. Parent did not dispute that she agreed to proceed with the meeting without Counselor Snare present. Id.
38. On March 13, 2026, Parent filed this due process hearing request alleging that the District violated Parents right to meaningful participation in Student's education, violated IDEA by changing Student's placement to Rogers, and requested an order that Student remain at the District while proceedings were pending or to "Stay Put." Complaint. Parent did not allege the District violated FAPE with regard to Student's IEPs or services. Id. The hearing was initially scheduled for April 14-15, 2026. Initial Scheduling Order in H-26-38. In the District's Answer on March 19, 2026, it expressly stated it did not contest the request for a Stay Put and confirmed that the IEP team decided that the "Student should change placement to the Rogers School District" at the March 2026 IEP meeting. Answer in H-26-38 p. 4. The District further stated that it would "not currently contest the stay put order requested in paragraph 30. . ." Answer in H-26-38 p. 5. The District made no counterclaims. Id. Thus, this Hearing Officer issued a "Stay-Put Order" on March 19, 2026 requiring the District to return Student to residence and attendance at the District, as the last educational placement agreed upon by both parties. Stay-Put Order. Student missed school from March 11 to March 31, 2026, when she returned to the District pursuant to the Stay Put Order. D. Ex. p. 3948; Tr. V. III p. 12.
39. On April 9, 2026, Parent requested a continuance due to her transportation issues, District did not object, and the continuance was granted for good cause shown. Order and Response to Request for Accommodations dated May 27, 2026. The matter was

- rescheduled by agreement of the parties for June 8-9, 2026, at Parent's request for a Monday-Tuesday hearing setting. Second Scheduling Order in H-26-38.
40. On April 29, 2026, Student's annual IEP meeting ("April 2026 IEP Meeting") was held. D. Ex. p. 3980. At the April 2026 IEP Meeting, District staff reported that she made progress on most of her IEP goals. P. Ex. p. 334-335, 340-341, 345-347. When Student returned to the District after spring break, Student recouped the skills she lost during her time out of school within 3-4 weeks in her OT and PT sessions. Tr. p. 190, 227.
41. In the previous hearing and in this hearing, Parent maintained that she disagreed with changing Student's placement to Rogers based on her belief that Student needed to be in a community of deaf people to learn most and grow. Tr. V. III p. 25; EH Tr. p. 20-21, 30. She asserts that at the District she has access to the environment, communication with her peers and teachers and does not have to rely on an interpreter. Tr. V. III p. 64. Student refers to the girls in her dorm as "friends" and talks about them at home occasionally; Parent was able to name two girls that Student talks about. Tr. V. III p. 17-18, 65. Parent believes Student can retain new information. Tr. V. III p. 18. She believes Student should receive more support at the District, maybe a paraprofessional, more support and goals, and the District should not take support away and give up on Student. Tr. V. III p. 25, 64, 73. Parent does not agree that Student has reached a plateau, states Student can do much more than the District claims she can do, and believes Student is currently making progress. Tr. V. III p. 23, 74. Parent admits she has provided no data, evaluation or evidence to support her opinion that Student should remain at the District. Tr. V. III p. 66. Parent has not requested the District provide a paraprofessional for Student during any IEP meetings, but Rogers may have brought it

up in a meeting. Tr. V. III p. 24, 74. Parent agrees it is important for Student to be with her family and spends less than 48 hours weekly with Parent. Tr. V. III p. 64-65. Student behaves fine with Parent, so Parent has not seen Student's major behavior issues. Tr. V. III p. 13. Student is a good kid, listens to Parent, and has no tantrums at home. Tr. V. III p. 13-14. She does not know whether Student's behavior incidents are motivated by a desire to be home with Parent. Tr. V. III p. 62-63. Student has improved in staying on task when Parent asks her to do something. Tr. V. III p. 14. Parent does not have concerns about Student's health and safety with seizures while she is at school. Tr. V. III p. 25-26. Student's first seizure was in 2022 due to having the flu, but she did not have them frequently at first. Tr. V. III p. 15-16. Then, they increased in frequency from every nine months, to eight months, then seven, and at the worse, she was having them monthly or every other month. Tr. V. III p. 16. Student has taken seizure medication for a couple of years; her last seizure was a month ago. Tr. V. III p. 17. Student was hospitalized for about four hours due to a seizure more than two years ago, and the District kept Parent informed about Student's progress during that time. Tr. V. III p. 26. Parent does not believe Student's seizures increased due to her anxiety from being away from Parent, but Parent admits she has no medical training or evidence to back up her assertion. Tr. V. III p. 62. Parent has not discussed separation anxiety with Student's doctor. Tr. V. III p. 78. Parent stays in regular contact with Nurse Shields and BCBA Green about Student's health and behavior; she is not in contact with anyone about Student's grades or therapies and has not reached out to ask those questions. Tr. V. III p. 24-25. Parent is mirroring the behavior checklist and token board at home that is used at school; she worked with BCBA Green on that. Tr. V. III

p. 24. In the fall semester, Parent would get updates saying Student had a good day or not, and BCBA Green would tell Parent specifically what Student did in a behavior incident. Tr. V. III p. 14-15. In the fall of 2025, Parent got FaceTime calls from Student that were set up by BCBA Green as a reward when she had a good day, as a regular part of Parent's routine with Student, but after December, calls started to decrease until May of 2026. Tr. V. III p. 11, 77-78. She got no more than ten in the spring of 2026, and Student returned to the District at the end of March 2026. Tr. V. III p. 12. Parent hopes but is unsure whether Student has access to FaceTime Parent at night on a tablet at the District. Tr. V. III p. 59-60. Parent has tried calling Student but does not receive an answer from the Ipad. Tr. V. III p. 79. She recalled the November 2025 IEP Meeting that was held to change Student's eligibility category and review the new evaluations. Tr. V. III p. 8-9. Rogers asked for records prior to the meeting, received some prior to the meeting, and some records were sent during the meeting. Tr. V. III p. 9-10. At the November 2025 IEP Meeting, Parent did not provide or ask for an opportunity to obtain any third-party evaluations, reports, or data. Tr. V. II p. 39-40, 86, 119, 197, 222; Tr. V. III p. 45. For the December 2025 IEP Meeting, Parent brought an Advocate, there was not enough time for Parent to go over documents with the Advocate, so the Advocate asked to table the meeting and it was. Tr. V. III p. 10. Parent attended every IEP meeting, except the January 2026 IEP Meeting, which she notified the District in advance that she could not attend. Tr. V. III p. 24. The March 2026 IEP Meeting, which was facilitated, was chaotic, there was a lot of back and forth, did not get anywhere, had some disagreements, and then just closed the meeting. Tr. V. III p. 10-11. The placement decision at the March 2026 IEP Meeting was for Student to return home,

and Parent did not agree with that decision. Tr. V. III p. 11. On April 4, 2026, there was a nurse's note stating that Student had four seizures on Thursday morning and two on Friday morning, and Parent stated she had called the neurologist. Tr. V. III p. 69; D. Ex. p. 1407-1408. On May 4, 2026, Parent received a call updating her about Student's behavior issues that day, as well as fun activities, from Case Manager Helms, along with someone else, but Parent was not told that Student had seven behavior incidents that day. Tr. V. III p. 14, 18-19. Tr. V. III p. 22-23. Parent emailed the District on May 4, 2026 stating she had been calling and was not able to reach a nurse. Tr. V. III p. 18-19; P. Ex. p. 448. She had tried several times to call Student that day to discuss Student's behavior incident, but she was not able to speak with Student that day or the next day. Tr. V. III p. 20. Case Manager Helms responded with an email listing requested phone numbers and describing the sequence of events regarding Parent's attempts to reach Student; Parent disagreed with the sequence of events related by Case Manager Helms' email. Tr. V. 20-22; P. Ex. p. 447. Parent stated she called and called, but no one answered until Parent messaged Nurse Shields. Tr. V. III p. 22; P. Ex. p. 449-451. Parent did not receive notice of any other behavior issues after the May 4, 2026 incidents. Tr. V. III p. 23. Parent did not recall if she asked for a reevaluation between the November 2025 IEP Meeting and March 2026 IEP meeting, and LEA Brazeal testified that Parent did not request a reevaluation during that time. Tr. V. III p. 31-34, 104-106. Student has attended summer school at Rogers since last summer with about six other Students for four hours per day; Parent believes she has on-to-one during the summer at Rogers. Tr. V. III p. 27-28. Parent believes Student would feel isolated not having access to communication as she does at the District, although she

is aware there is a program for deaf students at Rogers. Tr. V. III p. 28-29. Parent is told the Rogers program for deaf Students is good, but she does not feel like it has the full access that Student needs. Tr. V. III p. 28-29. Parent believes there should be more data showing Student would do better at a mainstream school versus a deaf school before changing Student's placement. Tr. V. III p. 33. Rogers usually attends Student's IEP meetings, and Parent has asked for meetings to be moved to allow Rogers to attend. Tr. V. III p. 46-49. Student is not reported to have behavioral problems during her summer school at Rogers. Tr. V. III p. 59. Student's audiologist is in Little Rock, but her kidney, neurology and other doctors are in Rogers. Tr. V. III p. 61-62. Rogers can provide a safe education for Student and has said there are no services that the District provides that Rogers cannot provide. Tr. V. III p. 63. Parent did not know whether Rogers has a deaf community and deaf staff. Tr. V. III p. 64. Rogers does not ask Parent to complete any paperwork to enroll Student in Rogers when she goes to summer school there; she stated the District and Rogers agreed that Rogers would provide summer school for Student because she had to make up days. Tr. V. III p. 81. She testified Student is still considered a student of the District even during the summers when she goes to Rogers, and she believed the District paid Rogers to provide Student services to make-up time, although that was disputed. Tr. V. III p. 81-82. This Hearing Officer found Parent credible when not limited by the extent of her memory or knowledge.

42. LEA Brazeal has a Masters degree in Special Ed K-12 and Bachelors degree in early childhood education; she has 29 years of experience with all but two years in Special Education. Tr. V. III p. 85. She previously worked at another district, then worked for

the District for four years, and then worked for the Arkansas Department of Education for a time before returning to the District in the fall of 2025. Tr. V. III p. 85. She does not directly provide services to Student but is a member of her IEP team in the role of Special Education Director. Tr. V. III p. 86. LEA Brazeal was aware that the District is a District of its own, responsible for FAPE, and has an LEA number. Tr. V. III p. 130-131. She has attended every meeting for Student since September of 2025. Tr. V. III p. 86. In the November 2025 IEP meeting, the IEP team discussed the recent OT, PT, Speech and Psycho-Educational evaluations and changed Student's goals based on the updated data and team input. D. Ex. p. 2612; Tr. V. III p. 91. The team considered keeping the same goals and rejected that in light of new evaluation data, and the team considered a change in Student's placement to Rogers and rejected that due to hesitation by Parent and Rogers. Tr. V. III p. 92; D. Ex. p. 2612. The team planned to reconvene December 10, 2025 to discuss hybrid placement in Rogers due to Student's academic, health, anxiety, and emotional regression. Tr. V. III p. 92; D. Ex. p. 2612. The Explanation of Action also stated "ARDB asked Rogers School District for the trial period to help make the best decision regarding [Student's] placement as ARDB does not feel it is currently the Least Restrictive Environment for [Student] due to the regression and little, if any, forward progress in [Student's] academic, emotional, social, health, and well-being. Her seizure activity has increased, which leads to medication increase drowsiness and lethargy. [Student] also consistently asks for Parent and is fixated on when she will get to go home." Tr. V. III p. 92-93; D. Ex. p. 2612. There were no new evaluations or information between the November 2025 IEP Meeting and the December 2025 IEP Meeting because evaluations had just occurred

and Parent had not requested additional evaluations. Tr. V. III p. 97, 104-106. At the December 2025 IEP Meeting, Parent and Advocate arrived 15 minutes late to the virtual meeting, Advocate requested to table the meeting to have additional time to review evaluations with Parent, and the meeting was tabled with no changes to Student's IEP or placement. Tr. V. III p. 100-102; D. Ex. p. 2650. The Explanation of Action from the December 2025 IEP Meeting stated the District made the referral for Student to return to Rogers because the District is no longer her LRE. D. Ex. p. 2650; Tr. V. III p. 97-98. The District team members no longer believed the District was the "appropriate" placement for Student because she needed to be in her local district to have access to Parent. Tr. V. III p. 102-103. The Basis for the Action was the evaluation data, the advocate input, the parental input, the Rogers input and the District input. Tr. V. III p. 98; D. Ex. p. 2650. Under Options Considered, the document stated moving forward with the referral to Rogers was rejected by Parent and advocate due to request for facilitated IEP meeting, and placement remaining at the District with current programming accommodations and modifications was rejected by the District team members citing provisions of FAPE. Tr. V. III p. 99; D. Ex. p. 2650. Follow up meeting dates were discussed, but it was too close to Christmas break. Tr. V. III p. 103-104. Parent later declined the facilitated IEP meeting. Tr. V. III p. 99. At the facilitated March 2026 IEP Meeting, the District team discussed they did not feel that Student was receiving FAPE in the correct placement, as they did not feel it was Student's LRE, and they were making the recommendation to refer Student back to Rogers. Tr. V. III p. 106. The District asked for questions, and Parent stated, "I don't like it, but I guess I don't have a choice." Tr. V. III p. 106. Then, the District moved forward with making

the recommendation to refer Student to Rogers. Tr. V. III p. 107. The District stated, “We are not saying it would never be Student’s [LRE], we are not saying that when she is able to later in life, access language the way she needs to, and access her mother and get those health concerns and stuff under control that it would never be a possibility.” Tr. V. III p. 107. The March 2026 IEP Meeting lasted more than two hours, evaluations were discussed but not in their entirety like they were at the November 2025 IEP Meeting. Tr. V. III p. 107-108. There was a disagreement between the District and facilitator because the District felt the facilitator was not treating the District fairly in the facilitation process, but that disagreement did not affect the decision for placement. Tr. V. III p. 108-110. Counselor Snare was not at the March 2026 IEP Meeting due to an emergency with another student, but LEA Brazeal requested and excusal for Counselor Snare, which Parent approved. Tr. V. III p. 110-111. Student’s attendance records reflected an out of school suspension from December 11, 2025 and was able to return on January 5, 2026, which LEA Brazeal testified should not count toward compensatory education, but returned the following Monday when the bus would take her to school. Tr. V. III p. 113; D. Ex. p. 3948. Although Student could have returned to school after the order in EH-26-29 on February 26 and 27, 2026, Student was absent on February 26 and 27, 2026 because Parent chose for her to return on March 2, 2026 when the bus would take her to school. Tr. V. III p. 113-114; D. Ex. p. 3524. Student was absent March 30, 2026, and the other recorded absences were medical. D. Ex. p. 3948; Tr. V. III p. 112-114. Student is receiving extended year services during the summer of 2026 at Rogers, and LEA Brazeal testified Student was enrolled as a student of Rogers first and foremost and that the District is a secondary placement. Tr. V. III

p. 114, 130-131. She testified that Student is enrolled in Rogers, Rogers made the referral to the District, so Rogers would provide Extended School Year Services. Tr. V. III p. 115. She testified that the District is a school district responsible for FAPE, but she testified that the District is still a secondary placement and that policy “was approved on February 3, 2026 by the State Department, by the Department of Education, and it was Board approved by the District.” Tr. V. III p. 130-135. She testified the District is not paying Rogers to provide summer school for Student. Tr. V. III p. 130. LEA Brazeal disputed that Student was receiving Extended School Year Services to make up for hours owed and testified that Student being out of school was not necessarily the fault of the District because the District went through the IEP process to make the recommendations it felt was right. Parent . Tr. V. III p. 115-116. Although Parent could have enrolled Student in Rogers in January and February, Parent did not do so, and then she stated her belief that Student is “already and enrolled student in Rogers.” Tr. V. III p. 115-116. The difference between the District and Rogers is that the District is a residential program, but the services Student receives at the District are available for her at Rogers. Tr. V. III p. 116. She believes Rogers has a deaf community based on discussions in IEP meetings, that Rogers can provide FAPE, and that Rogers has registered nurses on staff due to regulations requiring them. Tr. V. III p. 117. She testified that deaf students do not have to be at deaf schools to receive FAPE, and many are mainstreams into public schools. Tr. V. III p. 117. She did not feel the District is the LRE for Student, and a one-on-one paraprofessional would not solve the problem because that would be an even more restrictive environment. Tr. V. III p. 118. The continuum of LRE is general education, inclusion where special

education teachers assist in general education classes, resource where students are pulled out, self-contained where disabled students have less access to nondisabled peers, and then one-on-one support could occur in resource or self-contained. Tr. V. III p. 117-119. She testified that one-on-one paraprofessionals can become a barrier for the student and other students in the classroom. Tr. V. III p. 119. She does not believe Student has a one-on-one paraprofessional during the summer, but she does not know. Tr. V. III p. 119, 127. She does not believe that a one-on-one paraprofessional would be the right decision for Student because Student has been at the school since kindergarten and has not needed one; plus, the District is raising children to be adults and encourage independence. Tr. V. III p. 120. A one-on-one paraprofessional has not been discussed at any of Student's meetings that LEA Brazeal has attended. Tr. V. III p. 128.

43. Nurse Shields testified she had known Student since November of 2020. EH Tr. p. 216. She checks on Student daily, has a close relationship with Student, is on Student's IEP team, and stated Student has complex medical conditions that required over 13 medication changes in the last year, for which her doctors are primarily located near Rogers. Tr. V. II p. 277-278, 282; EH Tr. p. 167-168, 216-218. However, Student's medical conditions are very stable right now with seizures controlled by medication, her nephrology is in remission, and her asthma has been fine. Tr. V. II p. 279. Nurse Shields did not believe Student's medication was impacting her ability to receive services within the past two years but may have during the time that medications were being adjusted. Tr. V. II p. 280. She may see Student twice daily when she comes in for medications, and she is usually called to assist any time Student has a behavior or

medical crisis. EH Tr. p. 216. Student's first seizure occurred when she was home for Christmas break. Tr. V. II p. 279. Student lost skills during 2023-2024, but Student seemed to stabilize and start signing some with her again since 2024. Tr. V. II p. 310-311. Nurse testified that Student had been exhibiting an increase in seizures when she returns to the District after being home with Parent, and she was in favor of Student changing placement to Rogers due to Student's regression. EH Tr. p. 221-227. Student has real seizures, but at times had given the appearance of a seizure and then get up without exhibiting post-seizure behaviors when she was told that she could call Parent. EH Tr. p. 220-222; EH D. Ex. p. 224-234. Although Student certainly has real major seizures at times, Student sometimes exhibits pseudo seizures; for example, she may sign "brain shock" and get up from the floor without exhibiting post-seizure symptoms after being told "no fake seizures at school." Tr. V. II p. 281-284, 289-290; D. Ex. p. 129, 839-840, 823, and 827. The District has had to take Student to the hospital after a seizure. Tr. V. II p. 287. Nurse Shields sends out an updated care plan to all staff working with Student to notify them of any changes to Student's seizure care plan. Tr. V. II p. 291-292; D. Ex. p. 4095. Student tends to have seizures around 5:30 am about every other day. Tr. Vol. II p. 297-298. Student does not know Nurse Shields' name. Tr. V. II p. 294. She attended the November 2025 IEP Meeting and discussed her nurses notes and records, but she and Parent constantly communicate about Student's Health Care Plan. Tr. V. II p. 298-299. Nurse Shields attended the December 2025 IEP Meeting where the Advocate stopped the meeting, and she does not recall going over medical information in that meeting. Tr. V. II p. 299. She also attended the January 2026 IEP Meeting where District staff sat and waited for others to appear; when Rogers

and Parent did not arrive, the District had to decide what to do. Tr. V. II p. 299-300. Nurse Shields also recalled the March 2026 IEP Meeting after the first hearing; there were no changes to health care at that time and none were reviewed. Tr. V. II p. 300-301. The District struggles to monitor Student's seizure activity because they cannot use a camera in the dorm room to monitor night seizures due to liability, she could have a seizure one minute after she is checked on, and there is a lot of liability due to her medical complexities and privacy concerns. Tr. V. II p. 302-305. Movement pads cannot detect the difference in a seizure and going to the restroom. Tr. V. II p. 305. Per the seizure plan, the District needs to respond to seizure within three minutes. Tr. V. II p. 306. She does not know anything about Rogers' medical staff. Tr. V. II p. 311. She believes Parent is fearful of taking care of her medically complex child at home without the support of the District, and she knows Student is well cared for with the District. Tr. V. II p. 312-314. She testified that a one-on-one paraprofessional would not fix the problem because the problem is that Student wants to be home with Parent and will do anything to get there, including throwing fits and faking seizures. Tr. V. II p. 314. Nurse Shields agreed with the District's APRN that Student's seizures are triggered by stress and separation anxiety increases her stress. Tr. V. II p. 292; D. Ex. p. 2647; EH D. Ex. p. 476. Nurse Shields testified the District can educate Student and give her everything except Parent, and she believes the stress from transitions trigger seizures. Tr. V. II p. 293-296.

44. Counselor Snare testified that she has one-on-one sessions with Student two or more times weekly and group sessions one or more times weekly. Tr. V. II p. 24. Counselor Snare testified she could not testify to whether Student was doing better in the current

school year than the last school year because she could not recall beyond this school year. Tr. V. II p. 25-26. Her prior testimony was that Student's behavior did not improve despite all her efforts over the course of the past year. EH Tr. p. 128. She further testified that Student's behavioral incidents increased over the last year, and Student's primary motivation for maladaptive behaviors was to be with Parent. EH Tr. p. 129-130. Student's IEP team decided to change her placement to Rogers. EH Tr. p. 142. Counselor Snare's report dated April 14, 2025 stated the Student "has developed her social-emotional awareness, particularly her ability to identify emotions through emotion charts, sign language, or gestures. She recognizes and labels emotions in both on-on-one and group settings by pointing to visuals or referring to familiar signs. . . . She can accurately identify emotions using ASL or gestures." P. Ex. p. 207; Tr. V. II p. 26-27. Student's goals in the April 2025 report were to learn a "broader range of feelings (e.g., proud, nervous, embarrassed, excited.)." Id. Counselor Snare first testified that she had completed a report in April of 2026, but when informed that the report was not in the exhibits, Counselor Snare said she apparently "misremembered." Tr. Vol. II p. 28. Contrary to her April 2025 report, Counselor Snare testified that Student could not identify all the emotions on the emotion chart, including happy, sad, scared, angry, irritated, and disgust, with sign language or gestures and could only identify "happy and sad." Tr. V. II p. 28-29, 37-38. However, she testified the report was accurate. Tr. V. II p. 30. When presented with her report dated November 5, 2025, she acknowledged Student's goals were different from her April 2025 report. D. Ex. p. 2539-3530; Tr. V. II p. 46-. Counselor Snare's November 2025 report states that Student "has made some progress in her social-emotional awareness, particularly in her

ability to identify and label basic emotions using emotion charts, sign language and gestures.” Id. When presented with her April 23, 2026 report, which stated that Student demonstrated limited but stable progress, Counselor Snare acknowledged her goal was to “to identify and label her current emotional state by matching her facial expression to an emotion” using a mirror and adult modeling. D. Ex. p. 3992-3993; Tr. V. II p. 47-51. Student’s goals had not changed much because Student did not meet them; she did not consider changing Student’s goals when Student had not met them. Tr. V. II p. 47-51; 62-63. Counselor Snare testified Student is not able to communicate with her peers without support, and Student knows faces but not names, including not knowing Counselor Snare’s name. Tr. V. II p. 52-53, 63-64. Student frequently asks for her mother during sessions, which interferes with her ability to remain engaged in activities. Tr. V. II p. 54-57. She further testified Student is not able to utilize any of the coping strategies she is taught, and she believes this is because Student “doesn’t have the ability to retain new information” at all. Tr. V. II p. 31-32. She testified Student had made limited or “plateaued” progress in being able to apply coping skills independently in real life situations. Tr. V. II p. 33-35, 61-62. Counselor Snare testified her role in IEP meetings is to “support the team” by consulting and collaborating. Tr. V. II p. 30-31. She was unable to attend the facilitated IEP meeting on March 11, 2026, but she agreed with the IEP team’s decision that Student should return to Rogers because her review of Student’s documentation showed had not improved or had declined. Tr. V. II p. 36, 41-44. She did not review Student’s documents before the March 2026 IEP meeting but in prior IEP meetings. Tr. V. II p. 58-61. During the spring of 2026, Counselor Snare recalled seeing Student having behavior incidents including

- 1) refusal to transition from a dorm activity that was resolved with the emotional chart, time, and providing Student choices; 2) throwing food at a staff member that resolved by Counselor Snare moving food away, allowing her time to calm down, and then Student cleaned the food up; and 3) hitting another student that resolved with Counselor Snare offering Student prompts and reviewing the dorm rules then Student appearing to understand and apologized. Tr. V. II p. 63-72. Counselor Snare stated she was not supposed to implement the Behavior Plan after an incident but is support to call BCBA Green. Tr. V. II p. 72-73.
45. Teacher Siemens has been Student's math teacher for the 2025-2026 school year and has attended all Student's IEP meetings for the year; however, Teacher Siemens had not taught Student nor been on her IEP team prior to the current school year. Tr. V. II p. 79-80. Student typically chooses to eat lunch at Teacher Siemens' table daily. Tr. V. II p. 80-81. Before Student arrives in her class, Teacher Siemens sets up Student's token board and gets out her reward box as set forth in Student's behavior plan. Id. Student gets check marks for doing praise worthy things like paying attention or engaging, and she gets a reward if she earns five check marks during a class period, which helps her remain engaged in the class. Id. During the class period, Teacher Siemens works on a lesson, teaches a concept, has visuals, and uses manipulatives to support the concept. Id. Teacher Siemens works to get Student engaged in what is being taught, to respond to questions or discussions, and do individual work. Id. Teacher Siemens goes around the room and helps each student as they go through the work. Id. Student's accommodations are using the token system, are using visuals, manipulatives, and prompting her to continue working. Tr. V. II p. 81-82. Student's

rewards come from the token box, good reports in multiple classes allow Student to have a special FaceTime call to Mom. Id. In the 2025 IEP, Student's first math goal for 2025-2026 was "when presented with a number chart (0-50), [Student] will fill in the missing numbers with visual aids, manipulatives, or adult assistance as needed, achieving 75 percent accuracy in four out of four trials by the end of the IEP term, and Teacher Siemens testified that Student met the goal by the annual review of this school year. D. Ex. p. 198; Tr. V. II p. 82-83. Student's second math goal was "when given an addition chart, [Student] will accurately find the sum of two numbers with visual aids, manipulative, or adult assistance as needed with at least 75 percent accuracy across four trials by the end of the IEP team," and Teacher Siemens testified that Student also met this goal with the use of visual aids and manipulatives. Tr. V. II p. 83-84. These goals were developed at the annual review on April 30, 2025 and the duration of services was 9/30/25-11/11/25. Tr. V. II p. 84-85; D. Ex. p. 189. She was not asked to discuss Student's goal progress in math at the November 2025 IEP Meeting or the December 2025 IEP Meeting and did not do so. Tr. V. II p. 85-87, 95-96. Student does not seem to know Teacher Siemens' name; Student can retain some concepts with tools but not as much as desired. Tr. V. II p. 92. Teacher Siemens confirmed the December 2025 IEP Meeting was tabled to allow Parent and Advocate time to review the reports, and the discussion was that all the reports reflected that the least restrictive environment was not at the District, but no changes were made to Student's IEP or placement. Tr. V. II p. 87-88. There was a discussion attempting to schedule the next meeting, but it was not scheduled before the end of the meeting. Tr. V. II p. 88. She also recounted that Student daily counts down to when she will see her mom, and sometimes it is

- multiple times a day. Tr. V. II p. 88-89. Teacher Siemens has a visual aid on Student's desk that has the days of the week on it, and on Friday, there is a picture of her Mom. Id. When Student gets stuck on counting down to seeing Parent, it interrupts the class. Id. Teacher Siemens witnessed the behavior incident on August 12, 2025 where Student did not earn all her checkmarks and got angry that she did not receive her reward at the end of class. Tr. V. II p. 88-89. Student lifted the desk up, and it fell into Teacher Siemens. Tr. V. II p. 90. Teacher Siemens kept reminding Student that she could try again tomorrow in her class and prompted her to move to the next class, and Teacher Siemens was able to transition her to her next class. Tr. V. II p. 90. Teacher Siemens had been trained to use Student's Behavior Plan and utilized it in the incident where Student tipped the desk on her; she would only call BCBA Green if she were unable to handle Student herself and has not had to call BCBA Green to her classroom. Tr. V. II p. 98-99. More days than not, Student earns rewards using the token system. Tr. V. II p. 96-97. The Behavior Plan seems to work when implemented. Tr. V. II p. 99. Teacher Siemens agreed that Student should be moved to the Rogers School District because Student's learning is interrupted by Student's desire for mom; Student is making "some progress" but not the kind of progress that Teacher Siemens would hope she could make. Tr. V. II p. 90-91.
46. Speech Therapist Sullivan, formerly Haley, has worked with Student since 2020. Tr. V. II p. 104. In 2024, Student mastered three of eight speech goals, as reflected in the May 2024 Annual Speech Language Progress Report, and she made progress on other parts of the other goals. P. Ex. p. 209-216; Tr. V. II p. 109. Student has had no behavior incidents in speech therapy sessions this year. Tr. V. II p. 111. Student receives 180

minutes of speech therapy per month, which has not been increased despite the described “plateau.” Tr. V. II p. 111; P. Ex. p. 330; D. Ex. p. 203, 1449. For Student’s minutes, Speech Therapist Sullivan may pull Student one-on-one or may push into the classroom to support in ELA or math. Tr. V. II p. 111. Sometimes, Student does not want to come for one-on-one, so Speech Therapist Sullivan will sit with her in class instead of pulling her. Tr. V. II p. 112, 132-133. For the month of May 2025, Speech Therapist Sullivan pulled Student for one-on-one in two sessions, and Student is much more compliant one-on-one because she is not competing for any other attention and her token board is utilized. Tr. V. II p. 111-112, 132-133. Speech Therapist Sullivan has not witnessed any behavior incidents with Student this past school year, but has walked in on Student having a few behavior incidents with Case Manager Helms. Tr. V. II p. 113. The May 2, 2024 Annual Speech-Language Progress Report reflected that Student “had a better year with her compliance and overall demeanor” and “demonstrate[ed] significant progress toward her speech-language therapy goals”: mastered her use of antonyms and simple analogies at 84%; mastered using three word expressing at 83% and had achieved 74% on using four word expressions; achieved 39% on her use of narrative language skills; mastered at 82% demonstrating receptive language by pointing to pictures showing who or what and achieved 46% in answering where questions; and mastered at 82% demonstrative improved working memory by following directions with 3 critical elements and achieved 66% mastery in following directions with 4 critical elements. Tr. V. II p. 120-120; P. Ex. p. 209-212. The April 30, 2025 Annual Speech-Language Progress Report reflected that Student: achieved 65% in retelling stories with four action sequences; mastered labeling key vocabulary

terms at 89%; achieved 56% in answering different question types; achieved 64% in increasing utterances when describing things using adjectives; achieved 56% in following on-step directions with 4 critical elements; achieved 40% in using emotional vocabulary, and mastered demonstration of detection of her name at 80%. Tr. V. II p. 123-127; D Ex. p. 62-64. In April 2025, the Speech report also noted that Student “experienced an increased frequency of seizures and changes in medication management compared to previous years,” which has resulted in concerns about her memory and recall abilities, as she has difficulty consistently remembering the sign names of familiar peers and staff. Id. Data was collected on her ability to recall names, and one of the goals listed in the report was to work on Student’s ability to name objects and people, speech goals of identifying familiar people and objects was found in the April 2025 IEP, but Speech Therapist did not recall implementing a goal for recalling familiar names. D Ex. p. 63, 117; Tr. V. II p. 137. Speech Therapist Sullivan testified that Case Manager Helms, who is also a Speech Therapist, primarily conducted the September/October 2025 evaluation and drafted the May 2023 to November 11, 2025 Reevaluation Review titled, “Demonstration of Language Plateau” because Speech Therapist Sullivan was out on maternity leave from August to October of 2025. Tr. V. II p. 104, 110, 117; P. Ex. p. 158; D. Ex. p. 250. Speech Therapist Sullivan clarified that the “Demonstration of Language Plateau” was an evaluation using language assessments, but it does not reflect Student’s progress on her goals. Tr. V. II p. 106; P. Ex. p. 158. The November 10, 2025 Speech-Language Evaluation also states that “[Student] is currently demonstrating receptive language skills at the profoundly delayed level . . . [and] has shown little to no growth or improvement since

her last evaluation, indicating a plateau in skill level likely impacted by recent medical changes. P. Ex. p. 165-176, D. Ex. p. 250-261; Tr. V. II p. 107-108, 128-130. In the recommendations, the evaluation states, “progress will depend on stable health, consistent access to visual and auditory input, and unified implementation of behavior and communication strategies across all environments.” Id. The Progress Summary from Student’s Speech Therapy Annual Review dated April 29, 2026, reflected that Student achieved 17% on her goal of using appropriate pragmatic repair when her message is not understood; 43% on her expressive language goal to initiate, respond, and maintain two-three-turn exchanges with an adult or peer demonstrating topic relevance and partner awareness; 66% on her vocabulary expressive goal of producing three- to four sign utterances to describe or comment on familiar events at 80%; and 80% in one session (although 80% on two sessions was required for mastery) on labeling, describing or commenting on objects or environments using relevant words. P. Ex. p. 345-348, D. Ex. p. 4000-4008; Tr. V. II p. 113-115, 130-131. In the progress summary of the 2026 report, Speech Therapist Sullivan noted that Student “made meaningful progress in functional vocabulary skills during the portion of the IEP year following . . . November 2025, when these updated speech-language goals were established,” she “demonstrated these skills with decreasing levels of adult support in structured settings,” and she was expected to master her goals given continued instruction. Id. Speech Therapist Sullivan recommended Student receive a minimum of 180 minutes of speech therapy per month. Id. She testified Student made some progress from 2020 to May of 2026 but stated Student had not made the progress expected for someone of her age and abilities. Tr. V. II p. 116. Student sometimes remembers

Speech Therapist Sullivan's name, and Speech Therapist Sullivan testified Student has the ability to retain some new information. Tr. V. II p. 117. Speech Therapist Sullivan was at the November 2025 IEP Meeting but did not recall anything about the records being sent; the speech evaluation was discussed and Student's Speech goals were amended during the meeting based on the evaluation results. Tr. V. II p. 115, 118. She was also in the December 2025 IEP Meeting and recalled Parent's advocate requesting to table the meeting to allow time for her to review the documents, and the meeting was tabled. Tr. V. II p. 115-116. She recalled that no new evaluations or reports were discussed in the January 2026 IEP meeting because there were no new evaluations at that time. Tr. V. II p. 116. Speech Therapist Sullivan agreed that Student should be moved to the Rogers School District "because her language has plateaued and she is not making a lot of progress and the Rogers School District can provide the same services that we can provide her and she can live at home with her mother and see her every day." Tr. V. II p. 120. To her knowledge, she had provided Student all of her therapy minutes. Tr. V. II p. 132. Some days, Student's asking about her mom prevents her from working in therapy. Tr. V. II p. 134. Speech Therapist was aware of Student's Behavior Plan, has been trained to implement it, and has not had any behavior incidents with Student. Tr. V. II p. 139. She implements Student's token board and accommodations. Id.

47. Case Manager Helms has been involved in Student's education since her kindergarten year, but she has only been Student's Case Manager for one year and has consulted with Speech Therapist Sullivan regard Student's Speech therapy. Tr. V. II p. 232-233. As Case Manager, she looks at Student's overall diagnosis or progress or functioning

level. Tr. V. II p. 245-246. Although she pulled information from Speech Therapist Sullivan's evaluation, Case Manager Helms solely drafted the "Demonstration of Language Plateau" document for May 2023 to November 11, 2025 to frame the documentation in a concise manner, which stated "based on cumulative data from 2023-2025, student's speech-language development reflects a plateau with variability, characterized by limited expansion of expressive language, minimal generalization of skills, and little change on standardized measures despite ongoing specialized instruction and therapy." Tr. V. II p. 254-255, 267-268; D. Ex. p. 3853-3854; P. 158-159. The Demonstration of Language Plateau Report noted Student's neurological and medical factors contribute to inconsistent performance and limit her rate of language acquisition. Id. Student's absences due to seizures or dairy intolerance. Id. The Demonstration of Language Plateau Report reflects that between 2023 and 2025 Student had decreased OWLS-II Listening Comprehension scores, decreased OWLS-I Oral Expression, and stable to declining age-equivalent performance on the One-Word Vocabulary test. Tr. V. II p. 104- P. Ex. p. 158-159. It reflects that Student has met mastery criteria for labeling goals when provided with repetition, visuals, and structured practice, and her typical utterances have occasionally expanded to 2-3 signs with prompting from 1-2 signs. Id. Under the heading of "Memory, Attention, and Medical Factors," the report states that "[d]ocumentation across the reporting period indicates that [Student's] language performance is significantly affected by variability in attention and stamina, inconsistent recall of familiar people and vocabulary, and neurological and medical factors, including seizures and medication effects. Id. "These medical factors contribute to inconsistent performance and further limit [Student's] rate

of language acquisition.” Id. However, she did not disagree with any of Speech Therapist Sullivan’s prior speech evaluations or reports reflecting Student’s progress. Tr. V. II p. 255. Student is able to remember Case Manager Helms name, but she is not sure whether Student can retain new information, although she does come back from home with new vocabulary. Tr. V. II p. 235-236. In the emergency hearing, she testified that Student’s behavioral incidents had increased and that Student knew when she did something to hurt someone that it resulted in her being removed from the District and sent to Parent, which was Student’s primary motivator. EH Tr. p. 161. She testified Student asked for Parent 50 times a day, and Student asked for Mom after each behavior incident. EH Tr. p. 161. Case Manager Helms testified that there were increased safety concerns for Student, as her seizures were more frequent and for the District staff and other students who are affected by her behavioral incidents. EH Tr. p. 162-164. She testified that Student had already had a 2.5 day suspension earlier in 2025, so BCBA Green and principal reviewed the records of suspensions, incidents, and determined that a 7.5 day suspension met the need. EH Tr. p. 158-159. Then, she testified Student may have been suspended for 10 days. EH Tr. p. 159. She first testified that she believed Student was suspended for the full ten days and then said she was unsure about the suspension because she did not have the record in front of her. EH D. Ex. p. 180. She could not attest to whether or not Student drew blood in the December 10 behavior incident. EH Tr. p. 173. Case Manager Helms attended the November 2025 IEP Meeting, went over the speech evaluation with Parent, and amended the evaluation after a typo caused a brief misunderstanding; Rogers requested copies of the reports during the meeting. Tr. V. II p. 236-237, 246. Student’s goals were

updated at the November 2025 IEP Meeting, and there was a discussion of service changes but no implementation of a change of placement because there was no agreement. Tr. V. II p. 247-248. She also attended the December 2025 IEP Meeting and recalled a records request being sent prior to that meeting, which was fulfilled within a reasonable timeframe. Tr. V. II p. 237. Case Manager Helms attended the January 2026 IEP Meeting and recalled that no new information was discussed at that meeting because the team had already reviewed the evaluations twice. Tr. V. II p. 238-239. She attended the March 2026 IEP Meeting, and she offered and answered questions about Counselor Snare's report in Counselor Snare's absence. Tr. V. II p. 253. On May 6, 2026, Parent attempted to call Student twice but was unable to reach her; she emailed Case Manager Helms who explained that one nurse was ill and the other did not note a request to speak with Student and stated she was hopeful Student would "earn her contingent reward of FT with [Parent]." Tr. V. II p. 240-; P. Ex. p. 444-448. Later in testimony, Case Manager Helms testified that all students can call parents two or three nights a week. Tr. V. II p. 260. However, when the second complaint was filed and there was an instruction that all communications should occur with counsel present, the daily FaceTime call had to be halted as an incentive. Tr. V. II p. 260-261. Parent had asked to be notified of escalating behavior issues, so Case Manager Helms had to help define "escalating" as three major documented incidents Tr. V. II p. 261. The May 5, 2026 email was sent to update Parent in response to the behavior incidents on May 4, 2026 because Parent had been messaging the dorm to ask about behavior incidents in the dorm, but Parent was not informed that an escalation pattern was defined as three major documented incidents. Tr. V. II p. 261-267, 272-

273; P. Ex. p. 452-453. Case Manager Helms did not recall providing the documentation to Parent regarding the phone calls about Student's behavior on 5/4/2026, although she outlined the times of the calls. Tr. V. II p. 242-243; P. Ex. p. 444. Regarding emails sent on May 4, 2026, Case Manager recalled them because she felt she was "slightly rude and unprofessional" and wanted to rephrase. Tr. V. II p. 243-244; P. Ex. 454. A one-on-one para has not been considered in the past year, although paras have been considered for other students. Tr. V. II p. 239-240, 268-270. Case Manager Helms did not believe a one-on-one para could help Student, unless the paraprofessional was Student's mother; Parent is the only thing that the District does not offer Student. Tr. V. II p. 249. Student repeatedly tells Case Manager Helms about what she did with Parent over the weekend, what their plans are for the following weekend, how many days until she sees Mom, what Mom likes or does not like, and to take pictures to send to Parent. Tr. V. II p. 256. Case Manager Helms typed up Student's accommodations because she ran out of room on the form, and she does not believe there are any additional accommodations that the District could offer Student at this time, although a one-on-one paraprofessional and many other accommodations were not listed. Tr. V. II p. 256-257; D. Ex. 3889. She explained that a one-on-one is not needed because of the small class size, because of the language access, because of the visual supports, because of the BCBA on staff, fidelity checks with teachers and paras, fidelity checks in the dorm, and swing shifts for the dorm and school for social-emotional learning support. Tr. V. II p. 249. Student's average class ratio is two-to-nine at the maximum but usually two-to-five to seven, and there is a para in most of Student's classes due to her complexities and in case the Behavior Plan is activated. Tr.

V. II p. 250. Students who have one-on-one paraprofessionals at the District have them provided by the public school district for the student; however, Student's IEP team has not seen that constant one-on-one adult prompting is going to improve her functionality and quality of education but would increase her prompt dependence. Tr. V. II p. 250-251. In addition, Case Manager Helms testified that with all of the accommodations, supports, and services being provided to Student, she is not making the expected progress given all of these things, and the primary impeding factor is physical proximity to Parent, which the District cannot provide. Tr. V. II p. 252-253. Case Manager testified she was in favor of the change in placement to Rogers due to Student's communication regression, for example forgetting the names of her classmates and District staff, being unable to find her words, which she believed to result from Student's medications. EH Tr. p. 176-179. She also testified that the District was the most restrictive placement on the spectrum of least restrictive environments because there was no access to nondisabled students. EH Tr. p. 170-171; Tr. V. II p. 251-252. She testified that Student could receive the same accommodations and supports at Rogers that the District provides, except that some supports outlined in the District's IEP would not apply to their placement environment, and Rogers repeatedly states they are willing, ready and able to serve Student. Tr. V. II p. 257. Rogers would be a less restrictive environment for Student, and the District wanted to see if Student would be more successful in the less restrictive educational setting at Rogers. Id.

48. BCBA Green testified she has worked with Student since the fall of 2022; she does not have weekly sessions with her but has taught her replacement behaviors using role play.

Tr. V. II p. 142-144. Previously, BCBA Green testified Student's maladaptive behaviors were motivated by her desire to gain attention. EH Tr. p. 187. In 2024-2025, Student's behavior incidents had increased, as well as seizure activity. EH Tr. p. 187. District's Behavior Specialist testified that she believed Student's behaviors resulted from the environment and that there were also some physiological variables in place that Behavior Specialist could not see or control, which is the reason there is no clear antecedent for Student's behaviors. EH Tr. p. 206-207. The BCBA also testified that Student had 11 major behavior episodes in the fall of 2025. EH Tr. p. 191-192, 209-210. A major behavior incident means an administrative-managed event including injury, harm to another person, disruptive behavior that would include destroying property, turning over furniture, pouring out liquids, throwing objects, and elopement. EH Tr. p. 193. The major events listed in Student's behavioral incident dashboard in 2025 included holding a pillow over another student's face, putting scissors to a teacher's neck and attempting to cut her hair, repeatedly hitting and throwing objects at other students. EH D. Ex. p. 1-22, 266, 267-268, 276-278; EH Tr. p. 193-202. Student's FBA reflected that her triggers were returning to the District after a weekend home, being told no, and not receiving a preferred reward. EH Tr. p. 203, 205. Student's primary reinforcer or reward was to talk with or see Parent. EH Tr. p. 204. At the emergency hearing, District's BCBA testified Student had begun making repeated requests for Parent and tangible items were no longer sufficient to decrease maladaptive behaviors; Student was not meeting her goals on the FBA. EH D. Ex. p. 47-58; EH Tr. p. 205-208. Again, in this hearing, BCBA Green testified that Student's most powerful reinforcer was still her Mom. Tr. V. II p. 184-185. BCBA Green stated

she taught Student initial replacement behaviors and use of the token board were taught to Student in the fall of 2025 after a new FBA and Behavior Plan were completed in September 2025 with the help of Parent as co-creator of the plan. Tr. V. II p. 144-145, 176-179; D. Ex. 3988-3989. Student returned to the District after being home around March 30, 2026, and there was about a month when there were virtually no behavior incidents with Student. Tr. V. II p. 145-146. Then, behavior incidents occurred on May 4, May 20, May 25, 26, and 27, 2026, which appeared to have been motivated by the desire to access a tangible item that she wanted and could not get. Tr. V. II p. 145-146. On May 4, 2026 Student was throwing objects and refusing to comply with instruction; Student had been asleep on her desk and was awakened and asked to stand to complete her work to remain awake, which appears to have triggered the behavior, although Student de-escalated when BCBA Green's intervened asking her to set the chair down. Tr. V. II p. 180-181; D. Ex. p. 4053-4057. On May 20, 2025, Student kicked staff and BCBA Green after being awakened from sleeping on her desk and being asked to stand to do her work. Tr. V. 182; D. Ex. p. 4059-4064. BCBA Green confirmed that the reinforcers in Student's Behavior Plan were still reinforcers for Student. Tr. V. II p. 147; P. Ex. p. 151-157. BCBA Green testified Student's FBA and Behavior Plan were presented in September of 2025, so she did not have anything to present at the November 2025 IEP Meeting. Tr. V. II p. 147-148. She recalled Parent's Advocate requesting that the December 2025 IEP Meeting be tabled, and it was halted immediately. Tr. V. II p. 148. From the January 2026 IEP Meeting, BCBA Green recalled that placement was discussed, which was supposed to have happened at the December 2025 IEP Meeting; she did not recall discussing any of her evaluations at

that meeting. Tr. V. II p. 149. In the 2024-2025 school year, Student had 18 behavior referrals with 11 major and 6 minor, which was a decrease from 75 referrals in 2023-2024 and 83 in 2022-2023. P. Ex. p. 217, 403; Tr. V. II p. 149-151, 176-177; D. Ex. p. 4169-4172. District's BCBA attributed the decrease in behavior reports in 2024-2025 to Student being out of school approximately 27 percent of the school year and to her being heavily medicated that year. Tr. V. II p. 151-152. In 2025-2026, Student had 22 behavior referrals, with 11 major and 7 minor, which is comparable to the number of incidents in 2024-2025 and about a third of the incidents that she exhibited in 2022-2023 (83) or 2023-2024 (75). P. Ex. p. 403. Student cannot remember BCBA Green's name. Tr. V. II p. 155-156. BCBA Green believes Student can only retain new information for a very short period of time after enormous amounts of repetition, modeling and role play, but "over the long haul, no." Tr. V. II p. 156. BCBA Green has not been able to determine a pattern as to when Student is motivated and less motivated, during the entire duration of her years with Student. Tr. V. II p. 157. BCBA Green has not changed Student's behavior goals because "they have not been met," with the exception of the removal of the elopement goal. Tr. V. II p. 165-166; D. Ex. p. 2699, 3890, 3951. On September 23, 2025, Parent emailed BCBA Green asking what she could do to assist at home with Student's behavior, what might be triggering her, were there certain times of day or subjects when behavior occurs, how can we track her behavior pattern, what strategies are working, how Parent could reinforce the strategies at home, what calming techniques work well, what is the best way for Parent to get daily progress from teachers, what motivates Student, and what is the number one thing I can do at home to help her succeed at school. Tr. V. II p. 167-169. In response, BCBA

Green provided graphic data from the FBA, and answered Parent's other questions. Tr. V. II p. 169-174. She testified daily communication would be more feasible if Student lived at home. Tr. V. II p. 174. BCBA Green created a quarterly Progress Report that was delivered in December of 2025 summarizing Student's behavioral data and developments in November and December 2025, which stated that Student's behavior had improved and the improvement was partly attributed to Parent's consistent implementation of the Behavior Plan strategies at home over the weekends. Tr. V. II p. 174-175; D. Ex. p. 1414-1415. BCBA Green was in favor of changing Student's placement to Rogers because the data is inconclusive about the best placement for Student, she is curious, and she wants to see Student get what she needs. EH Tr. p. 206, 211. She also testified that the ratio is maybe two adults to one student when Student attends summer school in Rogers, so Student gets more one-on-one attention there and has zero behavior incidents there. Tr. V. II p. 183-184. Rogers has a BCBA and multiple registered behavior technicians that are the people who can be there to provide great support. Tr. V. II p. 184. The District does not have any registered behavior technicians, but BCBA Green has one in mind who would be a good fit and is in the process of credentialing. Tr. V. II p. 185. The District has not discussed a paraprofessional for Student. Tr. V. II p. 185-186. BCBA Green testified agreed that Student should be placed in Rogers based on IEP data that "shows that there has been a plateau across disciplines," which she heard about at the IEP meetings, and Student is not accessing what she needs at the District. Tr. V. II p. 161.

49. OT Green has worked with Student since Student entered kindergarten. Tr. V. II p. 188-189. Student receives 240 minutes of OT monthly, which is two 30-minute sessions

weekly, usually on Tuesdays and Thursdays at 12:40 p.m. Tr. V. II p. 189. OT Green learned it was better to pick Student up at the end of recess because many times Student would not want to leave the classroom because Student would have chosen a reward and would miss that if she was pulled for therapy. Tr. V. II p. 189-190. Although Student did not master any of her goals, the March 2024 OT report reflected that Student reached 52% on her goal of improving writing skills by placing letters on the lines, reached 55% on her goal of improving writing skills by spacing between words, reached 51% on her goal of signing numbers 1-20 and alphabet A-N, reached 58% on her goal of improving sequencing skills by performing a task with three steps; reached 66% on her goal of improving memory skills by identifying pictures of people, foods and animals; reached 65% on her goal of performing three skills in the correct order; reached 69 % on her goal of counting correctly during activities; and reached 75% on her collaborative goal of continuing an action after being praised or reinforced when participating in structured activities. Tr. V. II p. 200-202; P. Ex. p. 40-41. On Student's OT Annual Review 2025, Student met 5/8 goals; she did not meet her goal of keeping letters and numbers in spaces but reached 74%; she did not meet her posture goal but reached 77%; she met her visual discrimination goal of matching pictures with details, shapes, or letters at 90%; she met her goal of performing a 2-3 step functional activity at 72%; she met her goal of improving sequencing of 4-6 picture cards at 77%; she did not meet her goal of identifying names of people, foods, and objects but reached 55%; she met her goal of continuing an activity with reinforcement at 90%; and she met her goal of stopping an undesirable action when asked or warned at 100%. Tr. V. II p. 202-205; P. Ex. p. 42-45; D. Ex. p. 58-60. The April 2025 OT Annual Review stated Student

“has made notable progress in transition skills, moving more independently and efficiently from the regular classroom to therapy sessions, she has improved in cooperation during sessions, she continued to persevere but was more easily redirected to tasks; and she continues to require additional support and cues to manage her behavior effectively. P. Ex. p. 42-45. “Overall, Student has made significant gains in several developmental areas throughout the year, though ongoing support remains necessary to address attention, memory, posture and sequential processing skills. Id. Student’s OT progress was noted in her September 2025 IEP. Tr. V. II p. 208-209; P. Ex. 42-45; D. Ex. p. 190-191. On October 15 and 16, 2025, an OT Evaluation was conducted, and it was noted that “when she has more seizure activity, she loses memory skills, which make[] it difficult for her to make progress with her skills.” Tr. V. II p. 207; D. Ex. p. 248-249. For Student’s therapy sessions, OT Green sets up her token board and rewards, and she rewards Student immediately for coming into OT. Tr. V. II p. 198. Once Student is in the room, OT Green does not usually have trouble with her and few refusals because Student enjoys one-on-one time with anyone. Tr. V. II p. 199. Student consistently counts down the days until she can see her Mom, but it usually happens one to three times and does not interfere with Student’s learning. Tr. V. II p. 199. She is using the system that BCBA Green created to allow Student to use three tickets to talk about Mom, and after that, Student understands she is supposed to be done with the topic. Tr. V. II p. 199. In the OT Annual Review 2026 dated April 29, 2026, Student met her objective of identifying the correct sign for a picture at 76%; she reached 67% on the goal of signing the names of people or foods that she was in contact with daily; she reached 56% on sequencing numbers and letters; she reached 64% on

reciting the alphabet; she reached 33% on demonstrating core strength for posture. P. Ex. p. 340-342. The OT Review notes that Student “continues to show deficits, particularly in recalling the ASL name signs of both adults and peers” and recommended that Student continue to receive 240 minutes of OT monthly excluding school closures. P. Ex. p. 341. The OT report noted that Student had missed a significant amount of school, which affected her progress, but OT Green did not know if Student would have achieved more goals if she had not missed school. Tr. V. II p. 190-192. After missing school, Student was able to catch back up to her prior percentages on the goals within about three weeks. Id. OT Green had one behavior incident from Student in the fall of 2025 in which Student did not want to do the requested activity, so Student started knocking things off the bookshelf. Tr. V. II p. 192-193. OT Green called the Dean of Students to assist her in that incident. Tr. V. II p. 193. Student remembers OT Green’s name sometimes, and OT Green practices people’s names with Student almost every session, as that is one of her OT goals. Tr. V. II p. 193-194; P. Ex. p. 340. OT Green was unsure whether Student could retain new information. Tr. V. II p. 194. OT Green attended the November 2025 IEP Meeting, she provided her evaluation report, and discussed what the report said. Tr. V. II p. 196. OT Green was at the December 2025 IEP Meeting but does not recall what happened that day. Tr. V. II p. 196-198. She was one of the IEP team members who agreed that Student’s placement should be moved to Rogers because Student “had reached a plateau for me, and they can provide the same services, and she talks about Mom every single session, and I just felt like it would probably be a good idea for her to be able to have more access to Mom is she could get the same services at her school district.” Tr.

- V. II p. 198, 209, 212, 213. OT Green did her best to provide Student's minutes but could not recall if she had missed providing services due to family issues. Tr. V. II p. 213; D. Ex. p. 3929.
50. PT Floyd has worked with Student since September of 2025. Tr. V. II p. 216-217. He sees Student for 180 minutes monthly in the afternoons and utilizes her token board to get her to come to therapy and during therapy. Tr. V. II p. 217-218, 225. He was with OT Green during the behavior incident when Student knocked items off the desk and table, the Dean of Students was called, and it took a substantial amount of time for them to get her calm. Tr. V. II p. 226. After she calmed, Student cleaned up the items, and that is the only one of Student's behavior incident that he has witnessed. Tr. V. II p. 226. He has not seen her be able to retain new information without prompts. Tr. V. II p. 219. In his Annual PT Review dated April 2026, PT Floyd noted that Student missed a considerable amount of therapy, and this should be taken into account when considering goal achievement. P. Ex. 356-358. Student did not meet any goals but achieved 37% of her body mechanics goal; 40% of her school based 2-step tasks without crashing into peers; 40% of reactive strategies like stepping around/over; 33 percent of increasing body control with only 2 crashes on the floor per session; 30-35% on her goals related to building strength; he recommended that she continue her goals and receive 180 PT minutes monthly. Tr. V. II p. 219-220; P. Ex. 356-358. After returning from her absence for most of the spring semester, Student recouped her skills in 3-4 weeks. Tr. V. II p. 227, 230. He believed she would have achieved her goals if she had been able to access services, and all his services are one-on-one with Student. Tr. V. II p. 219-220. Student does bring up Mom and count down the days to seeing

Mom, and that interferes with her services about half of his sessions with her. Tr. V. II p. 220-221. He attended the November 2025 IEP Meeting and went over his evaluation from that period with Parent; the meeting was tabled because the team “could not come to terms” regarding placement. Tr. V. II p. 222-223. At the December 2025 IEP Meeting, Rogers attended virtually along with Parent and Advocate, Parent and Advocate delayed the beginning of the meeting and then came in and asked that the meeting be held later on, and then, the meeting was adjourned after an attempt to schedule the following meeting. Tr. V. II p. 223-224. He attended the January 2026 IEP Meeting and does not recall a discussion of any evaluations or reports at that meeting; everything had been discussed at the prior meetings. Tr. V. II p. 229-230. PT Floyd agreed with the decision to change Student’s placement to Rogers after hearing the District staff at the meeting report that “there was a plateau that seemed to be happening across all disciplines.” Tr. V. II p. 224-225.

51. Rogers’ Special Education Consultant testified that she became involved with Student’s IEP meetings in June of 2025 and had been involved since, although she had to miss one meeting. EH Tr. p. 79. She attended the November 2025 IEP meeting, and its purpose was to go over the re-evaluation, look at eligibility and placement; Student’s category of eligibility was changed to Multiple Disabilities and there were changes to the IEP goals and present levels. EH Tr. p. 79. A 60-day hybrid model was discussed, but Rogers’ Special Education Consultant had a lot of questions about how that would work logistically since Student was not enrolled in Rogers and still is unclear about how that would work. EH Tr. p. 80. She also attended the December 2025 IEP Meeting, and the purpose was to revisit the discussion of placement. EH Tr. p. 81.

Immediately after the meeting began, Parent's advocate asked to discontinue the meeting to give them more time to review records and schedule a facilitated IEP meeting, although Parent declined facilitation. EH Tr. p. 81-82, 85. The usual procedure was to discuss the next meeting date when the IEP team was together for a meeting. EH Tr. p. 88. Roger's Special Education Consultant testified she would need to see specific data showing the District is not adequately meeting Student's needs to give an opinion on her best placement, and when Student's placement has been discussed, the District seemed to her to be opining that they feel Student is unhappy or not being successful. EH Tr. p. 83. She had seen data showing Student made progress toward goals but had not seen data indicating that a change of placement was required. Id.

52. Rogers' Deaf Education Coordinator had been attending Student's IEP meetings for the past two and a half years. EH Tr. p. 92. She attended the November 2025 IEP Meeting, and the purpose of the meeting was to go over testing results, discuss programming and placement. EH Tr. p. 92-93. There was a discussion of a hybrid model, but Rogers was not sure how Student could be in two different districts. EH Tr. p. 93. In the November 2025 IEP Meeting, she suggested an auditory goal to address Student's cochlear implants and be able to identify sounds in the environment, for example ambulances, but the District's Case Manager declined to add that goal. EH Tr. p. 93-94. The December 2025 IEP Meeting was held to discuss Student's placement, and she recalled Parent's Advocate immediately asking for the meeting to be tabled to allow time for document review and facilitation. EH Tr. p. 94-95. She believed Student's placement should be Parent's choice; Rogers cannot provide an

- immersive deaf culture like the District does. EH Tr. p. 95-96. She had also directly provided services to Student in ESY the summers after third and fourth grades. EH Tr. p. 99. Student had no major behavior problems, but summer school is more of a one-on-one basis than the school year. EH Tr. p. 99.
53. None of the witnesses was a psychologist or psychiatrist. Tr. V. I-III; EH Tr. V. I.
54. The District's Admissions Policy states that: eligibility and referral for admission to the District is governed by IDEA and Arkansas Code Title 6, Chapter 43. It also states:

[a] student who has been identified by his or her resident district . . . as a student with a disability under IDEA, may be referred by his or her IEP team if the IEP team determines that the [District] is the appropriate placement and the Least Restrictive Environment ("LRE") for the student. If the student is accepted and enrolls in [the District] the responsibility for FAPE is shared by the referring District (LEA of Record) and [the District]. Id.

BURDEN OF PROOF

Before consideration of the Parents' claims, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). As Parent is seeking relief in this case, the burden of persuasion is on the Parent. In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8th Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008). The care and concern of the teachers, nurses, and service providers who work directly with Student was apparent and genuine, and their testimony regarding the specifics of Student's behavior and progress was credible. This Hearing Officer found some testimony inconsistent with documentation or other testimony, which called credibility into question. Some evidence, was more persuasive and reliable concerning the issues, which did affect this Hearing Officer's

decision as discussed below. In reviewing the record, the testimony of all witnesses and each admitted exhibit's content were thoroughly considered in issuing this decision.

DISCUSSION AND CONCLUSIONS OF LAW

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 the student to receive educational benefit. *Id.* The burden of proof falls on the party seeking relief. *See Sneytzer 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.

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). “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).

I. WHETHER PARENT WAS DENIED MEANINGFUL PARTICIPATION IN IEP MEETINGS HELD ON NOVEMBER 2025, DECEMBER 2025, AND MARCH 2026.

Pursuant to *Rowley*, a school district may commit a procedural violation of IDEA that amounts to a substantive denial of FAPE if procedural inadequacies (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). Placement decisions must be made by a group including the Parent and individuals knowledgeable about the child and placement options, and that such decisions be based on the child’s IEP, consistent with the least restrictive environment (“LRE”) provisions. 34 C.F.R. § 300.116. In *Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 427 (8th Cir. 2010), the Eighth Circuit

held that a student was not denied FAPE when technical or procedural IDEA violations did not also affect that student's educational benefit.

Parents are to be included in their child's IEP meetings unless the District "cannot convince" a Parent to attend. 34 C.F.R. § 300.322(d). "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. *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Cir. 2012)

On the other hand, 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). "When a school district predetermines the educational program to be provided to a disabled student, including the student's placement, prior to the meeting with the parents and closes its mind to the concerns or evidence of the parents, the IEP is procedurally flawed and must be set aside because parents were deprived of any meaningful 'opportunity to participate in the formulation process.'" *Fort Osage R-I School Dist. v. Sims ex rel. B.X.*, 641 F.3d 996 (8th Cir. 2011) citing *Lathrop*, 611 F.3d at 424. Guidance from Appendix A for the 1999 U.S. Dept. of Ed. Regs. Issued pursuant to IDEA 97 states, "the IEP team should work toward consensus, but the

public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority vote.” Placement should be set aside when the cooperative process is compromised. *See Paris School Dist. v. A.H. by and through Harter*, 2017 WL 1234151 (W.D. Ark. 2017) and *Parrish v. Bentonville School Dist.* 2017 WL 1086198 (W.D. Ark. 2017).

A. MEANINGFUL PARTICIPATION IN THE NOVEMBER 2025 IEP MEETING

Regarding the November 11, 2025 IEP Meeting, it is undisputed that Parent, Student’s IEP team, and several staff members from Rogers met to review her comprehensive three-year evaluation, discuss her eligibility category, and update her IEP (“November 2025 IEP”). EH Tr. p. 18; EH P. Ex. p. 125, 136; EH D. Ex. p. 340-341, 367, 385-404, 445-464. In light of her complex medical conditions, the November 2025 Notice of Action documented that the team changed Student’s eligibility “from Hearing Impairment, including Deafness, to Multiple Disabilities to reflect the integrated nature of her communication, cognitive, behavioral, and medical needs.” EH P. Ex. p. 136; EH Tr. p. 367. Student’s then recent Occupational Therapy (“OT”) Evaluation, Speech Evaluation and Amendment, Physical Therapy (“PT”) Evaluation, social-emotional goal progress, and recent health information were reviewed. EH D. Ex. p. 406-407, 407-419, 474-475, 419-424, 465-467, and 476. In the November 2025 IEP, Student’s placement continued to be “residential school” with zero time in general education and noted that Student “requires a comprehensive educational setting that provides coordinated access to Total Communication consistent adult support, and embedded health-related care throughout the school day,” and the District “currently offers the integrated structure needed to implement her IEP, [BIP], and Individualized Health Plan (IHP) with fidelity. Given her medical profile, developmental delays, and communication needs, this setting continues to support her access to instruction and safety.”

EH P. Ex. p. 146-147. The November 2025 IEP states that the team initiated a 60-day hybrid trial with Rogers to collect comparative data regarding communication access, behavioral regulation, and educational benefit.” EH P. Ex. p. 147. However, the Notice of Action documents that the team discussed changing Student’s placement to Rogers for a “hybrid 60-day trial,” but that option was “tabled” for further discussion at a meeting scheduled for December 10, 2025. EH P. Ex. p. 125; EH D. Ex. 367. Testimony established that the “hybrid” option was rejected because there was no agreement and no understanding of how it would work and confirmed the placement issue was tabled to be discussed at the next meeting. EH Tr. p. 19-20. The Notice of Action further reflected that immediate transition to Rogers was rejected because there was insufficient behavioral, academic, and medical data to support the placement at the time. EH D. Ex. p. 367. The November 2025 IEP Meeting was ended because Student was sick, and Parent needed to meet the bus transporting Student to Parent. EH P. Ex. p. 153.

As Parent’s participation in the November 11, 2025 IEP meeting is undisputed and Parent’s disagreement with the change in placement to Rogers resulted in the discussion of issue being tabled, this Hearing Officer finds Parent failed to meet her burden of proving that the District denied her meaningful participation in that IEP Meeting. In fact, the November 11, 2025 IEP meeting was concluded at Parent’s request because Parent needed to meet the bus transporting Student to her.

B. MEANINGFUL PARTICIPATION IN THE DECEMBER 2025 IEP MEETING

With regard to the December 10, 2025 IEP Meeting, when records were transmitted, whether the timeframe was reasonable, and whether Parent already possessed the records was disputed, but this Hearing Officer need not make finding on those issues because the following facts are undisputed. Student’s IEP team reconvened to discuss a possible change of placement for

Student. Parent brought an Advocate, who requested that the meeting be tabled to allow time for Parent and Advocate to review records together. The District raised the issue of changing Student's placement to Rogers, but there was no agreement. The meeting was tabled at Parent's request. This Hearing Officer need not determine whether the timing of the production of documents to Parent and Advocate denied Parent's meaningful participation because any potential violation of meaningful participation in the December 10, 2025 IEP Meeting was cured by the District's agreeing to reconvene the meeting at a later date, at Parent's request.

As Parent was present and her request for additional time to review records was not only heard and acknowledged by the District, but also granted, this Hearing Officer finds Parent failed to prove the District denied her meaningful participation in the December 10, 2025 IEP Meeting.

C. MEANINGFUL PARTICIPATION IN THE MARCH 2026 IEP MEETING

As discussed above, IDEA prohibits a school district from predetermining the educational program, including student's placement, for a disabled student prior to meeting with parents, and a predetermined placement should be set aside when a school district closes its mind to the concerns or evidence of the parents because parents were deprived of a meaningful opportunity to participate in the formulation process. *See Fort Osage R-I School Dist. v. Sims ex rel. B.X.*, 641 F.3d 996 (8th Cir. 2011); *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562 (8th Cir. 2024).

In EH-26-29, this Hearing Officer held the District violated Parent's right to meaningful participation in Student's education when it proceeded with the January 6, 2026 IEP meeting without Parent present although Parent's attorney requested the meeting be postponed. In EH-26-29, along with other evidence suggesting predetermination, the District emailed Parent on January 5, 2026 stating the meeting would move forward on January 6 and Student's placement would be

changed to Rogers, which clearly established that the decision to change Student's placement was made prior to and not "in" the January 6, 2026 IEP Meeting.

Despite the following findings, this Hearing Officer found that the District staff who directly teach and provide her services with her were truly concerned for Student's well being and believed that Student's health and education would be better in Rogers and were credible in their testimony in that regard and with regard to Student's progress, even if their use of the terms "plateau" and "LRE" were misguided. However, this Hearing Officer found the credibility of District administrators questionable for the reasons discussed below. Further, this Hearing Officer found Parent credible in her testimony that the District was close minded and did not consider her concerns at the March 2026 IEP Meeting, and testimony of District staff and documentation did not refute Parent's testimony on that point. This Hearing Officer finds that a preponderance of the evidence established that Student's placement was predetermined by the District, and as such, denied Parent meaningful participation in the March 2026 IEP Meeting on the basis of the above listed facts and the analysis herein.

1. TIMING

On Monday, March 2, 2026, Student returned to the District, eight days after the February 24, 2026 Order in EH-26-29, which found that the District had predetermined Student's placement prior to the January 6, 2026 IEP Meeting and ordered that Student be reenrolled in the District and a facilitated IEP meeting be held to determine placement. Parent's understanding was that Student's placement was changed due to Student's behavior at the January 2026 IEP Meeting.

The facilitated March 11, 2026 IEP Meeting was held nine days after Student's return and a little over two weeks from the Order in EH-26-29. Testimony and documentation established the March 2026 IEP Meeting was held virtually with attorneys for both sides present, the District

staff again went over the documentation, and testimony established the District discussed the same evaluations and remained firm on its position that Student's placement should still be changed to the Rogers School District with no offer of adjustment, additional support, and additional testing. Even the trial period with a hybrid model, which the District had proposed and discussed at the September 2025 IEP Meeting was off the table. That the March 2026 IEP Meeting was so close in time to the January 2026 IEP Meeting contributed to this Hearing Officers finding that placement was predetermined.

2. NO CHANGE IN STUDENT OR SCHOOLS

The feasibility and distance between the District and Rogers were no different in the fall of 2025 or the spring of 2026, and there was no evidence suggesting Student had different needs in the fall of 2025 or the spring of 2026. At the September 2026 IEP Meeting, the IEP team discussed that Student's ability level was in the extremely low range, but based on her email, Rogers' Assistant LEA did not believe the District's re-evaluation met ADE standards. The updated FBA stated that Student's disabilities continued "to impact her regulation, communication, and peer interactions," and intensive adult support remained necessary for safe participation in academic and residential settings. However, the District documented its plan to use the comprehensive evaluation results to determine whether continued placement at the District, return to the resident district, or a hybrid model best represent Student's LRE, and the IEP also documented that Student "continued to demonstrate significant behavioral needs that interfere with her learning and the safety of others."

Documentation from Student's November 2025 IEP contained language stating that Student "requires a comprehensive educational setting that provides coordinated access to Total Communication, consistent adult support, and embedded health-related care throughout the school

day, which the District currently offered the “integrated structure needed to implement” her IEP, BIP, and Health Plan with fidelity. The Speech Report documented that Student had increased seizures and medication changes in 2025-2026, but there was testimony from Nurse Shields that Student had more medical issues in 2023-2024 and 2024-2025, then in 2025-2026. This Hearing Officer finds there insufficient evidence suggesting Student’s health or abilities changed significantly during the 2025-2026 school year in a manner that would suggest a change in placement was required, which again contributed to this Hearing Officer’s finding that placement was predetermined.

3. CONCERTED USE OF “PLATEAU”

District employees overused the term “plateau” so greatly in testimony that it evidenced that the District was close minded and had predetermined Student’s placement. Again, this Hearing Officer found the staff who work directly with Student to be genuinely concerned for her well-being and best interest and credible in their testimony regarding the specifics of Student’s progress; however, with the exception of LEA Brazeal, and Math Teacher Siemens, the use of the term “plateau” by every employee who testified gave the appearance of a concerted effort by the District to demonstrate a plateau, despite data to the contrary. Many testified that Student had “plateaued,” even when their reports or testimony established that Student had made slow progress or even significant progress, as was the case with Student’s 2026 OT and Speech reports. In the 2025-2026 school year, despite a significant period of absence due to the District’s attempts to change her placement and continuing medical challenges, Student met a math goal, she met 5/8 OT goals, progressed and mastered a speech goal after goals were adjusted based in November of 2025, she progressed on most of her IEP goals, even if she did not master them, and was able to recoup skills lost during her time out of school within 3-4 weeks in OT and PT.

Although this Hearing Officer declines to make a determination regarding whether the District provided FAPE with regard to her IEP or services, as the Complaint did not allege a FAPE violation and the District made no counterclaims, a slow pace of learning is not uncommon for a student with Very Low to Extremely Low intellectual ability. Slow learning students continue to fall farther behind their peers on standardized tests because they learn more slowly than their peers, but declining standardized scores do not mean that a student is not learning or progressing at their own rate in light of their circumstances. In addition, the evidence reflected Student's medical issues in the spring of 2025 resulted in her loss of some skills and slower acquisition of others, which explains any actual regression or slower progress.

After the November 2025 IEP Meeting, instead of the usual practice of schools of pointing out a student's progress, the District appeared to set out to prove that Student could not or would not progress. Contrary to progress reports, some District staff testified they did not believe Student could retain new information, and others testified that her ability to learn was extremely limited. This Hearing Officer finds the consistent use of "plateau" by District staff members and in light of Student's actual progress further evidence that the District was close minded regarding Student's placement at the March 2026 IEP Meeting and likely long before that.

4. LEAST RESTRICTIVE ENVIRONMENT

The District employees also consistently testified that the District was no longer the LRE for Student. Documentation from the November 2025 IEP Meeting stated that the team considered a change in Student's placement to Rogers "as ARDB does not feel it is currently the Least Restrictive Environment for [Student] due to the regression and little, if any, forward progress in [Student's] academic, emotional, social, health, and well-being. Her seizure activity has increased, which leads to medication increase drowsiness and lethargy. [Student] also consistently asks for

Parent and is fixated on when she will get to go home.” The Explanation of Action from the December 2025 IEP Meeting stated the District made the referral for Student to return to Rogers because the District was no longer her LRE, even though the meeting had been tabled with no discussion to allow time for Advocate to review evaluations with Parent, which suggests that the form was likely completed prior to the meeting and not edited afterward.

LEA Brazeal and Case Manager Helms testified that the District was the most restrictive and highest level of support on the continuum of placement because the District is a residential school with no nondisabled students for Student to access. Rogers is a public school where there are nondisabled students, so it is the least restrictive educational environment on the continuum of placement. Certainly, sending every student at the District to their residential public school would provide each deaf student with a less restrictive environment, but that does not mean the environment would be a more appropriate placement for any of those deaf students. Per the District’s documentation, Student needs immersive ASL and the District is the only school that can provide it. Also, Student’s medical and behavioral needs are being met at the District pursuant to BCBA Green’s testimony, as documentation reflects that behavior incidents have decreased since Parent and BCBA Green cooperated in formulating and implementing Student’s behavior plan, which works well when implemented based on the testimony of Math Teacher, OT, and PT.

This Hearing Officer finds District’s LRE argument appears contrary to its documentation of Student’s needs and also contrary to the way LRE works. As stated above, Student’s May 2025 IEP stated that Student is a residential student at the school because the “state school is the *only* school with full provision in ASL with support services that meet[] [Student’s] specific needs.” Student’s language needs did not change after May of 2025. Also in the fall of 2025, the District also documented that Student was experiencing seizures and needed the medical and behavioral

support that the District could provide, which did not change. Further, the District asserts that Student is failing to learn or “plateauing.” A failure to progress would usually suggest a student needs additional support, in the form of additional modifications, accommodations, services, or a *more* restrictive school setting if the less restrictive supports fail. District testimony even established that they would be willing to reconsider Student for enrollment at a later time “when she is able to later in life, access language the way she needs to, and access her mother and get those health concerns and stuff under control that it would never be a possibility” which reflects that they would reconsider having her as student later when she would need less support, not more. Perplexingly, the District would like to send her to Rogers now while she appears to need more support and where they believe she would have a less restrictive environment, instead of more. In this case, the District is arguing that Student is not progressing, so her placement should be changed to a less restrictive placement, which this Hearing Officer finds are contradictory positions.

For these reasons, this Hearing Officer finds that the District’s argument that it is no longer Student’s LRE also contributed to the determination that the District was close minded regarding Student’s placement at the March 2026 IEP Meeting and before. The District’s position was so entrenched that it did not even consider that its plateau argument was contrary to its LRE argument, or that its LRE argument was contrary to Student’s increased needs.

5. FAILURE TO GATHER ADDITIONAL INFORMATION OR CONSIDER OTHER OPTIONS FOR SUPPORT OR PLACEMENT

Based on testimony and documentation, there were no new evaluations to review between the November 2025 IEP Meeting and the March 2026 IEP Meeting. The Notice of Action from the November 2025 IEP Meeting reflected that immediate transition to Rogers was rejected because there was insufficient behavioral, academic, and medical data to support the placement at the time, but strangely, the District made no effort to gather additional data was obtained between

the November 2025 IEP Meeting and the January 2026 Meeting to support the change in placement. If Student was not progressing as expected in light of her circumstances, IDEA required that the District adjusted her goals (which was done to a limited extent in November of 2025), consider increasing service minutes (which was not done), and additional supports provided (which was not done other than adjusting Student's Behavior Plan). The District did not refer Student for a psychological evaluation of Student to allow a professional psychologist to issue an opinion regarding whether Student had separation anxiety that was triggering her seizures. Nurse Shields testified that Student's transitions away from Parent were stressful and triggered her seizures. If that is the case, it would seem to follow that Student would have increased behavior incidents on Sundays and Mondays when Student returned to school from home, but BCBA Green testified she could not determine a pattern for when Student would have behavior incidents. Still, the District did not seek the opinion of a psychologist in an effort to collaborate with Parent.

At the March 2026 IEP Meeting, the same November 2025 evaluations were discussed again, the District stated it did not feel it was Student's LRE, and then, the District stated it was making the recommendation to refer Student back to Rogers. The District asked for questions, and Parent said she did not like it but guessed she did not have a choice. There was no evidence of discussion of a trial period, as there had been in the fall of 2025, and there was no proposal of additional support to help Student succeed at the District. In the District's defense on this point, Parent did not provide any additional evaluations or evidence in support of Student remaining at the District, but she did continue to state her objection to the change in placement. These facts evidence that the District was not attempting to reach consensus or collaborate with Parent or Rogers and contributed to the conclusion that the District predetermined that Student would not remain in her placement at the District.

6. PREDETERMINATION CONCLUSION

Based on the above discussed facts and reasoning, this Hearing Officer finds Parent met her burden of proving the District leadership remained closed minded to any option other than returning Student to Rogers, as it had been since sometime prior to the January 2026 IEP Meeting. This Hearing Officer further finds that the District's predetermination significantly impeded the parents' opportunity to participate in the decision-making process regarding placement, as the District ceased considering Parent's objection to changing Student's placement to Rogers or trying to collaborate with Parent to reach consensus. Parent was left out of the January 2026 IEP Meeting and stated she did not like it but did not have a choice in the March 2026 IEP Meeting. The District's predetermination of Student's placement resulted in a deprivation of educational benefit and denial of FAPE in violation of IDEA during the time Student missed school from January 5 to March 2, 2026 due to the District's predetermination at the January 2026 IEP Meeting and missed from March 11 to March 31, 2026 due to the District's predetermination at the March 2026 IEP Meeting.

B. WHETHER THE DISTRICT COMPLIED WITH IDEA AND STATE REGULATIONS IN CHANGING STUDENT'S PLACEMENT

1. CHANGE IN PLACEMENT

In H-26-38, it is undisputed that moving Student from residence and education at the District to education at Rogers School District would be a change in placement. The District confirmed in its Answer to Due Process Hearing that it did not "contest the stay put order requested" by Parent at the time. *See Answer* p. 5. In addition, Rogers is a public school and the District is a residential school, which would be a different placement on the continuum.

2. NO AUTHORITY FOR REFERRAL TO ROGERS

The District is mistaken in its argument and apparent belief that it could “refer” Student back to her district of residence, as a change of placement. Based on LEA Brazeal’s years of experience and testimony, that was likely the case in the past. However, Arkansas amended pertinent laws impacting this issue in March of 2025. LEA Brazeal was aware of the amendments and affirmed that the District is a District of its own responsible for FAPE and has an LEA number. As cited by the District, A.C.A. §6-43-107 governs the District’s admissions policy, states that the District may adopt an admissions policy, and also states that “a student who is accepted for admission to the [District] . . . shall unenroll from the school in which he or she is currently enrolled and the [District] shall become responsible for all requirements under the student’s individualized education program.” As referenced by LEA Brazeal, the District’s Admissions Policy Effective on February 3, 2026 states that a student may be referred to the District by his or her district of residence (“LEA of Record”):

if the IEP team determines that the [District] is the appropriate placement and the Least Restrictive Environment (LRE) for the student. If the student is accepted and enrolls in [the District] the responsibility for FAPE is shared by the referring district and [the District]. The LEA of record shall participate in ongoing IEP development and review. [The District] shall provide the specialized instruction and related services necessary to provide a free appropriate public education (FAPE) and implement the IEP, conduct progress monitoring, and maintain IDEA-required documentation.

Neither A.C.A. §6-43-107 nor District’s admissions policy establishes a procedure for sending a student back to the referring district if at some point the District determines it is no longer the LRE or appropriate for a student. Despite the dual responsibility for FAPE between the referring district and the District, A.C.A. §6-43-107 specifically states that the Student unenrolls from the referring district, and the District becomes the student’s District and is dually responsible for FAPE, along with the referring district.

20 U.S.C. §1415(k)(2)(B) and 34 C.F.R. 300.532(b) establish the authority of a hearing officer to “order a change in placement” within a school district or “return a child with a disability to the placement from which the child was removed.” Although IDEA hearing officers have the authority to make determinations regarding educational placement and programming within a district and IDEA hearing officers also make determinations regarding whether a particular private school is an appropriate placement for a student whose parents have enrolled them in the private school or wish to do so, this Hearing Officer finds no support in the law or regulations for the authority to remove a student from one public school district and place them in another school district in which the student is not enrolled and their parent does not wish their child to be enrolled. Further, although this Hearing Officer heard the genuine pleas of many District staff members to change Student’s placement to Rogers because they believe Student would be less stressed and more able to focus on her education if she had daily access to Mother, as they believe she does during summer ESY, this Hearing Officer finds that such a finding of placement would be beyond the jurisdiction of a hearing officer and contrary to laws and regulations.

IEP teams have the ability to change a Student’s placement within a school system to implement LRE, but this Hearing Officer found no authority for a school district to dismiss a Student to achieve LRE. The District cites *Barron ex rel. D.B. v. South Dakota Bd. Of Regents*, 655 F.3d 787 (8th Cir. 2011) for its position that IDEA does not require that deaf students be educated at a school for the deaf, and certainly, some deaf students are enrolled by their parents in regular public schools and are educated there. *Id.* However, that case is inapposite because it involved a state school for the deaf that closed entirely, all the students were sent to public schools because the school for the deaf no longer existed in that state, and that was not a situation involving

the dismissal of one Student. Id. The case does not suggest that a school for the deaf may dismiss a student to another school district based on LRE. Id.

Based on Arkansas law cited above and the absence of legal authority suggesting otherwise, this Hearing Officer concludes that District IEP team cannot unenroll Student without proper disciplinary procedures, and the District cannot refer Student back to or cause Student to be enrolled in Rogers. Parent may enroll Student in Rogers, but Parent has not done so even after the January or March 2026 IEP Meetings when the District IEP team attempted to refer Student back to Rogers.

3. ATTEMPTS TO CHANGE PLACEMENT APPEAR RELATED TO BEHAVIOR

Districts have a responsibility to provide FAPE to each and every student with a disability, even those with challenging behavior issues. As there are no other grounds for dismissal and as testimony and documentation evidence that the District's desire to change Student's placement appears to stem from the District's difficulty in managing Student's behavior, the District's dismissal of Student in this case would amount to a disciplinary removal under IDEA. Pursuant to C.F.R. § 300.536, a change in placement because of disciplinary removals occurs "when a removal is for more than 10 consecutive school days . . ." In relevant part, C.F.R. § 300.530(b)(1), Authority of school personnel, additionally states:

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

The District's effort to remove Student due to her behavior goes back at least a year. Documentation from Student's May 2, 2025 IEP Meeting stated that Student was a residential

student at the school because the “state school *is the only school with full provision in ASL with support services that meet[] [Student’s] specific needs.*” A few days later, on May 19, 2025, Student had a major behavior incident; in the Manifestation Determination related to that incident, the District moved Student to virtual instruction, and it took a state complaint initiated with ADE to reverse the District’s placement of Student in virtual instruction. A few days after the May 19 behavior incident, on June 3, 2025, the District first raised the idea of “hybrid programming” but determined it was not feasible due to distance.

Student also had major behavior incidents in August of 2025, which appeared to have spurred the discussion of a change in placement based on the timing of the discussion of a change in placement in Student’s September 2026 IEP documentation. As discussed above, the Notice of Action from the November 2025 IEP Meeting reflected that immediate transition to Rogers was rejected because there was insufficient behavioral, academic, and medical data to support the placement at the time, but there was no evidence that additional data was obtained between the November IEP Meeting and the March IEP Meeting to support the change in placement.

As discussed above, in EH-26-39, which was held just four months prior to the hearing in this matter, this Hearing Officer found Student’s behavior was the motivation for the District’s change in her placement at the January 6, 2026 IEP Meeting in summary based on the following facts. Although the District raised the issue of placement at earlier IEP Meetings, the District exhibited an urgency to change Student’s placement to Rogers after the December 10, 2026 behavior incident, for which Student was suspended. After that incident, the District first wanted to reschedule Student’s IEP meeting for Christmas Eve, and then scheduled the meeting for the first day of school after Christmas break with no cooperation regarding the meeting date, as had been customary. The District did not reschedule the January IEP Meeting despite Parent attorney’s

and Rogers' request that it be rescheduled, even though the District had been amenable to a last-minute request to table the December IEP Meeting just before the incident, and the District moved forward with Student's January IEP Meeting without Parent, although Parent had consistently attended prior meetings and had communicated with the District that she could not attend on January 6, 2026. Despite District staff statements that the change of placement was due to her plateau, the bulk of the District's testimony in EH-26-29 centered around Student's behavior and the inability to manage Student's behavior due to her motivation to be with Parent.

In H-26-38, BCBA Green did testify that Student's behavior improved since Parent assisted with the Behavior Plan in September of 2025 and had been implementing it at home, and other staff members who were implementing the Behavior Plan, for example Math Teacher Siemens, PT Floyd, and OT Green, testified that the Behavior Plan was effective when implemented. Student's behavior incidents in 2024-2025 and 2025-2026 were less than half the number of incidents in 2023-2024 and 2022-2023. However, documentation and other testimony continued to reflect that Student's behavior was still a problem that was top of mind for District administration. Again, testimony in this hearing frequently circled back to the District's difficulty in managing Student's behavior because getting to Parent was her primary motivation, including testimony that Student acted out in an attempt to be sent home to Parent.

Further, although District's testimony in this matter was that the recommended change in Student's placement was motivated by Student's "plateau" and LRE, which appeared to be the true motivation of Student's direct service providers, this Hearing Officer did not find the testimony of District administrators credible on this point in light of the inconsistency between their testimony and documentation. Student's prior IEPs and evaluation reflected that Student had continued to slowly progress, except for the spring of 2025 when Student's loss of skills was

explained by seizures and seizure medications that severely impacted Student's ability to function. Yet, there was little evidence that the District reconsidered what appropriate progress should look like in light of Student's seizures and seizure medication in the form of adjustments in accommodations or goals, whether Student should receive additional minutes in Speech Therapy in light of her struggle to recall names and terms, or whether Student would receive any more educational benefit in Rogers than she would at the District in light of her medical issues. Moreover, there was no evidence of consideration by the District that Student continued to need the "embedded health care" or immersive language environment that the District was providing, as stated in the November 2025 IEP, and there was no finding that Student no longer needed the embedded health care or the total language environment.

Although not the intent of all of the team members, as in the January 2026 IEP Meeting, for some team members, the March 2026 IEP Meeting appeared again to this Hearing Officer to be a disciplinary removal in disguise. The issue of discipline in the March 2026 IEP Meeting was not overtly apparent as it had been in documentation and testimony from the January 6 IEP Meeting where the January IEP cited regression and states "[d]uring the current IEP term, the student exhibited increased emotional dysregulation and physical aggression toward staff, students and property, most recently 12/10/25, resulting in disciplinary removal. . . In light of these factors, the IEP team determined that current placement no longer provides meaningful educational benefit and that a less restrictive setting closer to home may better support the student's ability to access FAPE . . ." However, District testimony in this case again reflected concerns its ability to manage Student's behavior in light of her motivation to return to Parent. In addition, as discussed above, the March 2026 IEP Meeting was held about two weeks after this Hearing Officer's decision was issued in EH-26-29, the Complaint in H-26-38 was filed just two months after the Complaint in

EH-26-29, and this Hearing Officer did not find the District's motivation for recommending the change Student's placement shifted from her behavior during that time.

The testimony and documentation discussed above led this Hearing Officer to conclude by a preponderance of the evidence that the District's change in Student's placement at the March 2026 IEP Meeting was due to Student's behavior and discipline and in violation of IDEA requirements for disciplinary removals.

20 U.S.C. §1415 (k)(1)(B),(E),(G), and (H) set forth regulatory requirements pursuant to IDEA for changing a student's placement as a result of a student's behavior and states:

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

- (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

Here, permanent change in Student's placement to Rogers would be a removal for more than ten days. The District did not argue that Student's placement was changed temporarily or because her behavior was substantially likely to result in injury to District staff, Student or to others pursuant to 20 U.S.C. §1415(k) and 34 C.F.R. §300.530(g). No manifestation determination was held after the fall of 2025. The District did hold IEP meetings in January and March of 2026 to discuss changing Student's placement with parent, but as found above, the District impeded Parent's meaningful participation in those meetings because it predetermined Student's placement.

IDEA requires that placement decisions be made by a group including the Parent and individuals knowledgeable about the child and placement options, and that such decisions be based on the child's IEP, consistent with the least restrictive environment ("LRE") provisions. 34 C.F.R. § 300.116. Again, in *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562 (8th Cir. 2024), cited by the District, the Eighth Circuit Court of Appeals held that "an IEP is procedurally invalid 'when a school district predetermines the educational program to be provided to a disabled student . . . prior to meeting with the parents. Such behaviors would inappropriately deprive the parents of the meaningful opportunity to participate in the IEP's formulation.'" As this Hearing Officer found above, the District predetermined Student's placement before the March 2026 IEP Meeting and

remained closed minded during the meeting, which invalidated the District's placement, even if it were possible. For the above-described reasons, this Hearing Officer finds by a preponderance of the evidence that the District failed to comply with IDEA in changing Student's placement in March of 2026.

Order

Based on the testimony and documentary evidence, this Hearing Officer finds that Parent met her burden of proof in showing that the District changed Student's placement without meeting the requirements of IDEA. Specifically, the District predetermined Student's placement before the March 2026 IEP Meeting, the District failed to follow procedures for disciplinary removal of Student's removal, and the District does not have the authority to refer Student back to the sending District for purposes of achieving LRE. The District's predetermination of Student's placement significantly impeded Parent's participation in Student's education and caused a deprivation of educational benefit to Student because its actions resulted in Student missing school from January 5 to March 2, 2026 and from March 11 to March 30, 2026. IDEA grants hearing officers great discretion in formulating compensatory education. This Hearing Officer hereby orders that:

1. The District shall permit Student to return to the District as a residential Student by District bus the on the first day when other students arrive to begin school at the District in August of 2026, and the District shall continue to provide transportation and all other services that the District has provided for Student to date, until the evaluation and IEP Meeting referenced below have occurred or unless disciplinary issues arise prior to that time that would permit the District to remove Student from the District in compliance with IDEA.

2. As a portion of compensatory education, the District shall hold a training on the topic of IDEA procedural compliance that specifically covers IDEA's requirement of collaboration with parents, which shall last no less than three hours, and shall be mandatory for members of Student's IEP team, Superintendent, teachers, and service providers.
3. As a portion of compensatory education for educational time missed in the spring of 2026, after Student returns to the District in August of 2026 and for no less than one school year, the District shall increase Student's Speech Therapy minutes to 240 minutes per month in light of Student's slow progress in that area. Student's Speech Therapy sessions are to be implemented on a one-on-one basis, as testimony established it is more effective, and Speech Therapist is to consult with OT, PT, and classroom teachers to determine the best time for Student's Speech Therapy when she will not resist going to therapy because she was working toward a reward in a class setting.
4. As a portion of compensatory education, after Student returns to the District in August of 2025, due to Student's documented medical fatigue due to seizures and seizure medicine, the District shall revise Student's Behavior Plan to reflect that Student is not to be requested to stand to work if she falls asleep in class. District staff shall document each incident in which Student falls asleep in class and report it to District Nurse, who shall maintain documentation of Student's sleep in class incidents and send them to Parent monthly, so Parent will have them to discuss with Student's neurologist. BCBA, Parent, and the IEP Team shall determine the best course of action for occasions when Student falls asleep in class, instead of requesting Student be asked to stand to work in

- light of her medical conditions, and Student's Behavior Plan shall be updated to reflect that. If Student's behavior is not well managed by her Behavior Plan, Student's IEP team should determine whether an RBT trained paraprofessional should be implemented for Student, as BCBA suggested had been helpful during ESY in Rogers.
5. As a portion of compensatory education, prior to the beginning of school in August of 2026, BCBA, Parent, and the IEP team shall review and update Student's Behavior Plan to ensure that reinforcers are current, to add the plan for occasions when Student falls asleep, and any additional necessary updates. District staff who work with Student directly shall receive a training on Student's updated Behavior Plan for no less than 30 minutes. Student's reinforcement FaceTimes with Parent shall be reinstituted, and dorm staff members shall additionally facilitate FaceTime calls with Parent on Tuesdays and Thursdays at a time convenient for Student and Parent. Any staff member who is unwilling or unable to implement Student's Behavior Plan with fidelity shall be replaced by the District with another staff member who is able and willing to do so. On the last day of school each week, BCBA or LEA shall notify Parent by email of any behavior incidents classified as minor, and any notes or report created shall be attached for Parent's review. For any behavior incident classified as major, BCBA or LEA shall notify Parent by telephone call of the incident within a reasonable time on the day of the incident, and any notes or report created shall be emailed to Parent no later than the next day for her review.
 6. As a portion of compensatory education, the District shall pay for, refer Student for, and schedule (in collaboration with Parent per below) a comprehensive independent educational evaluation and a psychological evaluation at Dennis Development Center

("DDC") with interpreter services requested for hearing impaired. Parent shall be permitted to chose between the first three available dates that DDC offers for the evaluations, and the District shall provide transportation and accommodations for Parent to attend the evaluation if the Parent requests transportation and accommodations in writing more than three business days prior to the evaluations. If the Parent is unable to attend the evaluations in person, the District staff shall facilitate Parent's participation in the evaluations by telephone conference call or FaceTime during the entire time that District staff are permitted to be present for the evaluation. For any questionnaires that are part of the evaluations, Parent is to be provided the opportunity to complete any parent form, and any form that is to be completed by the District shall be completed by one of Student's general education teachers. The District and Parent shall provide input to the DDC psychologist or psychiatrist of Student's fixation on Parent, behavior report data, seizure and nurse visit data, pseudo seizure anecdotes, and any other symptoms or conditions relevant to this matter, so that the evaluations can address the existence of any separation anxiety, behavioral issues, or other psychological issues Student may have and provide recommendations to Student's IEP Team.

7. After receiving the DDC evaluation, the District shall hold a facilitated IEP meeting for Student at a mutually agreed upon time and place by all members of the IEP team including Parent and her attorney, and the placement in Student's best interest at that time may be discussed in light of the DDC evaluation.

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

7/21/2026

DATE