

BEFORE THE SPECIAL EDUCATION HEARING OFFICER

IN THE MATTER OF THE DUE PROCESS HEARING)
FOR STUDENT)
AND) CASE NO. 25DP450-002
SHAWNEE HEIGHTS UNIFIED)
SCHOOL DISTRICT NO. 450)

Notice of Hearing Officer's Decision

This matter comes before the undersigned Special Education Due Process Hearing Officer, Angela D. Gupta ("Hearing Officer"), for decision. In this proceeding, Petitioners, as parents of Student ("XX")¹, assert various claims against Respondent, Shawnee Heights Unified School District No. 450, (the "District") for violation of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. For reasons stated below, the Hearing Officer finds Petitioners have shown that, as a result of substantive and procedural violations of the IDEA, Respondent failed to provide a free, appropriate public education ("FAPE") to XX during her Kindergarten school year (2024-25). The Hearing Officer further finds that Petitioners are entitled to equitable relief including compensatory education services and other specific remedies.

I. Procedural Background

On or about January 29, 2025, Petitioners submitted their initial due process complaint. See Letter to Kansas State Department of Education (01/29/2025). In the complaint, Petitioners alleged various claims including: (1) failure to develop an adequate IEP; (2) failure to conduct a manifestation determination review ("MDR"); (3) unlawful removal from the general education 1 To protect personal identification information, this Decision refers to Student as "XX."classroom; (4) unilateral change of placement without parental consent; (5) violation of parental rights in educational decisions; (6) failure to provide a safe learning environment; (7) violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and (8) Violation of the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq. See id.

On February 21, 2025, the undersigned was appointed to serve as Hearing Officer in the case.

On April 14, 2025, the Hearing Officer held a virtual scheduling conference with the parties and entered a schedule in the case. See Scheduling Order (04/17/2025). At the parties' request, the Scheduling Order provided a timeline for the parties to submit amended pleadings and conduct limited discovery. Id. at 2. The due process hearing was scheduled for July 8, 9, and 11, 2025. Id. at 2.

On or about May 3, 2025, Petitioners submitted their Amended Due Process Complaint ("Amended Complaint"). In the amended claims, Petitioners assert that, with regard to all or part of XX's Kindergarten school year (i.e., 2024-2025), the District violated substantive and procedural requirements under the

¹ To protect personal identification information, this Decision refers to Student as "XX."

IDEA by: (1) failing to develop and implement a meaningful IEP; (2) failing to timely address XX's behaviors through an FBA and BIP; (3) unilaterally changing XX's placement without procedural safeguards; (4) denying parents the ability to meaningfully participate in educational decisions; and (5) not educating XX in the least restrictive environment ("LRE"). *Id.* at 2-3. Petitioners assert the violations resulted in denial of a FAPE. *Id.* at 1. Petitioners seek equitable relief including: (1) compensatory education services; (2) mandatory professional development; (3) mandatory oversight, coordination, and staff training by a Board-Certified Behavior Analyst ("BCBA"); and (4) development of an appropriate FBA and BIP, in collaboration with a BCBA, to address XX's individualized needs. *Id.* at 4.

On or about May 23, 2025, the District submitted its Response To Amended Due Process Complaint. In the response, the District denies Petitioners' allegations. *Id.* at 1-8. Respondent further denies that Petitioners are entitled to relief, "except to the extent that the District has agreed to provide educational services over the summer." *Id.* at 8. The District further states that it "will continue to work with Petitioner[s], and the entire IEP team, to develop and implement appropriate IEPs and BIPs as necessary and required." *Id.*

On July 1, 2025, the Hearing Officer held a virtual status conference with the parties to address pre-hearing matters.

On July 8, 9, 10, and 11, 2025, the due process hearing was held at Shawnee Heights High School.² Despite best efforts, the parties were unable to complete the presentation of evidence during that time. Therefore, additional days for due process hearing were scheduled and held on August 4, 5, 11, 13, and 15, 2025.

At the due process hearing, the parties stipulated to the admission of Petitioners' Exhibits 1 through 138, and Respondent's Exhibits 201 through 218. Tr. Day 1 at 30:8-21 (Hearing Officer).

At the due process hearing, the parties had ample opportunity to present evidence and elicit testimony from the following witnesses:

- XX's mother (or "Mom")³ (Days 1, 2, and 5)
- Tiffany McCain, XX's Kindergarten Special Education Resource Teacher (Day 2)
- Michelle Peacocke, Early Childhood School Psychologist (Day 2)
- Brae Richards,⁴ XX's Preschool Teacher at Jars of Clay (Day 2)
- Amy Punches, XX's BCBA (Day 3)
- Michelle Garolock, Program Director of Jars of Clay (Day 4)
- Scott Dial, Principal at Tecumseh South Elementary (Day 4)
- Dr. Richard Harrison, Behavioral Consultant for the District (Day 6)
- Dr. Kristin O'Brien, Director of Special Education for the District (Days 6 and 7)

² Although July 10 had not originally been scheduled, the parties agreed to present evidence on this day as well.

³ The name of XX's mother is available in the hearing transcript.

⁴ Although the Hearing Officer has reviewed and considered the testimony of Brae Richards, her testimony is not cited in this Decision. Accordingly, all references herein to "Richards" are with regard to Sarah Richards, the school psychologist (discussed below).

- XX's stepfather⁵ (Day 7)
- Tracie Holcomb, Early Childhood Education Inclusion Teacher and Member of the District's Autism Team (Day 8)
- Ryan Ritchey, Assistant Principal at Tecumseh South Elementary (Day 8)
- Sarah Richards, School Psychologist at Tecumseh South Elementary (Days 8 and 9)

Following the close of evidence, the Hearing Officer established a briefing schedule for the parties. Additionally, the Hearing Officer scheduled oral argument to be held on January 20, 2026, which was subsequently rescheduled to March 13, 2026.

On October 21, 2025 Petitioners submitted their proposed findings of fact and post-hearing brief. See Petitioners' Findings of Fact and Conclusions of Law ("Petitioners' FOF"). On November 21, 2025, the District submitted its response. See USD 450's Response to Petitioners' Findings of Fact and Conclusions of Law ("District's Response"). On December 24, 2025, Petitioners submitted their reply. See Petitioner's [sic] Reply to Respondent's Response to Petitioner's [sic] Findings of Fact and Conclusions of Law ("Petitioners' Reply").

On March 13, 2026, the parties presented oral argument in a virtual hearing. In addition to the Hearing Officer, the following persons attended the hearing: XX's mother and Bradley R. Finkeldei, Counsel for Respondent. Following the conclusion of oral argument, the matter became ripe for decision.

II. Legal Standards

The Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., establishes a broad requirement for states to provide children with disabilities a free, appropriate public education ("FAPE"), and relies on specific federal and state regulations for implementation. D.T. ex rel. Yasiris T. v. Cherry Creek Sch. Dist. No. 5, 55 F.4th 1268, 1273 (10th Cir. 2022) (citing 20 U.S.C. § 1412(a)(1)). A FAPE includes both "special education" and "related services" that are provided in conformity with the child's individualized education program, or "IEP." 20 U.S.C. § 1401(9). "Special education" is defined as "specially designed instruction ... to meet the unique needs of a child with a disability." 20 U.S.C. § 1401(29). "Related services" include support services that "may be required to assist a child with a disability to benefit from special education," including, among other things, speech and psychological services. 20 U.S.C. § 1401(26); see also K.A.R. § 91-40-1(ccc); KSDE Special Education Handbook, Chapter 5 at 116 ("If the IEP Team determines that a particular supportive service is necessary to assist an eligible child with a disability to benefit from special education and has included that service in the child's IEP, then the school must provide that service.").⁶

To ensure that students receive a FAPE, schools must develop an IEP for all eligible students. 20 U.S.C. § 1412(a)(4). The IEP is the "centerpiece" of the IDEA's delivery system and provides the "the means by which special education and related services are 'tailored to the unique needs' of a particular child."

⁵ The name of XX's stepfather is available in the hearing transcript.

⁶ The IDEA and its state counterpart, the Kansas Special Education for Exceptional Children Act, both consist of comprehensive statutes and regulations. See 20 U.S.C. § 1400, et seq.; 34 C.F.R. § 300, et seq.; K.S.A. § 72-3403, et seq.; K.A.R. § 91-40-1, et seq. To the extent they are consistent, state law citations set forth herein should be construed as incorporating the federal counterpart, and vice-versa. In Kansas, a child with a disability is also known as an "exceptional child." K.A.R. § 91-40-1(w).

Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S.Ct. 988, 994 (2017) (quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 181 (1982)). The IDEA prescribes IEP processes that “emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Endrew F., 137 S.Ct. at 994 (citing 20 U.S.C. § 1414). When parents and schools disagree, “parents may turn to dispute resolution procedures established by the IDEA.” Endrew F., 137 S.Ct. at 994. If informal negotiations fail, the parties may proceed to a “due process hearing” administered by a state or local educational agency. Id. (citing 20 U.S.C. § 1415(f)(1)(A), (g)). At the end of the administrative process, an aggrieved party may seek redress in state or federal court. Endrew F., 137 S.Ct. at 994 (citing 20 U.S.C. § 1414(i)(2)(A)).

Under Tenth Circuit law, in evaluating the adequacy of an IEP, courts apply a two-step analysis that first examines whether the IEP’s development process complied with the IDEA’s procedures, and second looks to whether the IEP’s substance provided the student with a FAPE. Systema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1312-1313 (10th Cir. 2008). “If the IEP satisfies both steps, then the school district has complied with the [IDEA].” Id.

If a procedural violation is found, the courts must determine whether the violation resulted in substantive harm and/or the denial of FAPE by (1) causing substantive harm to the child or her parents; (2) depriving an eligible student of an IEP, or (3) resulting in the loss of an educational opportunity. Systema, 538 F.3d at 1313. “Multiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not.” R.E. v. N.Y.C. Dep’t of Educ., 694 F.3d 167, 190 (2d Cir. 2012).

To meet its substantive obligation to provide a free appropriate public education (“FAPE”), a school must offer an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F., 137 S.Ct. at 999. The IEP “must be appropriately ambitious in light of [the student’s] circumstances,” which is “markedly more demanding than” the de minimis test previously applied by courts. Id. at 1000. This standard reflects a recognition that crafting an appropriate program of special education requires a prospective judgment by school officials. Id. at 999 (citation omitted). The IDEA contemplates that “this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child’s parents or guardians.” Id. (citation omitted).

When reviewing the adequacy of an IEP, the appropriate question is “whether the IEP is *reasonable*, not whether the court regards it as ideal.” Id. (emphasis in original) (citation omitted).

In developing each child’s IEP, the IEP team must consider, *inter alia*:

- (1) The strengths of the child and the concerns of the parents for enhancing the education of their child;
- (2) the results of the initial evaluation or most recent evaluation of the child; [and]
- (3) the academic, developmental and functional needs of the child[.] ***

K.S.A. § 73-3429(d); see also 34 C.F.R. § 300.324(a).

Every IEP must include, among other things: (1) “a statement of the child’s present levels of academic achievement and functional performance,” including “how the child’s disability affects the child’s involvement and progress in the general education curriculum;” (2) “a statement of measurable annual goals, including academic and functional goals” that are designed to “meet the child’s needs that result

from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and to "meet each of the child's other educational needs that result from the child's disability;" and (3) "a description of how the child's progress toward meeting the annual goals . . . will be measured" and when periodic progress reports will be provided. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(III). Additionally, the IEP must include a statement of the special education and related services that will be provided for the child to "advance appropriately toward attaining the annual goals" and "be involved in and make progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

The measure and adequacy of an IEP is determined as of the time it was offered to the student (i.e., not with the benefit of hindsight from a later date). O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 701 (10th Cir. 1998). Determining what "appropriate" progress looks like under an IEP is case-specific and depends on the "unique circumstance of the child for whom it was created." Endrew F., 137 S.Ct. at 1001. The absence of a bright-line rule should not be mistaken as "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Id.* (quoting Rowley, 458 U.S. at 206). "A reviewing court [or hearing officer] may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable child to make progress appropriate in light of his circumstances." Endrew F., 137 S.Ct. at 1002.

While the adequacy of an IEP is determined from the perspective of the time it is written, the implementation of an IEP is an "on-going, dynamic activity," which must be evaluated as such. O'Toole, 144 F.3d at 702 (citations omitted). Thus, a school district cannot ignore the fact that an IEP is clearly failing, nor can it continue to implement, year after year, an unchanged IEP that fails to confer educational benefits on the student. *Id.*

School districts incur liability when "a *material* failure to implement an IEP violates the IDEA." Beer v. USD 512 Shawnee Mission, Case No. 21-2365-DDC-TJJ, Memorandum and Order at 53-54 (Doc. #42) (D. Kan. March 17, 2023) (emphasis in original) (quoting Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)). A party challenging the implementation of an IEP must demonstrate "more than a de minimis failure by showing the school district failed to implement substantial or significant parts of the IEP." Beer, Memorandum and Order at 54 (Doc. #42) (emphasis in original) (citing E.C. v. U.S.D. 385 Andover, No. 18-1106-EFM, 2020 WL 2747222, at *6 (D. Kan. May 27, 2020).

III. Factual Findings

Based on evidence presented at the due process hearing, as well as stipulations contained in the parties' post-hearing briefs, the Hearing Officer finds the following facts.

XX is a student with autism and a history of challenging behaviors. Petitioners' FOF at 2, ¶ 1(i); District's Response at 1, ¶ 1(1).

By all accounts, XX is a loving and creative girl who is a fast learner and wants to be independent and interact with her peers. See, e.g., Tr. Day 1 at 32:4-11 (XX's mother); Tr. Day 6 at 1298:16 to 1299:16 (Harrison). XX struggles with communication, social, and behavioral challenges. See, e.g., Tr. Day 1 at 32:12-20 (XX's mother); Tr. Day 3 at 593:18 to 594:18 (Punches). She also has restrictive and avoidance issues for foods. Tr. Day 3 at 594:15-18 (Punches).

During the 2024-25 school year, XX attended Kindergarten in the District at Tecumseh South Elementary ("TSE").

At the time of the due process hearing (i.e., in the summer of 2025), XX was 7 years old and preparing to enter First Grade at TSE.

A. 2021-2022: Preschool Years

1. 2021-22: First Year of Pre-K at Tecumseh South Elementary

In the fall of 2021, XX turned three years old. At that time, the District evaluated XX and determined that she was eligible to receive early childhood special education services based on developmental delays. October 2018 Evaluation/Eligibility Report, P-3. In particular, during a play-based observation, XX demonstrated "overall development delays." Id. at 1. Whereas most children her age had over 800 words in their vocabulary, XX had fewer than 10 expressive words. Id. Also, as compared to age-based peers, XX demonstrated "limited joint attention" and had "difficulty following simple directions and routines and require[d] cues and support to transition between activities." Id. at 2.

Beginning when she turned three years old, XX attended preschool at TSE for the 2021-22 school year. Tr. Day 1 at 34:11 to 37:23 (XX's mother). At that time, the individualized education program ("IEP") for XX provided three goals related to developmental delays in the areas of (1) expressive vocabulary; (2) maintaining joint attention; and (3) independently transition and follow directions. October 2018 IEP, P-4.

2. May 2022: Autism Diagnosis

In May 2022, XX was diagnosed with autism. Id. at 42:1-5. Specifically, a psychologist with the Pediatric Development and Behavioral Sciences department of the University of Kansas Health System ("KU") diagnosed the following: (1) autism spectrum disorder ("ASD"), (2) global developmental delay; and (3) mixed receptive-expressive language disorder. May 2022 After Visit Summary at 2, P-5.⁷ The psychologist found that XX had "deficits in social communication and social interaction as well as restricted, repetitive patterns or behaviors or interests." Id. at 4. More specifically, in the area of social communication, the psychologist found that XX required "*Very Substantial Support (Level 3)* to increase the use of verbal and nonverbal skills to communicate for functional and social purposes," as well as to "develop and maintain social reciprocity including initiating and responding to social interactions with peers and adults." Id. (emphasis in original). In the area of repetitive, restrictive behaviors, the psychologist found that XX required "*Substantial Support (Level 2)* to increase functional and pretend play skills and to improve flexibility with transitions and changes in routine." Id. (emphasis in original). The psychologist noted that these levels of support were based on XX's current level of functioning and may change over time. Id. at 5.

Regarding treatment, the psychologist recommended, among other things, adding Applied Behavior Analysis ("ABA") therapy to XX's treatment plan. Id. Additionally, the psychologist recommended using *Autism* as an educational exceptionality, and including an IEP team member with expertise in ASD "to help support the educational team and guide the development of appropriate programming." Id.

⁷ The After Visit Summary described ASD as a "neurodevelopment disorder" in which affected children and adults have "difficulty with social interactions to varying degrees." Id. at 4.

Regarding ABA therapy, the After Visit Summary stated:

Children with [ASD] benefit from intensive early behavioral intervention. Current research-based recommendations for your children with autism suggest 25 hours or more of ABA home or center-based programming per week. Intervention can occur in a variety of settings ... and can be provided by a variety of individuals (parents, other family members, friends and service providers). Intervention can include individual and small group instruction. Intervention with structure, predictable routines, clear consequences and consistent expectations will be most effective. The effectiveness of a program should be regularly evaluated by examining the child's progress. Children will be most successful when parents are actively involved. If ABA professionals are not accessible, parent can also learn to effectively use ABA strategies to bring about meaningful and positive change in child's behavior.

Id.

In July of 2022, XX returned to KU for a follow up visit. July 2022 Progress Notes, P-9. The Progress Notes from this visit indicate that XX was having difficulty regulating her emotions and was exhibiting tantrum behaviors – such as throwing toys, screaming, and crying – that had recently increased to approximately 2-3 times per week. Id. at 1. Significant tantrums could last from ten minutes to a couple of hours and sometimes included self-injury, such as hair-pulling and hitting herself. Id.

During the summer of 2022, XX's parents started searching for an ABA provider. After some difficulty, they eventually found ABA services through Amy Punches with Positive Behavior Support Corporation ("PBS"). Tr. Day 1 at 52:2-14, 61:13-20 (XX's mother).

Punches is a Board-Certified Behavior Analysis ("BCBA"). Tr. Day 3 at 545:3-6 (Punches)⁸. She is employed by PBS, which is a national company. Tr. Day 3 at 545:14-19, 698:25 to 699:3 (Punches). In this capacity, Punches provides BCBA services to clients to areas in Kansas including Topeka, Tecumseh, and Osage County, among other places. Id. at 699:7 to 700:24.

In August of 2022, Punches performed an initial evaluation of XX and started working with her from there. Tr. Day 1 at 52:2-14, 61:13-20 (XX's mother). Additionally, Mom starting learning ABA strategies and continued with parent training in ABA for about two hours per week over the next three years. Tr. Day 1 at 45:20 to 46:6 (XX's mother).

The family's insurance would pay for PBS to provide up to 40 hours of ABA therapy per week to XX at school or other locations. Tr. Day 1 at 177:8 to 179:16 (XX's mother). However, based on communications with school officials, XX's parents understood that the District's policy would not allow their outside ABA provider to work with XX during the time that she was attending school at TSE. Tr. Day 1 at 76:5-11, 179:18 to 181:1, 190:16 to 191:19 (XX's mother).

3. 2022-23: Second Year of Pre-K – Mornings at Tecumseh South Elementary; Afternoons at Jars of Clay

For the 2022-23 school year, XX's parents arranged for XX to attend half-day preschool in the mornings at TSE and then be bused to a private daycare, Jars of Clay, for the afternoon. Tr. Day 1 at 61:13 to 62:21,

⁸ Punches has been working with autistic children as a BCBA since 2015. Tr. Day 3 at 545:20 to 548:10 (Punches). Beginning in 2009, she also gained training and experience as the parent of a child with autism who is now 18 years old. Id. Punches has an associate's degree in business administration, a bachelor's degree in psychology, and a master's degree in special education with an emphasis in autism. Tr. Day 3 at 545:7-13 (Punches).

71:10 to 72:14 (XX's mother). At Jars of Clay, XX was able to receive ABA therapy through PBS. Id. During this time period, XX's injurious and aggressive behaviors were high. Id. Through working with PBS in the afternoons, these behaviors decreased; however, the family experienced challenges with regard to consistency due to a lack of collaboration between what was happening at TSE versus the private daycare. Id.

In August of 2023, a meeting report from TSE indicates that XX was diagnosed with autism over the summer, and that the school would change her educational label prior to Kindergarten. August 11, 2022 Meeting Report, P-10. The report further reflects that parents had arranged for ABA therapy to happen at Jars of Clay and home. Id. Parents shared medical documents regarding the ASD diagnosis that indicated, among other things, behavioral concerns with regard to tantrums and self-injury. Id.; Tr. Day 1 at 65:1 to 67:6 (XX's mother).

Towards the end of the 2022-23 school year, XX began demonstrating an increase in the prevalence and frequency of negative behaviors including, among other things, non-compliance, head-banging, tantrums, hair-pulling, aggression, and elopement. Tr. Day 1 at 85:8 to 86:22 (XX's mother).

In May of 2023, TSE held a field day that preschoolers attended. Tr. Day 1 at 40:15 to 37:16, 86:17-22 (XX's mother). XX did not understand the change in routine and became very upset. Id. TSE staff did not know how to handle XX. Id. They decided to put her in the office; XX threw a tantrum and started throwing office chairs, because she was secluded in an unknown environment. Id. This was the first time that XX demonstrated aggression toward others at school. Id.

On July 18, 2023, Mom sent an email to Dr. Kristin O'Brien, Director of Special Education for the District, asking if the family's private ABA therapist from PBS could work with XX at TSE. July 13, 2023 Email, P-18. In the email, Mom stated, in part, as follows:

I wanted to reach out to you with some more questions and concerns in hopes of finding a better solution for my daughter's sake. [XX] currently works with therapists through PBS. I understand if their staff aren't able to come into the school. I'm just trying to understand why since my daughter does need some extra support in the classroom. [If this is due to privacy concerns], [c]an PBS staff sign a HIPAA form to protect the other students like they do at other schools? Once again, I do understand if that isn't an option, but I would like to proceed with putting together options for a solution in the classroom.

Id. The email further stated that, toward the end of the last school year and continuing into the summer, XX had been struggling with "difficult behaviors," and PBS staff had done a great job at managing the behaviors and figuring out solutions. Id. Mom expressed concern about these behaviors escalating, and XX not having the support that she needed when she returned to school. Id.

Mom did not receive an email response from Dr. O'Brien. Tr. Day 1 at 91:12-16 (XX's mother). However, it appears the two of them spoke over the telephone a few weeks later. Tr. Day 7 at 1580:15-25 (O'Brien). In the conversation, O'Brien learned that the family had decided to enroll XX in an outside agency because the District would not allow her to have private ABA support in the classroom. Id. at 1592:1-8.

Toward the end of summer, XX's parents decided to remove XX from TSE and have her attend full-time daycare at Jars of Clay, so that she could receive 40 hours of ABA therapy per week. Tr. Day 1 at 91:16 to 92:8 (XX's mother). XX's parents had seen that the ABA strategies were effective with XX and believed she would make better progress in that setting. Id.

4. 2023-24: Third Year of Pre-K at Jars of Clay

From August of 2023 to August of 2024, XX attended Jars of Clay daycare/preschool, where she received 40 hours of ABA therapy per week through PBS. Tr. Day 1 at 92:9-20 (XX's mother). In this environment, XX flourished. Id. She became like "a whole new girl" and began communicating with her parents, who learned for the first time how smart she actually is. Id.

When XX first arrived at Jars of Clay in August of 2023, her behavior was "overwhelming" to staff. Tr. Day 4 at 759:19 to 761:14 (Michelle Garlock).⁹ XX would get upset at a different things and could not communicate her needs to staff. Id. Additionally, XX did not interact with the other children. Id. Over time, with the help of PBS staff, the Jars of Clay staff became able to determine what was upsetting XX and work with her to help her calm down and communicate what she needed. Id. PBS staff spent about 6 to 8 hours a day with XX; they were excellent to work with and helped train the teachers at Jars of Clay to work with XX. Id. at 765:2 to 766:12; 784:13-18.

During the two years that XX attended Jars of Clay, PBS staff monitored the outcomes of her behavior intervention plan by direct observations weekly to ensure that the desired outcomes were being achieved. Tr. Day 1 at 97:17 to 98:8 (XX's mother). By the end of XX's time at Jars of Clay, Mom described that XX's behaviors were "reduced to none," with only occasional issues of elopement. Tr. Day 1 at 109:8-25 (XX's mother). XX's speech and communication were improving as well. Id.

The Jars of Clay staff saw "amazing" changes in XX. Tr. Day 4 at 759:19 to 761:14 (Michelle Garlock). By the time XX left, she was talking with staff, telling them stories, and communicating her needs. Id. at 770:18 to 771:9. Additionally, XX was interacting with other kids and their parents. Id. XX also demonstrated "amazing" growth in meeting her academic goals, including learning to write her name. Id.

During this time, XX's parents watched their daughter "flourish" in her abilities to selfregulate, communicate, and play with peers and staff. Tr. Day 7 at 1768:12-20 (XX's stepfather). They further watched her progress from saying single words, to phrases, to full sentences. Id.

Providing ABA therapy to XX over the two years before Kindergarten had an extremely positive effect on her development. When PUNCHES first assessed her at four years old, XX had skills at or below the level of an 18-month-old. Tr. Day 3 at 690:5-11 (PUNCHES). With ABA therapy, XX was able to catch up by several years. Id. During this time frame, the ABA therapy that XX received made a significant impact on helping to improve her communication and social skills while also reducing her problem behaviors. Tr. Day 3 at 694:11-14 (PUNCHES). While overall XX made significant improvements during this time, the frequency and intensity of some of her behaviors also ebbed and flowed, in some behaviors improved and some behaviors worsened at different points in this time period. See, e.g., Tr. Day 3 at 610:7 to 611:14, 709:1 to 712:3, 734:2-19 (PUNCHES).

⁹ Michelle Garlock has been the Program Director for the Jars of Clay day care center since 2007. Tr. Day 4 at 759:4-12 (Garlock). In 2023-24, the Pre-K classroom at Jars of Clay had approximately 24 students with two full-time teachers and extra floaters available at times. Id. At 782:6 to 783:2.

5. 2022-24: XX's Progress During 2 Years of ABA Therapy in Pre-K

In the fall of 2022, when Punches first observed XX at Jars of Clay, she was unable to eat her meals with the other kids. XX threw her plate of food and drank Pediasure afterwards. Tr. Day 3 at 565:4-18 (Punches). Also, XX had little-to-no communication skills. Id.

In October of 2022, Punches performed an 11-day assessment that included parent and teacher interviews, as well as observations of XX's behaviors. Tr. Day 3 at 556:7 to 560:23 (Punches). At the time of the assessment, XX was almost four years old. The VP-MAPP assessment showed that her skill levels were primarily at the 0-18 months category. Tr. Day 3 at 563:11 to 564:4, 566:8 to 570:9, 580:15-19 (Punches); VB-MAPP Milestones Master Scoring Form, P-14.¹⁰

Following the assessment, Punches prepared an Initial Intervention Plan. In the background summary, Punches included, among other things, the following information:

*Client's skill deficits/needs for improvement include social and communication. [XX] will sometimes use 1 word to communicate. She can say things like, 'hi, bye, I love you, chocolate milk,' but she often will point or lead a person to the item instead. [XX] will often lack eye contact when engaging with others. [XX] may engage in restricted and repetitive patterns of behavior. The maladaptive behaviors including head banging, tantrum, stimming/hand flapping, hair pulling, and throwing objects. Frustration is an antecedent to these behaviors. [XX's] abilities compared to expected development of a 25 month old in communication, gross/fine motor, safety, social, play/leisure, and daily living. ****

October 2022 Intervention Plan at 1 (10/14/2022), P-15.

About a year later, in September of 2023, Punches performed another assessment of XX. At this time, XX was almost five years old. The assessment showed that her skills had generally improved to around the 18-30 months category, with some skills like play, listen, and responding improving to the 30-48 months category. Tr. Day 3 at 581:4 to 582:4 (Punches); VB-MAPP Milestones Master Scoring Form, P-14. At this time, XX's social skills had also improved, along with other skills including visual perception and matching. Id.

6. March 2024: Assessment by Punches

In March of 2024, Punches administered her last assessment of XX before Kindergarten. At the due process hearing, Punches described XX's progress at this time as follows:

So she continued to improve on group skills. These included things with ... circle time and calendar time. And ... we were really focusing on where she could sit down with her own peers in the group, attend to the teacher, do the motor imitation skills that we taught, answer some questions on like what the days of the week are without disrupting the others and ... attending [to] herself.

¹⁰ The VB-MAPP is described as follows:

The VB-MAPP is a criterion-referenced assessment tool, curriculum guide, and skill tracking system that is designed for children with autism, and other individuals who demonstrate language delays. The VB-MAPP is based on B.F. Skinner's (1957) analysis of verbal behavior, established developmental milestones, and research from the field of behavior analysis.

March 2024 Intervention Plan at 13 (03/18/2024), P-23.

Here interverbal skills improved She improved more on social skills, reading skills, and then you can see also like her requesting more items. And these are higher level skills, so it's like requesting something that's missing, which is harder for individuals on the spectrum because ... it's not literal. It's something that's out of sight, out of mind.

Tr. Day 3 at 582:9 to 583:4 (Punches).

In the March 2024 Intervention Plan, Punches included, among other things, the following information in the background summary:

Client's skill deficits/need for improvement include social and communication, intraverbal skills, and reducing problem behaviors. [XX] is using her words to communicate more frequently. She will use one-two words, and 4-5 word sentences. She continues to increase her interaction with peers including the areas of cause-and-effect. The current maladaptive behaviors include: aggression, throwing objects, and elopement. Frustration, task avoidance, attention, access to tangible are antecedent to these behaviors.

March 2024 Intervention Plan at 2 (03/18/2024), P-23.

The March 2024 Intervention Plan described XX's strengths and needs as follows:

Strengths:

[XX] uses one-two words regularly and has increased using 4-5 word sentences daily..... She engages in more peer play and make believe play with peers. For example, playing in the toy kitchen. She is a fast learner and when she receives support, has made huge gains in skills, which continues to be reflected in her assessment scores. She is able to tact items, generalize and play with her peers. [XX] continues to show an increase in language, communication and FCT in general since receiving ABA services. She will clap for herself when she has completed something and she looks for others to notice.

Needs:

[XX] engages in aggression; elopement; throwing objects, and echolalia. [XX] has a deficit in social and communication compared to her same aged peers. She also has restrictive and avoidance behaviors for foods. [XX] has difficulty accepting changes or stopping in the middle of projects.

Id. at 2.

The March 2024 Intervention Plan indicated that the following problem behaviors continued: physical aggression, throwing objects, and elopement. Id. at 6-8. Additionally, the plan stated that XX had previously mastered or met target goals for the following behaviors: tantrum, hair pulling, hand flapping, self-injury, biting, and climbing/standing on inappropriate items. Id.

The plan provided specific definitions of the problem behaviors, along with 33 short-term instructional goals to reduce or replace the target behavior. See March 2024 Intervention Plan at 7-8, 20, 21-27 (03/18/2024), P-23.

The plan provided that, based on recent results obtained from the VB-MAPP and Vineland 3 Assessment, the following skills would be taught: manding;¹¹ tacting;¹² listener responding; social;

¹¹ "Mand" means the ability to request things. Tr. Day 3 at 578:7-9 (Punches).

¹² "Tact" means the ability to label items. Tr. Day 3 at 594:1 (Punches).

communication FCT; intraverbal skills; group skills with peers; communication skills – receptive and expressive; daily living skills – personal and community; and social skills – interpersonal relationships, play and leisure, and coping skills. March 2024 Intervention Plan at 13 (03/18/2024), P-23.¹³

a. Functions of Behavior

The FBA (conducted between March 6 to 8, 2024) revealed that for physical aggression, the functions of behavior were attention and escape. Id. at 2. For throwing objects and elopement, the functions of behavior were access to tangible and escape. Id.

As set forth below, as to each function of behavior, the March 2024 Intervention Plan provided highly detailed information regarding hypothesis-based interventions for (1) context/antecedents; (2) setting events; (3) preventative strategies; (4) replacement skills; and (5) management strategies. Id. at 11-13.

i. Attention

For the function of attention (as to physical aggression),¹⁴ the March 2024 Intervention Plan provided the following information:

Context/Antecedent(s)

1. *Receiving low levels of attention*
2. *Attention is withdrawn by preferred individuals*
3. *Caregiver/Supervising Adult's attention is directed elsewhere for longer than a few minutes (e.g., while talking on the phone or interacting with another individual)*

Setting Events:

When client receives diverted attention and/or has to wait for attention, fatigue, illness, or hunger she may engage in aggression.

Preventative Strategies (antecedent-based)

1. *When attention is not available or will be divided. Let the client know when attention will be available and unavailable by telling her just a minute, setting a visual timer, etc.*
2. *Provide alternative activities or toys, especially those that involve peers or siblings, when attention will be withdrawn.*
3. *Remind the client to request attention with appropriate behavior.*
4. *Enlist family members, friend, neighbors, and service providers to increase attention for positive behavior.*
5. *Organize schedule and routines to embed interaction in daily life (e.g., including client in chores, structuring play times, enrolling in extracurricular activities, check-ins at school.*

¹³ The plan describes the Vineland 3 Assessment as follows:

The Vineland Adaptive Behavior Scales, Third Edition (Vineland-III) measures the personal and social skills of individuals from birth through adulthood. Because adaptive behavior refers to an individual's typical performance of day-to-day activities required for personal and social sufficiency, the scales assess what a person actually does, rather than what he or she is able to do. The Vineland-III assess adaptive behavior in four domains: Communication, Daily Living Skills, Socialization, and Motor Skills. It also provides a composite score that summarizes the individual's performance across all four domains. The Vineland II was conducted with mother, Bandy, on 3/4/2024. The curricular assessment will be updated every 6 months.

March 2024 Intervention Plan at 13 (03/18/2024), P-23

¹⁴ The plan does not specifically discuss the function of escape in the context of physical aggression; however, it appears likely that the interventions listed for the function of escape for elopement and throwing objects could also be applied in instances involving aggression. See March 2024 Intervention Plan at 11-13 (03/18/2024), P-23.

Replacement Skills (related to function)

1. Teach the client to request attention by asking to play, bringing a toy, touching sleeve, etc.
2. Teach the client to engage in independent play and leisure tasks.
3. Teach the client strategies for interrupting others.
4. Teach the client to tolerate waiting to receive attention from preferred individuals.
5. Teach the client to play with peers by building skills such as turn-taking, sharing, etc.

Management Strategies (consequence-based)

What to do when the client demonstrates the replacement or desired behaviors:

1. Provide immediate attention if possible when the client requests attention appropriately. If unable to provide attention, let the client know when you will be available.
2. Reward lengthy period of independent activity with special, attention-rich activities.

What to do when the client engages in problem behaviors:

1. Withhold or minimize attention for Noncompliance and Tantrum minimizing conversation, looking away, and refraining from commenting on the behavior. If necessary, remove yourself or the client to another room to prevent interaction and escalation.
2. After the client has calmed for at least 1 minute, prompt the client to make a functional request for attention. Praise the client for making a request, but provide low quality attention for a brief period of time.
3. Ensure that original demand is completed.

March 2024 Intervention Plan at 11, P-23 (emphasis omitted).

ii. Access to Tangible

For the function of access to tangible (as to elopement and throwing objects), the March 2024 Intervention Plan provided the following information:

Context/Antecedent(s)

1. When the client is told no, denied access to tangible, is required to wait, or is asked to end a desired activity.
2. When preferred items are present, but is [sic] unavailable.
3. When client cannot get the toys to do what she wants them to do or they fall down or apart.

Setting Events:

When client is playing with other peers and toys, unable to access tangible, tired, hunger, illness, change in routine are all setting events to these target behaviors.

Preventative Strategies (antecedent-based)

1. Implement Differential Reinforcement and provide client with praise and reinforcement for tolerating delayed access.
2. Organize environment and remove materials related to off-limit activities.
3. Develop a choice menu or schedule of activities to clarify availability.
4. When possible, only start activities when there is time to complete them.
5. Provide a choice of alternative activities prior to or when terminating access.
6. Let the client know when the activities will be available again (e.g., on a picture schedule. Encourage the client to engage in another activity while waiting. Provide a timer, clock, or some other mechanism (e.g., when I have finished __, you can ...) to track waiting time.
7. Teach the client to wait by building delays into the daily schedule.
8. Clarify what and how much of the preferred item the client can have.
9. When in new environments, let [XX] know what items she may or may not have.
10. Remind the client to ask for permission.

11. Remind [XX] that feet stay on the floor.

Replacement Skills (related to function)

1. Teach the client to tolerate denied and delayed access to requested items or activities.
2. Teach the client to request access to preferred items.
3. Teach the client to ask for more time.
4. Teach the client to engage in other activities to distract from the activity removed.
5. Teach the client to accept alternative items when the preferred item is not available.
6. Teach [XX] to ask for help.

Management Strategies (consequence-based)

What to do when the client demonstrates the replacement or desired behaviors:

1. If the client asks for access or an extension of an activity nicely, allow an additional minute of engagement in the activity.
2. If the client tolerates a delay or denial without engaging in problem behavior, provide reinforcement.
3. If the client exits an activity or accepts no, praise him/her and offer a choice of alternative activities.
4. If the client requests an item appropriately and it is acceptable for him/her to have it, provide the item. If the client requests and [it is an] item he/she cannot have, suggest an alternative.
5. If the client accepts being told "no" appropriately, provide the client with verbal praise or access to a preferred item.

What to do when the client engages in problem behaviors:

1. If the client engages in any noncompliance or tantrum behavior after being denied access, prompt a functional communication request for the item or activity.
2. If the client makes a request, provide low level praise and allow up to 1 minute of engagement in the preferred item or activity if possible. If [it is] not possible, offer an alternative choice.

March 2024 Intervention Plan at 11-12, P-23 (emphasis omitted).

iii. Escape

For the function of escape (as to elopement and throwing objects), the March 2024 Intervention Plan provided the following information regarding hypothesis-based interventions:

Context/Antecedent(s)

1. Presentation of non-preferred demands or tasks that she is struggling to complete by herself.
2. When the client is asked to transition from one activity or environment to another.

Setting Events:

Fatigue, hunger, illness, change in routine, and gaps in service.

Preventative Strategies (antecedent-based)

1. Use the Premack Principle by building in a schedule of non-preferred activities before preferred activities.
2. Use behavioral momentum before presenting a difficult task (presenting maintenance/easier tasks, prior to presenting an acquisition skill, etc.).
3. Simplify, shorten, or clarify tasks, activities, or demands when work tasks are required.
4. Embed preferred items or activities such as music and social play into unpleasant or difficult tasks.
5. Use First/Then statements.
6. Clearly differentiate choices from directives.
7. Avoid presenting demands during (list circumstances that are particularly problematic) [sic].

8. *Remind the client of when they are allowed to say no or request breaks or assistance.*
9. *Teach the client to develop a plan for completing activities, allowing brief breaks and ordering tasks to make them more manageable.*
10. *Position yourself between yourself and the exit when presenting a demand to block any attempts of elopement. Make necessary environmental arrangements in the instructional area to block direct access to doorway or exit.*

Replacement Skills (related to function)

1. *Teach the client to follow first/then directions to teach the client tolerate and complete non-preferred tasks, and preferred tasks, and wait for reinforcement.*
2. *Teach the client to appropriately mand for preferred items, breaks, and help.*
3. *Teach the client to say no to a task, activity, or demand by shaking head, pushing materials away, etc.*
4. *Teach the client that feet stay on the floor*

Management Strategies (consequence-based)

What to do when the client demonstrates the replacement or desired behaviors:

1. *If client complies with a presented demand, provide reinforcement according to the current reinforcement plan.*
2. *If the client asks to avoid or leave an unpleasant environment and it is possible to do so, respect her wishes. If the client asks to leave and it is not possible, remove her to the periphery or allow a brief break from the environment.*
3. *If the client asks for a break, allow her to exit the activity for 2 minutes while calming down with zero reinforcement or demands. If [XX] asks for a reduction in demands or assistance, provide appropriate help.*

What to do when the client engages in problem behaviors:

1. *If the client engages in any of the target behaviors after a demand is placed, present the demand again and use the least intrusive level of prompting, as well as the least amount of attention, to assist them in completing the demand. Deliver neutral praise after the demand has been completed.*
2. *Withhold access to enjoyable activities until the task, activity, or demand has been completed*

March 2024 Intervention Plan at 12-13, P-23 (emphasis omitted).

b. Instructional Goals

With respect to the instructional goals, the March 2024 Intervention Plan states as follows:

The following skills will be taught utilizing the listed instructional methods in order to replace the client's problem behavior, increase social skills and independence, and achieve the quality of life outcomes that are the focus of this plan. These goals are derived from the ultimate outcomes desired through intervention and functional behavioral and curricular assessments, and include instruction in skills relevant to functional communication, tolerance and coping, social interaction, and daily living.... In order to develop the skills identified, the behavioral intervention professionals and caregiver will task analyze complex skills, develop routine specific instructional plans, and use appropriate chaining, shaping, and prompting methods. Teaching plans will include the specific skills or skill sequences to be taught, environmental arrangement to promote skill use (e.g. token boards, timers, visual schedules), and other specific instructional procedures.

March 2024 Intervention Plan at 20 (03/18/2024)), P-23.

Regarding short-term instructional goals, the plan included 10 continued goals and five new goals to reduce or replace target behaviors. See March 2024 Intervention Plan at 7-8, 20, 21-27, P-23.¹⁵ The objectives of these goals included, among other things: remaining seated while eating; asking for help when she needed assistance; saying “no thank you” in an appropriate tone and volume; sitting in a small group for 5 minutes; responding to a question without engaging in echolalia; spontaneously manding to peers 5 times per hour; independently answering 25 different who or where questions; waiting for one minute before receiving a preferred item or activity; imitating 10 different 3 component sequences of actions when prompted; independently responding to questions regarding her name and age; transitioning off an uncompleted activity or task; and independently selecting the correct item from an array of 10 from a book for 25 different verb-noun what, which, or who questions. Id. 21-27. In establishing such goals, Punches always aims to target something that is observable and measurable. Tr. Day 3 at 645:25 to 646:9 (Punches).

As discussed below, in developing XX’s Kindergarten IEP, TSE staff used some of the information contained in Punches’ March 2024 Intervention Plan. See also Tr. Day. 2 at 489:16-20, 502:5-16 (Peacocke).

B. Spring 2024: Preparation for XX to Attend Kindergarten at TSE

In the spring of 2024, XX’s parents started making preparations for her to attend Kindergarten at TSE for the following school year. Tr. Day 1 at 99:14-24 (XX’s mother). Mom reached out to TSE staff in order to have an IEP in place before the next school year began. Id.

On April 12, 2024, Mom sent an email to the school’s psychologist, Michelle Peacocke,¹⁶ regarding an upcoming evaluation of XX. April 2024 Email String, P-24. Attached to the email were documents from PBS, including the most recent behavior plan and test results (VB-MAPP and Vineland-3) performed by Punches in March 2024. Id. Mom shared this behavior plan and data because she wanted the school to have the most recent information on XX and the progress she had made during the last year at Jars of Clay. Tr. Day 1 at 109:8-25 (XX’s mother).

Peacocke responded by thanking Mom for the information and providing the dates that she planned to go to observe XX at Jars of Clay. April 2024 Email String at 1, P-24. In a subsequent email, Peacocke stated that she planned to “observe how [XX] does in the setting overall” and “see what she does with her ABA person and then have an idea [of] what testing we might want to do with her for evaluation purposes.” Id. at 2.

1. TSE’s Evaluation of XX

a. Observation of XX at Jars of Clay

¹⁵ The plan provided a total of 33 short-term instructional goals and indicated that many of the goals had been met. Id. at 21-27.

¹⁶ Michelle Peacocke is an early education school psychologist who has been employed by the District for 17 years. Tr. Day 2 at 516:5 to 513:2 (Peacocke). In this capacity, Peacocke conducts approximately 85 to 100 evaluations of kids aged 3-5 per year. Id. Many of these evaluations are conducted in the pre-K setting, both in the District and in private schools. Id. Peacocke also participates as part of the IEP teams for these students. Id. Peacocke has an undergraduate degree in psychology and an educational specialist degree in school psychology. Id. at 516:5-13.

In the spring of 2024, Peacocke performed an evaluation to determine whether XX was eligible to receive special education services at TSE. Tr. Day 2 at 471:19 to 474:10 (Peacocke). Peacocke testified that, as part of the evaluation, she observed XX “several times” at Jars of Clay. Id. Peacocke did not record number of times or length of time that she spent observing XX. Id.

Around late April of 2024, records from PBS indicate that PBS staff were present on several occasions when TSE staff observed XX at Jars of Clay.

On April 23, 2024, the session description by RBT Amanda Nye states in part, as follows:

This RBT, [XX], staff, and peers were present during the session. Michelle Peacock [sic] school psychologist was present from 2:15-3:53pm. This RBT used NET to model three-word mands [sic] and functional communication for [XX] during play and structured work times. NEW BEHAVIOR: [XX] began screaming when peers were upset or mimicking their crying. This RBT used planned ignoring and prompted staff to do so. This RBT worked with [XX] and took data on [various acquisition goals] and redirected reduction behaviors during session. CONT BEHAVIOR: [XX] was climbing on window under play equipment, this RBT placed the demand “feet on ground”, [XX] kicked off shoes and ran to play, this RBT followed and redirected “shoes on then play”[.] Three aggressions were outside[.] [XX] wanted to play chase. She smiled[,] approached this RBT[,] hit twice on my chest with both hands, stepped back, then stepped forward [and] hit once on my arm before smiling and running away. This RBT asked do you want to play? [XX] responded yes. This RBT prompted say, “play with me.” This RBT took data on parent goals and provided feedback and modeling for planned ignoring and compliance training.

Session Descriptions at 1, P-111 (04/23/2024, 2:00 p.m. to 5:30 p.m.) (emphasis added).

On April 24, 2024, the session description by RBT Bianna Long, states, in part, as follows:

Met with client at mutually agreed upon time and location. RBT, staff, and peers were all present as well as 2 professionals from the school district and BCBA Amy Panches. Client engaged in maladaptive behaviors such as elopement where she was given the instruction to wait, in reference to being excused, to which she ran across the room. She was physically prompted back to her chair. During the session we worked extensively on echolalia and 1 step instructions while also covering wh [sic] questions, manding for help, eating +50%, transitioning from incomplete, manding to play and waiting one minute.

Session Descriptions at 1, P-111 (04/24/2024, 1:30 p.m. to 4:30 p.m.) (emphasis added).

Also, on April 24, 2024, the session description by Amy Panches states, in part, as follows:

This BCBA met with [XX] at the agree upon time at the daycare for protocol modification and oversight. Staff, peers, and Bri (rbt) were present. The client's school staff also arrived to observe for about 45 minutes. This BCBA gave [sic] throughout the session. Bri did great at setting up environment for dtt trials, net prompting, reinforcement choices, varying praise, and collaboration/professionalism with school staff. This BCBA worked on collaboration and answer questions asked during session. This BCBA probed tacting [sic] some letters and numbers. This BCBA worked on transitions with the client, snack time, play time with peers, and additional probing of colors, shapes, and wh questions for maintenance.

Session Descriptions at 1, P-111 (04/24/2024, 1:45 p.m. to 3:45 p.m.) (emphasis added).

On April 25, 2024, the session description by RBT Amanda Nye states, in part, as follows:

This RBT, [XX], staff, and peers were present during the session. Michelle Peacock [sic] school psychologist was present from 8:30-9:40am. During play, [XX] allowed peers to join her game without problem behavior. After 5 minutes [XX] left her area and with prompting requested to move to a table top activity. This RBT worked with [XX] and took data on [various acquisition goals.] This RBT observed reduction behaviors, redirected, and took data during session.... [XX] engaged in SIB: she hit her side while shirt was off three times with an open hand and hit the top of her head with an open hand twice. This RBT modeled reduction behavior procedures and gave feedback as staff implemented procedures.

Session Descriptions at 1, P-111 (04/25/2024, 8:30 a.m. to 12:30 p.m.) (emphasis added).

b. Evaluation Findings

In May of 2024, based on staff's observations of XX at Jars of Clay and other assessments,¹⁷ the TSE Evaluation team determined that XX was eligible for special education services. May 2024 Evaluation/Eligibility Report, part 1 of P-25. Specifically, the Evaluation Report recommended special education services in the areas of (1) consultive occupational therapy to provide strategies for sensory needs and continued motor development; and (2) direct speech/language therapy to improve communications skills across all environments. Id. at 2-3.

With regard to observations of XX at Jars of Clay, the Evaluation Report stated, *inter alia*, that XX (1) was able to use social greetings; (2) demonstrated an understanding on the classroom routine; (3) could "engage in parallel play independently with prompting from a nearby adult;" (4) would sometimes leave the carpet area during group activities before the activity was completed and needed redirection to return to the area; (5) responded to proximity control, in that she would sometimes sit up and look in the direction of instruction if she was not sitting as expected in the area and an adult would move closer to her; (6) occasionally eloped from the classroom setting and required adult assistance to return to the classroom; and (7) often responded to "first/then" prompting in understanding the expectations and following the direction of an adult. Id. at 2.

At the due process hearing, when asked whether she considered the fact that, during the observations at Jars of Clay, XX was being prompted and assisted by dedicated, trained 1:1 support, Peacocke responded affirmatively. Tr. Day 2 at 473:24 to 474:10 (Peacocke). Peacocke further stated that, in the evaluation, she was looking for "eligibility," thus seeming to imply that her observation did not include a determination regarding what level of support would be needed to TSE. Id. Peacocke did not recall any specifics regarding her observations of XX at Jars of Clay. Id. at 476: to 478:5.

Peacocke testified that, under the IEP that was proposed as a result of her evaluation, XX was to receive door-to-door "special education services," meaning that a paraprofessional or special education teacher would be providing her support throughout the day. Tr. Day 2 at 479:6 to 487:2 (Peacocke). This did not necessarily mean that the XX would be receiving 1:1 support. Id. at 479:6 to 487:2, 497:13 to 499:19,

¹⁷ The other assessments included: (1) the Bracken School Readiness Assessment, which requires the child to point to pictures in response to questions; and (2) the Preschool Language Scale-5 (PLS-5), which evaluates receptive language skills in the areas of attention, vocabulary, concepts, morphology, syntax, and integrative thinking skills. May 2024 Evaluation/Eligibility Report, part 1 of P-25.

511:25 to 512:2. In other words, the paraprofessional or special education teacher could also be tending to other students at the same time. Id.

Peacock further testified that, as part of her evaluation, she received information from parents regarding the functional behavior analysis and/or behavior intervention plan prepared by Panches at PBS. Tr. Day 2 at 489:15 to 492:2. (Peacocke). Peacocke testified that some of the goals from the PBS reports were used to create the May 2024 IEP for XX. Id. More specifically, Peacocke testified that she, along with the speech therapist, occupational therapist, and an early childhood teacher wrote the IEP goals based on the goals that the “ABA people were working on at that time that transferred into a school setting.” Id. at 502:5-16; see also Id. at 520:2 to 527:1 (discussing goals taken from March 2024 PBS Positive Behavior Intervention Plan, P-23, and put into May 2024 IEP, part 2 of P-25). The PBS goals were not necessarily taken verbatim. Id. At 529:18 to 530:10.

Peacocke also testified that private child care settings are structured differently than a public school, so they try to make a best estimate of a goal that would carry into the school setting based on what a student is doing in an early childhood setting. Tr. Day 2 at 519:2 to 513:19 (Peacocke). Peacocke further testified that it is “very, very common” to see kids react differently in general education kindergarten than in the private setting, because it is “a huge time of growth and development for children.” Id.

2. IEP Meeting on May 16, 2024

On May 16, 2024, TSE held an IEP team meeting that included XX’s mother; Amy Panches, BCBA; XX’s father; Brae Richards, General Education Teacher and Special Education Provider; Dr. Kristin O’Brien, Director of Special Education; Michelle Peacocke, Early Childhood School Psychologist; Melissa Streeter, Speech/Language Specialist; Sophia Rylko, Occupational Therapist; and Scott Dial, TSE Principal. May 2024 IEP at 2, part 2 of P-25.

At the meeting, Mom learned that the school was getting a new special education teacher for XX’s Kindergarten year, and TSE staff could not speak as to what the new teacher would be like. Tr. Day 1 at 137:15 to 138:6 (XX’s mother).

When presented with the school’s proposed IEP, Mom expressed concerns about, *inter alia*, the objectivity of the proposed goals and how data would be collected. Id. at 137:15 to 141:25.

Additionally, Mom advocated for the school to develop an FBA and BIP before XX started Kindergarten. Id. at 142:2 to 143:15. Specifically, Mom was concerned that XX’s behaviors would start up again or increase in Kindergarten, because she would be going from 1:1 ABA support at Jars of Clay, to no ABA support at TSE. The testimony is unclear as to whether Mom understood the school to say that, under the IEP, XX would have a dedicated, 1:1 para, versus “a para in the area.”¹⁸ Regardless, Mom understood that the para would not necessarily have any training specific to XX. Tr. Day 1 at 142:2 to 143:15 (XX’s mother).

¹⁸ At the due process hearing, Mom testified that, at the time of the May 2024 IEP meeting, she thought that “attendant care” meant a para would be with XX all the time; however, she later learned that the school was really providing “a para in the area” (i.e., that could also be providing services to other children, in addition to XX) Tr. Day 1 at 142:14 to 143:3 (XX’s mother). According to O’Brien, the term “attendant care” means that the student will be supported by an adult outside of instructional time in the day, such as when the student is walking to and from the bus. Tr. Day 7 at 1656:20 to 1657:8 (O’Brien).

As noted, at Jars of Clay, XX was receiving 1:1 support from her ABA providers. Further, both parents and Punches reported to TSE that, in pre-K, XX engaged in problem behaviors including aggression and elopement. For the beginning of Kindergarten, the school did not believe it was necessary to provide 1:1 support to XX. Tr. Day 6 at 1483:24 to 1484:4, 1500:13 to 1501:16 (O'Brien). The school viewed Jars of Clay as a different setting and wanted to first observe XX in the school's setting to determine what her needs would be there. Tr. Day 6 at 1495:1-25. Dr. O'Brien stated that the best practice would be for the school to first collect data in the new environment before putting measures in place. Id. at 1496:1-9.

For Kindergarten, parents understood that the District would not allow PBS to provide support to XX during the school day. Thus, with the start of Kindergarten, there was going to be a drastic reduction in the number of hours of ABA therapy that XX would be receiving. As noted, at Jars of Clay, XX was receiving 40 hours of ABA therapy provided through PBS and paid by parents' insurance. Tr. Day 1 at 177:6-12 (XX's mother). For after-school care in Kindergarten, the family had arranged for XX to attend the program run by the Boys and Girls Club ("B&G Club"), a third-party provider, in TSE's gym. Tr. Day 1 at 165:11 to 166:1 (XX's mother). The B&G Club would allow XX to receive support from PBS during the after-school program, which amounted to six hours of ABA therapy per week. Id. at 174:16 to 175:5. Thus, when XX started Kindergarten, her ABA therapy would be reduced from roughly 40 hours a week at Jars of Clay, to about six hours per week at the B&G after-school program. Tr. Day 3 at 578:21-25 (Punches).

Regarding parent input, the IEP stated, *inter alia*, that Mom (1) wanted to know if there would be a consistent paraprofessional with XX; (2) expressed concerns with subjectivity in data collection; and (3) expressed concerns with lunch, in that XX required reinforcers (usually M&Ms and gummy bears) to try new foods. Id. at 10.

The IEP further stated that Mom would like an FBA and BIP developed when XX started school, and the team "agreed to conduct when we get to know her." Id. Essentially, the school took the position that it could not conduct an FBA until after it observed XX's behaviors in the classroom. Tr. Day 7 at 1601:14 to 1602:9 (O'Brien). Mom testified that school staff pushed back on her request for an FBA, stating that they wanted to first see XX's behaviors for themselves. Id. Mom ultimately gave in, signed the IEP, and agreed to revisit the matter in the fall. Id.

The IEP meeting notes state, *inter alia*, the following:

[XX] responds well to proximity control for "ready-to-learn" behaviors. First/then language also works well for her – pairing this with a visual in her new kindergarten setting next year could be helpful (visuals had been present at [Jars of Clay] but this was faded as she no longer needed). BCBA shared that staff often need to wait out her tantrums. Prompt of "what do you need?" works well for her.

* * *

Mom is concerned with lunch – their expectation is that she will eat school lunch with her peers but that she requires reinforcers (usually M&Ms and gummy bears) to try new foods. BCBA shared that she is willing to talk with the teacher and paras about how to reinforce and work through food concerns.

Recess and attendant care were discussed for reciprocal play, initiating communication and play, and social skills. Mom shared concerns with potty training and that she is not always compliant in changing her pull-up or with toileting procedures.

May 2024 IEP at 17, part 2 of P-25.

Punches' session description of the May 2024 IEP meeting states, inter alia, as follows:

The school shared their IEP goals based on their observations and interviews. [Mom] requested changes based on conversations with Families Together and this BCBA that included making the goals observable and measurable, more objective and not subjective, having a BIP added to the IEP, which the school agreed to doing [an] FBA in the fall. This BCBA discussed different behaviors that [XX] engages in daily, the antecedent and management strategies that we use, and having para support during recess for important school opportunities and during lunch to continue to work on expanding foods. This BCBA offered to model and collaborate with the school. The school offered for me to work with the teacher first. Many ideas were shared. We will meet again in August before school starts for an update on progress and meet the teacher. [Mom] did not sign the IEP today and requested the changes be emailed to her....

PBS Session Description at 2 (05/16/2024), P-111; see also Tr. 3 at 653:24 to 655:20 (Punches).

At the due process hearing, Punches testified that she suggested a 1:1 para for at recess to help work on XX's communication and social interactions with peers, as well as for safety concerns regarding her elopement behavior. Tr. 3 at 658:13 to 659:13 (Punches).

3. May 2024 IEP for Kindergarten

a. IEP Goals

The May 2024 IEP identified five areas in which XX demonstrated functional needs. For each area of need, the IEP established a separate goal, as set forth below.

i. Goal 1: Attending to Adult-Directed Activities in a Group Setting

The first IEP goal targeted an area of functional need in attending to adult-directed activities in a group setting.

The IEP described XX's current level of functional performance as follows:

[XX] has difficulty attending to adult directed activities in a group setting. She does not always sit with the group or stay at the activity independently. Most children her age are able to attend to an adult directed activity in a group setting for 5-10 minutes without redirection.

May 2024 IEP at 3, part 2 of P-25.

To target this need, the IEP established the following goal:

When presented with the opportunity to sit in a group instruction setting, [XX] will be able to sit in the group (5-15 minutes) without disruptive behavior/attempting to leave the group (story time, circle time, small and large group instruction, etc.) on at least 80% of opportunities by end of the IEP year as measured by Observation. Id. The IEP indicated baseline data of "33% of opportunities observed."

Id. The IEP did not set any measurable objectives for this goal. Id.

The school derived the first IEP goal from a similar goal in Punches' plan. Tr. Day 2 at 520:2 to 522:25 (Peacocke). Specifically, the goal in Punches' plan targeted sitting in a small group as follows: "Learner will sit in a small group for 5 minutes without disruptive behavior or attempting to leave the group." March

2024 Intervention Plan at 23, P-23. In the plan, Punches provided the criteria for measurement of this goal as follows: “at least 80% of opportunities across multiple group settings (story time, circle time, etc.) and peers over 3 consecutive sessions.” Id. Punches’ plan stated that XX’s current level on this goal was 33.3%, with mastery of the goal expected in August 2024. Id.

At the due process hearing, Punches testified that the school’s language in the first IEP goal was too vague and not written in a way to provide a way to objectively measure progress on the goal. Specifically, Punches pointed out that, with respect to measuring progress on the first IEP goal, the IEP did not state how many times XX should be observed or how long each observation session should last. Tr. Day 3 at 648:17 to 650:3 (Punches). Punches stated that, without specific details regarding the number of days, length of session, and across multiple settings, the person collecting data would not be able to determine whether XX had consistently or objectively mastered the goal. Id. For instance, Punches stated that, in the way the IEP goal was written, it appeared possible that someone could observe XX be successful on one occasion and determine that she had mastered the goal. Id.

The record does not reflect how the school determined the baseline data for the first IEP goal; it appears similar to the current level stated in Punches’ plan. The record does not reflect how the school intended to collect observation data on the first IEP goal (e.g., number of days, length of session, or settings), or how observation data for the goal was, in fact, collected.

ii. Goal 2: Transitioning Between Activities Independently

The second IEP goal targeted an area of functional need in transitioning between activities independently.

The IEP described XX’s current level of functional performance as follows:

[XX] has difficulty transitioning between activities independently. It is especially difficult for her to transition from an uncompleted or preferred activity to something that is less interesting to her. Most children her age are able to transition without difficulty throughout a school day and [XX] is needing additional prompts, cues, and time to transition. Children her age need to be able to transition independently (without additional prompts/cues) across a variety of school day activities (classroom, recess, music, library, lunch, etc.) following the school schedule/routine.

May 2024 IEP at 4, part 2 of P-25.

To target this need, the IEP established the following goal:

When transitioning off of an uncompleted activity or to an adult directed activity, [XX] will be able to transition independently (without additional prompts/cues) without engaging in problem behavior on at least 90% of opportunities across multiple tasks, settings and with different people over 5 consecutive data days by end of the IEP year as measured by Observation.

Id. The IEP indicated baseline data of “[less than] 80% of opportunities with prompts and cues.” Id. The IEP did not set any measurable objectives for this goal. Id.

The second IEP goal appears similar to a goal in Punches’ plan, which targeted transitioning off of an uncompleted task as follows: “Learner will transition off an uncompleted activity or task (ex. coloring) without engaging in problem behavior due to restrictive and repetitive patterns.” March 2024 Intervention Plan at 27, P-23. Punches provided the criteria for measurement of this goal as follows: “at

least 80% of opportunities across multiple task settings, and with different people over 5 consecutive sessions.” Id. Punches’ plan stated that XX’s current level on the goal was 77.78%, with mastery of the goal expected in June 2024. Id.

Punches’ testimony at the due process hearing did not address the second IEP goal.

The record does not reflect how the school determined the baseline data for the second IEP goal; it appears consistent with the current level stated in Punches’ plan. By its terms, the second IEP goal provides that it is to be measured by observation across multiple tasks and settings with different people over five consecutive data days. May 2024 IEP at 4, part 2 of P-25.

iii. Goal 3: Following Directions and Imitating Actions

The third IEP goal targeted an area of functional need in following directions and imitating actions. The IEP described her current level of functional performance as follows:

[XX] has difficulty following directions and imitating actions. She is beginning to imitate some actions during group activities with songs/rhymes. Most children her age are able to sequence and imitate a variety of actions to participate in learning activities.

May 2024 IEP at 6, part 2 of P-25.

To target this need, the IEP established the following goal:

When presented with activities within a classroom setting and during one on one instruction time, [XX] will be able to imitate different sequences of actions (3 or more components) when prompted on at least 80% of opportunities by end of the IEP year as measured by Observation.

Id. at 6. The IEP indicated baseline data of “[less than] 20% of opportunities observed.” Id.

The IEP did not set any measurable objectives for this goal. Id.

The school derived the third IEP goal from a similar goal in Punches’ plan. Tr. Day 2 at 520:2 to 522:25 (Peacocke). Punches’ goal targeted imitating component sequences of actions as follows: “Learner will [imitate] 10 different 3 component sequences of actions when prompted, “do this” (ex. clapping, jumping, touching toes) (Pick up a doll, put it in a vehicle, push vehicle forward).” March 2024 Intervention Plan at 26, P-23. Punches provided the criteria for measurement of this goal as follows: “across multiple people, examples, and settings over 3 consecutive sessions.” Id. Punches’ plan did not provide a current level on the goal; this was a new goal that was expected to be mastered in September 2024. Id.

At the due process hearing, Punches testified that the school’s language in the third IEP goal was too vague and not written in a way to provide a way objectively measure progress on the goal. Specifically, Punches pointed out that, with respect to measuring progress on the goal, the IEP did not state how many times XX should be observed and how long each observation session should last. Tr. Day 3 at 650:20 to 651:13 (Punches). Punches stated that, without specific details regarding the number of opportunities over a certain number of days, the person collecting data would not be able to determine whether XX had consistently or objectively mastered the goal. Id. Punches stated that, the way the IEP goal was written, it appeared possible that someone could observe XX be successful once and determine that she had mastered the goal. Id.

The record does not reflect how the school determined the baseline data for the third goal, how the school intended to collect observation data on the goal (e.g., number of days, length of session, or settings), or how observation data for the goal was, in fact, collected.

iv. Goal 4: Turn-Taking and Social Exchanges

The fourth IEP goal targeted an area of functional need in turn-taking and social exchanges.

The IEP described XX's current level of functional performance as follows:

[XX] is not as independent in turn taking/social exchanges as other children her age. She relies on scripts for social greetings and prompting from adults to engage in turn taking during activities.

May 2024 IEP at 7, part 2 of P-25.

To target this need, the IEP established the following goal:

When provided the opportunity to take turns during activities at school, [XX] will be able to [take turns] independently (without adult prompting) on at least 75% of opportunities by end of the IEP year as measured by Observation.

Id. at 7. The IEP indicated baseline data of "independent in turn-taking [less than] 25% of opportunities observed." Id. The IEP did not set any measurable objectives for this goal. Id. at 7.

The record does not reflect how the school determined the fourth IEP goal or the baseline data for this goal; it does not appear to be based on Panches' plan. The record does not reflect the school intended to collect observation data on the goal (e.g., number of days, length of session, or settings), or how observation data for the goal was, in fact, collected.

v. Goal 5: Delayed Communication Skills

The fifth IEP goal targeted an area of functional need in delayed communication skills, including echolalic behaviors and associative responses to questions asked of her.

The IEP described XX's current level of functional performance as follows:

According to standardized testing results and observations, [XX's] communication skills are delayed when compared to same aged peers. During the evaluation, . . . [XX] displayed echolalic behaviors and was observed to repeat the question [XX] was also observed to give an associative response to some of the questions asked of her (i.e., What do you when you are cold? "cold snow"). Although [XX] was easily understood during the evaluation, Mom noted that [XX] can be difficult to understand at times. Articulation skills should be monitored as expressive language skills continue to develop.

May 2024 IEP at 8, part 2 of P-25.

To target this need, the IEP established the following goal:

When presented with various language activities and asked a question about an item or activity, [XX] will be able to increase her functional communication skills by providing an appropriate short answer to the question at 50% accuracy by the end of the IEP year as measured by Short-Cycle Assessments.

Id. at 7.

The IEP indicated the following baseline data: “[XX] was observed to correctly answer questions on the Preschool Language Scales – Fifth Edition with 0% accuracy.” The IEP did not set any measurable objectives for this goal. Id. at 7.

The record suggests that the fifth IEP goal was primarily handled by the school’s speech pathologist. See May 13, 2025 Email chain at 1e, P-116.

Punches’ testimony at the due process hearing did not address the fifth IEP goal.

As reflected above, the language of the IEP indicates that the baseline data for the fifth goal was determined based on XX’s answers to questions on the Preschool Language Scales – Fifth Edition. Additionally, the terms of goal provided that progress would be measured by Short-Cycle Assessments. The record does not provide a description of Short-Cycle Assessments.

b. Program Modifications and Supports

The IEP provided the following modifications/accommodations:

- Allow extra time for transitions daily during transitions;
- Alert student to transitions daily 1-5 minutes before transition, when known transition to occur; and
- Visual schedule daily to assist with transitions and learning of the routines.

See May 2024 IEP at 13, part 2 of P-25.

Regarding supports for school personnel, the IEP stated that, once per quarter, the student’s IEP team would receive 15 minutes of consultation services from the District’s Autism Team. Id. at 13.

c. Special Education Services and Supports

Regarding the delivery of special education services, the May 2024 IEP stated as follows:

Beginning upon enrollment for the first day of school for the 24-25 school year and continuing for the duration of the IEP year, [XX] will receive [1] AC services 20 min each day in the general educational setting for non-instructional times, [2] 20 min of services times per week through the speech therapist, [3] indirect services 5 min each week through the occupational therapist with [4] the remainder of the school day receiving special education support in the general education setting. She is also eligible for special education transportation approximately 30 min each day in session for the duration of the IEP.

As outlined in this IEP, [XX] will participate in the general education setting 80% or more of the time, and is eligible to participate in extracurricular and other nonacademic activities for which she qualifies under school rules and regulations.

May 2024 IEP at 15, part 2 of P-25 (emphasis added).

As reflected above, aside from the specific times allocated for services regarding “AC,”¹⁹ speech, and occupational therapy, the IEP provided for XX to spend “the remainder of the school day receiving

¹⁹ The record does not reflect what the term “AC services” refers to in the IEP. Based on context, it appears that the term could relate to accommodations; however, the Hearing Officer makes no findings in this regard.

special education support in the general education setting.” Id. At the due process hearing, school witnesses gave varying responses regarding the meaning of this provision. Peacock stated that it “describes that [XX] is getting services from a staff member for the entire school day.” Tr. Day 2 at 482:7 to 484:19 (Peacock). Peacock further elaborated that the staff member could be a special education teacher or a paraprofessional. Id. O’Brien concurred that the term “special education support in the general education classroom” meant that the student would get support from either a special education teacher or a para in the general education classroom. Tr.

Day 7 at 1593:21 to 1594:25 (O’Brien). O’Brien further explained that “special education support in the general education classroom” is one of three options for special education services in the State of Kansas, with the other two options being: (1) special education services outside of the general education classroom; and (2) indirect services. Id.

Dial testified that the term “special education support” in the IEP meant that XX would have a sped teacher following the IEP and providing para support when needed, teacher support when needed, and special accommodations from anyone. Tr. Day. 4 at 812:14-24 (Dial). Dial agreed it was a broad term that could mean a lot of things. Id. at 812:23 to 813:1. Richards generally agreed that “special education supports” was a broad term that could mean “[a]ny service, accommodation, [or] modification provided to a student to help them achieve their IEP goals and access the general education curriculum to the maximum extent possible.” Tr. Day 9 at 2160:2-11 (Richards).

C. 2024-25: Kindergarten at TSE

1. Preliminary Facts Regarding 2024-25 School Year at TSE

a. TSE and District Staff

Dr. Kristin O’Brien has served as Director of Special Education for the District for 11 years. Tr. Day 6 at 1446:6 to 1447:4 (O’Brien). In this role, her general responsibilities include providing training to special education teachers, supervising related services staff, and providing support to IEP teams, parents, and students. Id. With regard to XX, Dr. O’Brien attended the May 2024 eligibility and IEP meetings, and one of the meetings with parents in August of 2024. Tr. Day 6 at 1454:8-23. Her next involvement was a meeting with XX’s mother in November of 2024. Id.

Scott Dial has served as Principal at TSE for 18 years, including the 2024-25 school year. Tr. Day 4 at 804:2-24 (Dial). In this role, Dial is ultimately responsible to ensure that IEPs are followed and student safety is upheld. Id.

Ryan Ritchey has served as Assistant Principal at TSE for two years including the 2024-25 school year. Tr. Day 8 at 1879:23 to 1881:3 (Ritchey).²⁰ In this capacity, Ritchey assists with behavior for all students in the building. Id. at 1881:10-19. As to special education students, helps problem-solve with special education teachers and paras on behavior strategies. Id. Ritchey is also responsible for para evaluations

²⁰ Previously, Ritchey served for two years as dean of students at TSE for two years, and as a 5th grade teacher for approximately 15 years. Id. Ritchey holds a bachelor’s degree in education with a minor in special education, and a master’s degree and specialist degree in administrative education. Id. at 1881:4-9, 1923:3-10. Other than his college courses, Ritchey has not had any specific training in special education. Id. at 1898:17-24.

and assists with para scheduling. Id. Additionally, Ritchey will sit in on IEP meetings when the Principal (Dial) is not available. Id.

Sarah Richards has served as School Psychologist at TSE for 10 years, including the 2024-25 school year. Tr. Day 8 at 1985:24 to 1987:19 (Richards).²¹ In this capacity, Richards' primary duties include consultation, collaboration, and assessment of students, along with other day-to-day activities. Id. Richards works primarily with special education students. Id. With regard to XX, Richards was not part of her early education IEP team. Id. at 1987:20 to 1988:16. Richards attended the May 2024 IEP meeting learn about XX and help her transition into Kindergarten. Id. At the May 2024 meeting, parents requested that the IEP team meet again before the next school year started. Id.

Prior to the start of the 2024-25 school year, all school staff were trained in Mandt procedures regarding how to handle situations involving deescalation, seclusion, and restraint. Tr. Day 6 at 134:1-8 (O'Brien); Tr. Day 7 at 1580:15-25 (O'Brien).

b. Tiffany McCain – XX's Special Education Teacher

For the 2024-25 school year, Tiffany McCain was Special Education Resource Teacher at TSE for students in Kindergarten through Second Grade. Tr. Day 2 at 367:3 to 368:18 (McCain).²² In this role, McCain supported students with IEPs who spent the majority of the day in the general education classroom and needed additional special educational supports. Tr. Day 2 at 413:21 to 415:20 (McCain).

During the 2024-25 school year, McCain had approximately 23 students on her caseload, including XX. Tr. Day 2 at 413:21 to 415:20 (McCain). As special education teacher for XX, McCain was responsible to support XX and follow the May 2024 IEP as it was written. Tr. Day 2 at 367:3 to 368:18 (McCain). After the school year began, McCain was involved in writing or contributing to amendments or other issues relating to the May 2024 IEP after the school year began. Id.²³

McCain understood that the May 2024 IEP required for XX to have access to para support for 100 percent of the school day; McCain characterized this requirement as a "para in the area" (i.e., not dedicated 1:1 support). Tr. Day 2 at 371:20 to 372:16 (McCain).

McCain was responsible to schedule approximately seven paras to serve her students. Tr. Day 2 at 413:21 to 415:20 (McCain).

²¹ Previously, Richards worked as a school psychologist in another school district for two years. Id. Richards holds an educational specialist degree in school psychology, which constitutes a master's degree plus 60 credit hours (i.e., in between a master's degree and a PhD). Id.

²² Previously, McCain worked in the general education classroom, primarily in Kindergarten for approximately 13 years. Id. Over the past five or six years, McCain moved to special education; part of that time was as a Special Education Resource Teacher, and part of the time was in a special day school setting. Id. McCain has a bachelor's degree and master's degree in special education. Tr. Day 2 at 413:8-20 (McCain).

²³ In August of 2024, McCain began working for the District (i.e., at the start of XX's Kindergarten year). Tr. Day 2 at 367:3 to 368:18 (McCain). Thus, McCain was not involved in drafting the May 2024 IEP or any of events that took place before August 2024. Id. At the time of the due process hearing (i.e., the summer of 2025), McCain was no longer employed by the District. Id. at 401:13-14.

For the 2024-25 school year, the District assigned an additional para to McCain's staff in anticipation of XX's needs. Id. Additionally, at some point in the middle of the school year, an additional para was added to McCain's staff.²⁴ Tr. Day 4 at 875:21 to 876:2 (Dial).

According to District personnel, McCain was responsible to train the paras working with XX with regard to XX's individualized needs. Tr. Day 7 at 1693:21 to 1695:15 (O'Brien).

McCain did not know the training of the paras that she assigned to work with XX. Tr. Day 2 at 371:20 to 372:16 (McCain). McCain testified that she did not have the ability nor background to train the paras with respect to XX's needs. Id.

Throughout the 2024-25 school year, McCain assigned approximately five to ten paras to work with XX. Id. at 408:11-17. The same para was not assigned to work continuously with XX. Id. at 415:6 to 372:1. In other words, different paras were scheduled to work with XX throughout the day. Id. at 434:17 to 436:13. Sometime in the spring semester, that changed, and McCain assigned herself to work primarily 1:1 with XX. Also, at some point in the spring semester, two adults were scheduled to be with XX at all times.

School staff made a "team decision" to not assign the same para to work with XX throughout the day. Tr. Day 2 at 415:6 to 372:1 (McCain). In making this decision, the team "looked at a variety of factors to determine what was best for both [XX] as well as the staff." Id. It would have been within McCain's discretion to assign a single para to XX throughout the day. Id. at 434:17 to 436:13. However, the team considered this option and decided to go a different route, because "[XX's] behavior was incredibly difficult for one person to remain with her throughout the entirety of the school day." Id. There were "numerous times" when teachers requested support or replacement due to stress or being physically hit by XX. Id.

At the due process hearing, McCain testified that she did not believe the District provided her with sufficient guidance to manage XX's needs. Tr. Day 2 at 373:1 to 372:16 (McCain).²⁵ Before the school year started, McCain did not receive any training with respect to the individualized needs of XX. Tr. Day 2 at 369:13-20 (McCain). At some point during the school year, McCain asked for assistance or support from the District to meet XX's needs. Tr. Day 2 at 373:1 to 372:16 (McCain). McCain did not believe that the District took her concerns seriously and/or responded to in a timely manner. Id.

McCain believes that XX's parents tried to work in partnership with her and the District. Tr. Day 2 at 385:16-21 (McCain). McCain further believes that XX's parents tried to get resources for McCain and the school. Id. at 403:6-11.

c. The District's Autism Team

The District has an autism team comprised of approximately 12 people, with at least one team member in each building. Tr. Day 7 at 1637:15 to 1638:2 (O'Brien). The autism team meets monthly to share information. Id. The team is comprised of people with various roles, including teachers, speech therapists, social workers, occupational therapists, and school psychologists, at all levels from preschool

²⁴ The record does not reflect when the second para was added to McCain's staff.

²⁵ McCain believes she was adequately trained to handle the other 22 students on her caseload. Tr. Day 2 at 464:12-16 (McCain).

through 12th grade. Tr. Day 8 at 1795:19 to 1796:17 (Holcomb). The role of the autism team is to consult a student's IEP team if they have any questions regarding students with autism. Id.

During the 2024-25 school year, Tracie Holcomb and Richard Harrison were members of the autism team. Tr. Day 7 at 1637:15 to 1638:2 (O'Brien).

Tracie Holcomb has served as the District's Early Childhood Special Education Inclusion Teacher for the past two years, including the 2024-25 school year. Tr. Day 8 at 1794:16-24 (Holcomb).²⁶ In this position, Holcomb travels around to four schools and two daycare centers within the District. Id. In 2017, Holcomb completed a three-day training to become a member of the District's autism team. Id. Since then, she has attended several trainings on autism through TASN.²⁷ Id. Last year, Holcomb attended the summer institute for autism. Id.

As a member of the autism team, Holcomb is assigned to the younger students. Id. At 1797:10 to 1798:14. Typically, she will check in with a student's team quarterly to see how things are going and answer any questions. Id. at 1795:19 to 1796:17. Approximately three or four times a year, she is asked to come and observe the student if there has been a change in behavior or a change in the student's learning. Id.

Richard Harrison has worked as a behavioral consultant for the District for approximately five to six years. Tr. Day 6 at 1256:7-15, 1326:13 to 1327:4 (Harrison).²⁸ Harrison splits his time between the District and Seaman School District USD 345. Id. at 1267:2-5. Additionally, once a month, Harrison goes to the Silver Lake School District USD 372. Id. at 1267:2-5. Under this schedule, Harrison works at the District every other week. Id. at 1326:17 to 1327:4.

Harrison has a bachelor's degree in psychology and a master's degree in behavior analysis and therapy. Tr. Day 6 at 1256:7-15 (Harrison). Additionally, Harrison has a master's degree in special education; and a PhD in special education and leadership. Id. Over the course of his career, Harrison has worked with hundreds, if not a thousand, adults and kids with autism. Id. at 1343:4-9.

Harrison is not a BCBA. Tr. Day 6 at 1256:7-15 (Harrison). At the due process hearing, Harrison explained his understanding that, in order to become a BCBA, one needs to have a master's degree in any number of areas, including behavioral analysis, and then complete a certain number of hours of clinical work under a BCBA and take a test to become certified. Tr. Day 6 at 1256:19 to 1257:18

²⁶ Previously, Holcomb taught early childhood special education for 29 years. Id. at 1795:2-4. Early childhood ranges from birth to age eight. Id. at 1813:6-9. Holcomb has a master's degree in special education. Id. at 1795:5-18.

²⁷ According to the Kansas Department of Education ("KSDE") website, the Kansas Technical Assistance System Network ("TASN") is intended to "increase the capacity of districts to implement and sustain the use of evidence-based practices addressing Kansas State Department of Education Special Education and Title Services (KSDE SETS) identified priority areas and practices." KSDE website, <https://ksdetasn.org/tasn/about-tasn> (last checked 03/14/2026). The website further states, among other things, that the overall goal of TASN is "to improve the quality of education and outcomes for students who receive Title services and students with disabilities." Id.

²⁸ Previously, Harrison worked with a team that worked under a statewide grant to provide technical expertise services to the school districts in the State of Kansas with respect to students who had "really significant needs." Tr. Day 6 at 1323:15 to 1325:17 (Harrison). Harrison described this organization as the precursor to TASN, and described his role as similar to that of Jennifer Paxton's current role. Id.

(Harrison). Harrison stated that it was the clinical work and taking of the test that distinguished a BCBA, as opposed to the type of master's degree that the person might have. Id.

As noted, Harrison has a master's degree in behavior analysis and therapy (in addition to his graduate degrees in special education and leadership). In his studies and experience, Harrison did applied work with families that had kids with autism. Tr. Day 6 at 1258:8-10 (Harrison). Additionally, for three years, he ran a National Institute of Health Grant on self-injury and aggression, in which he worked jointly with a pharmaceutical person who utilized lab rats to determine what might work for people with aggression. Id. at 1258:8-10, 1323:15-23.

Thereafter, for about 20 years, Harrison worked under a statewide grant with a team of two other people (a social worker and a special education teacher) to provide technical expertise services to Kansas school districts who needed help with students who had "really significant needs." Tr. Day 6 at 1323:15 to 1325:17 (Harrison). During this time, Harrison published articles on functional assessments and data collection. Id. Harrison's team was called "Project Stay," Id. It was a predecessor to today's TASN. Id. Harrison described himself as the precursor to Jennifer Paxton (as discussed below, in the spring of 2025, Paxton provided support to TSE regarding XX). Id.

In recommending behavioral supports, Harrison relies on both clinical data and philosophical theory. Tr. Day 6 at 1258:21 to 1259:12. 323:15 to 1325:20 (Harrison). He believes that direct observation, functional behavioral data, and outcome tracking are core to making effective behavior plans. Id.

d. The District's Policy – No Outside Providers During School Hours

The District has a strict, blanket policy that prohibits third parties from providing services to students during school hours in the school setting. Tr. Day 4 at 831:8 to 832:9 (Dial).²⁹ Based on this policy, the District denied multiple requests by parents to have PUNCHES and PBS work with XX during the school day. Id. at 831:8 to 832:9, 847:4-10. Specifically, Dial checked with O'Brien in determining the District's decision to deny the parents' requests. Id. at 832:3-9.

At the due process hearing, O'Brien confirmed that the District has an unwritten, blanket policy that prohibits third parties from providing support to students in classrooms during school hours. Tr. Day 6 at 1469:11 to 1471:25, 1476:3-17 (O'Brien). O'Brien further testified that this policy was the primary reason why PUNCHES was not allowed to provide support to XX in the classroom during school hours. Id. at 1469:11 to 1471:25, 1480:11 to 1481:6. Specifically, O'Brien testified that she informed XX's parents of the policy in the summer of 2023, when they asked to have PBS provide services to XX for her third year pre-K. Id. at 1472:10 to 1473:20.

Dr. O'Brien testified that the policy comes from the District Superintendent and Associate Superintendent. Id. at 1476:3-17. Dr. O'Brien understands it is a strict policy; she did not consider asking for an amendment or exception to the policy to address XX's needs. Id. at 1479:14-19. Dr. O'Brien stated that she had discussions with them about amending the policy within the last couple years, but it was not specific to XX. Id.

²⁹ The policy does not prohibit an outside provider from attending meetings at the school. Id. At 962:23 to 963:11. The record does not contain an explanation by the District of the reason behind the policy.

Mom testified that the family was repeatedly told that the District would not allow thirdparty organizations into the school to help provide ABA therapy and supports to XX. Tr. Day 1 at 148:21 to 149: 6 (XX's mother). However, no one ever provided her with a written policy or the exact language of the policy. Id.³⁰

By the time XX was starting Kindergarten, her parents had given up on trying to have the District allow PBS to provide services to XX at TSE during the school day. Tr. Day 1 at 181:4-15 (XX's mother). They instead switched their approach and tried to focus on finding a way to have TSE staff trained and educated on how to deal with XX's behaviors. Id.³¹

Punches testified that she and Mom asked multiple times for Punches to be allowed to come into the school to observe XX and help advise staff on how to handle the situations that were arising with XX. Tr. Day 3 at 636:17 to 637:24, 670:19 to 671:3 (Punches). School staff repeatedly said "no" because outside providers were not allowed to come into the school during school hours. Id. Dial's testimony corroborated Punches' account. Tr. Day 4 at 847:4-10 (parents requested outside support, including access for their BCBA, multiple times).

e. Monthly Meetings with McCain and Punches

McCain had a general agreement to collaborate with Punches monthly over Zoom. Tr. Day 2 at 374:3-8 (McCain). Throughout the school year, McCain tried to implement the strategies suggested by Punches. Id. at 424:12 to 426:24.

Punches stated that she understood that she was supposed to be meeting monthly with school staff, but it became confusing as to when the meetings were scheduled, and regular monthly meetings did

³⁰ In discovery, Respondent mistakenly produced the policy of Seaman School District USD 345 regarding third-party services. See Tr. Day 6 at 1457:13 to 1458:6 (O'Brien); USD 345 Board Policy, P-139. At the due process hearing, O'Brien stated that the District's policy regarding third parties was available on its website. Tr. Day 6 at 1457:13 to 1458:6 (O'Brien). When asked to produce it, Respondent provided the District policy regarding visitors to the school, which states that the building principal "shall be responsible for developing rules and regulations governing the presence of visitors in the buildings." Visitors to School Policy, P-140; see also Tr. Day 6 at 1462:12-23 (O'Brien). Dr. O'Brien stated that the policy prohibiting third parties was essentially embedded in this policy under the District's guidance for developing rules and regulations for visitors. Id. at 1463:2 to 1466:9, 1469:7-24.

³¹ If the District had allowed it, Punches could have provided support and oversight to XX's paras. Tr. Day 3 at 691:2-7 (Punches). Through PBS, Punches has provided ABA services to many students in multiple public-school settings over the years. Id. at 550:12 to 553:9. In these situations, PBS enters into a Memorandum of Understanding with the school district that sets forth parties' roles, responsibilities, policies and expectations. Id. PBS will work with schools to make requested modifications to the agreement. Id. Under a typical Memorandum of Understanding, PBS agrees to "[c]ollaborate with instructional personnel in the educational setting to provide services in the educational setting according to the student's public instructional personnel, school consent and individualized IEP." Memorandum of Understanding, P-27. Additionally, PBS agrees to maintain confidentiality of other students and staff. Id. The term of the agreement is typically for one year, with either party having the right to terminate without cause by providing 30 days advance notice of termination. Tr. Day 3 at 550:12 to 553:9 (Punches); Memorandum of Understanding, P-27. When Punches provides ABA services in a school setting (i.e., under a Memorandum of Understanding between PBS and the school), the teacher would be the ultimate decision-maker on what strategy to use, with Punches in a support role providing training and consulting. Tr. Day 3 at 702:8-22 (Punches). In Punches' experience, most of the time, teachers understand why she is recommending a certain thing and are willing to implement and try her suggestions. Id. When providing support in the school, PBS staff will defer to the school's policies and allow school staff to take care of things where needed, such as if a child is having a tantrum. Id. In such a case, PBS staff could help school staff block the child, but they would not attempt to restrain the child. Id.

not, in fact, occur. Tr. Day 3 at 729:8 to 731:7 (Punches). Punches further stated that, in the meetings, there were a lot of topics that needed to be discussed, which did not leave much time for her to train staff on skills. Id. Punches stated that, in some instances, she was asked to sit in on other meetings with Mom, but she mostly listened and did not have an opportunity to work with staff on skills in those meetings. Id.

Punches testified that, when McCain had questions, it was difficult or impossible for Punches to completely understand and/or give accurate advice without having the ability to observe first-hand what was happening in the classroom. Tr. Day 3 at 637:8-24, 670:19 to 671:3 (Punches). Id.

2. August to September: Beginning of Kindergarten

In August and September of 2024, McCain did not have any concerns regarding the IEP or XX's behaviors. Tr. Day 2 at 416:17 to 417:14 (McCain). Further, Richards testified that, between September 17 and October 9, she observed XX and did not see any behaviors that would necessitate a BIP. Tr. Day 8 at 1999:6-17 (Richards).

Shortly into the school year, XX's family started experiencing bathroom issues with XX as a result of the school's failure to collaborate with them. One issue involved the school's decision to allow XX her to use the single stall bathroom in the special education room. Tr. Day 1 at 163:19 to 165:10. (XX's mother). XX's mother expressed concern, because XX had a tendency to become territorial over individual or independent things. Id. Allowing her to use a one-stall bathroom that the other kids could not use would give her special treatment and cause her to begin to think that the bathroom belonged to her and that other kids could not go in there. Id.

Additionally, XX was scared to flush the toilet, and the school implemented the use of headphones without collaborating with the family. Id. As a result, the family struggled with XX's toileting in other circumstances (i.e., when headphones were not readily available). Id. The family preferred to use something that was more readily available in the natural environment. Id. At home and at the Club, they were making an elephant noise when flushing. Id.

a. August Meetings with Staff and Parents

At parents' request, in early August 2024, Richards scheduled a meeting with parents and staff for Thursday, August 8, during the week before school started. Tr. Day 8 at 1989:9 to 1990:16 (Richards). Richards recalled that discussions at the meeting included, among other things, potential concerns that staff might see as XX entered Kindergarten and potential supports that staff could provide if XX were to need them. Tr. Day 8 at 1989:9 to 1990:16 (Richards). Richards did not recall who attended the August 8th meeting. Id. at 1991:6-7.

Notes from the August 8th meeting indicate that parents reported, among other things, the following information regarding XX:

1. Needs support during recess to facilitate peer interactions and supervise eloping.
2. Recent behaviors include eloping, hitting, biting, running in rooms and shutting the door.
3. Need to block her from hitting and biting other students.
4. Support during lunch: trying all foods at preschool lunch with reinforcement, parent will provide reinforcers (M&Ms, gummy bears, stickers).
5. Disrobing: block her visually from other students.

6. Triggers are not wanting to transition, not wanting to do a task.

See Meeting Notes at 1-2, R-208.³²

At parents' request, another meeting was scheduled for Friday, August 16, which was a couple of days after school started. Tr. Day 8 at 1992:15 to 1995:11 (Richards). Attendees at this meeting included Richards, McCain, Dial, Gast, parents, and Punches. Id.

Notes from the August 16th meeting indicate that XX was preferring to use the big bathroom in hallway versus the individual bathroom in the sped room, and that she was writing her first and last names without visual models. Meeting Notes at 2-3, R-208. Parents wanted a BIP, and staff stated they did not know XX well enough to or have enough data to write a thorough or accurate plan. Id. They talked through "theoretically" what a response would look like if XX were to be aggressive. Id. Punches shared that "based on her data thus far, function is nearly always escape/avoidance or demand." Id. They also discussed placing a Stop Sign visual is XX has a common eloping place. Id. Parents stated that, at lunch, the expectation is that XX will take a bite before being reinforced with a gummy bear. Id. Punches requested to observe XX during the school day, to have regular weekly or biweekly meetings with the team or sped teacher, and to train teachers and paras. Id.

Punches' session description of the August 16th meeting states, *inter alia*, as follows:

**** We discussed some areas of potential concerns in the lunchroom where they are seeing small elopement so far. This BCBA discussed the eating procedure plan, reinforcement, and how we work on bringing her back to the table. We discussed using visuals which aren't currently in place. They are seeing what is needed and not needed to support her in this setting. Her special education teacher is going to make a simple first-then board and small visual schedule. I discussed the toileting issues with bathroom for [B&G Club] and her requesting to go on a walk in the halls to escape the task at [B&G Club]. Talking through the process, we discovered that school staff is flushing the toilet for her right now, but they are going to work on removing that [and] having her follow through with it.... We discussed more behaviors, graphs that I had, function of behaviors, and then our team collaboration and communication moving forward to best support [XX]. ****

PBS Session Description at 3 (08/16/2024), P-111.

XX's mother recalled that, at the August meetings, part of the discussion involved trying to figure out a communication system between XX's parents and the school that worked efficiently for everyone and also allowed parents to gather information that they needed to keep XX's care consistent in all environments. Tr. Day 1 at 154:2-8 (XX's mother). Mom stated that, at the meetings in August, school staff continued to "push back" on her request for an FBA and BIP, stating that staff needed to first see XX's behaviors before they could put a plan into place. Id.

Richards testified that staff refused parents' request for a BIP, as follows:

³² Exhibit R-208 contains the District's notes of various meetings compiled by Sarah Richards, the school psychologist. Tr. Day 7 at 1609:21 to 1610:9 (O'Brien); Tr. Day 8 at 1990:1-16 (Richards).

We [couldn't] put a behavior plan in place for a student that we [had] yet to enter our setting, so in order to put a behavior plan in place, we need to make sure that we know what we're putting it in place for. And since [XX] had not yet entered our kindergarten setting, that was not appropriate.

Tr. Day 8 at 1992:1-14 (Richards). Richards further testified that, once the school began observing a pattern of behaviors, it would be appropriate to put a BIP in place. Id.

At the time of the August meetings, Richards had not received the previous behavior plans and strategies prepared by Punches. Tr. Day 8 at 1991:8-16 (Richards). As discussed, parents had provided this information to Peacocke back in the spring of 2024. See April 2024 Email String, P-24. However, Peacocke did not forward the information to Richards. Tr. Day 8 at 2043:5-19 (Richards); Tr. Day 9 at 2035:5 to 2036:5 (Richards). Richards testified that she did not receive the information until the spring of 2025. Tr. Day 8 at 2043:5-19 (Richards).

b. September 17th Meeting with Staff and Punches

On Tuesday, September 17, school staff including McCain, Richards, and Gast held a monthly meeting with Punches. Tr. Day 8 at 1996:2 to 1998:1 (Richards). Mom was not able to attend the meeting and gave permission for staff to meet alone with Punches. Id.; Tr. Day 5 at 1144:11-20 (XX's mother).

Notes from the September 17th meeting indicate that things were going well, as follows:

1. *Toileting: She is toileting and flushing 100% independently in McCain's room with headphones. No plan to take away headphones – they are available to any student in the building.*
2. *Language – no echolalia. She does speak quietly and sometimes needs a prompt to repeat if too quiet[.] ****
3. *She doesn't love carpet time but does stay for close to if not full 10 minutes. She has the option of returning to her seat, which is close to the carpet..*
4. *Clothing changes – No more pullups! McCain shared that if she changes it is into nondescript clothing.*
5. *Lunch – taking all bites and trying all foods without M&M reinforcer – recess as natural reinforcer is enough. Eats all snack and milk. Gast says she is eating most of her food more often than not.*
6. *Communication log: We will come up with a daily communication log.*

Meeting Notes at 3, R-208.

3. October through January: Middle of Kindergarten

a. Early October: Mom's Observations at Lunch and Recess

Mom testified that, about six weeks into the school year, she began "battling" lunch issues. Tr. Day 1 at 154:11 to 155:12 (XX's mother). These issues came to her attention on a day when she was picking up XX early for an appointment. Id. A para came up to Mom and said that XX had eaten half of a cheese stick that day, which was the most she had eaten all year. Id. Mom then reached out to the school and learned that XX was immediately throwing away her lunch tray and refusing to eat anything, and that no one was helping her to eat with the reinforcement process that the family had been using for three years to improve her eating due to sensory issues. Id.

On Friday, October 4, Mom went to observe XX at lunch. Id. at 155:13 to 159:7. Prior to this time, Mom was under the impression that XX was going to have 1:1 support at school. Id. During the observation, Mom learned that was not the case. XX did not have a dedicated 1:1 para, but only a “para in the area” who would presumably need to attend to other students as well. Id. Mom also learned that the school was not using reinforcers or otherwise assisting XX to eat at school. Id.

Following lunch, Mom observed XX at recess and saw that no one was watching her. Id. 157:4-24. XX ran through the mulch in front of the swing set with kids swinging, where kids were not supposed to be. Id. Mom was uncomfortable with observing that the two staff members who were on the playground were not really watching the kids. Id.

On the same day, Mom sent an email to McCain and Richards recounting what she had observed at lunch that day. October 6, 2024 Email, P-29.³³ In the email, Mom stated that XX ate only the cheese off her cheeseburger and nothing else, which was a “big regression.” Id. Mom stated that, normally, XX would have eaten much more, but “[t]his takes a lot of help to get her there which is why we’ve had the 1:1 process in place.” Id. Mom offered that her sister (i.e., XX’s aunt) worked at the school and would be willing come and eat lunch with XX on most days to provide the 1:1 support that XX needed to encourage better eating habits. Id.

b. Early to Mid-October: Mild Behaviors Surface

On Tuesday, October 8th, McCain sent Mom an email stating that XX had lost her front tooth and “was upset and started biting her shirt.” October 8, 2024 Email, P-30. This was the first email that Mom received regarding the regression of XX’s behaviors at school. Tr. Day 1 at 159:8-16, 162:11 to 163:5 (XX’s mother).

On Wednesday, October 9th, another meeting was held with McCain, Richards, and Mom in attendance. Tr. Day 8 at 1999:6-17 (Richards).³⁴ At the meeting, staff cleared up an apparent misunderstanding in which Mom thought XX was not spending any minutes on the carpet during carpet time. Id. at 2000:2 to 2001:25. Notes from the meeting indicate that, among other things, Mom did not know that the school was not using reinforcement at lunchtime and asked that candy reinforces begin on Monday, and that the school provide daily communication with an itemized percentage of each menu item and more information about behaviors during lunch (e.g., eloping, crying). Meeting Notes at 3, R-208. Mom also requested to be included in any future collaboration meeting with Panches. Id. The parties discussed that McCain would send a daily email log to parents. Id. Mom requested communication with regard to the school implementing new things so that she and Panches could also implement them at home. Id. Mom shared that, at home, the family was using an “elephant noise” for flushing (instead of headphones), because the strategy could be used anywhere. Id.

On Friday, October 11th, McCain sent an email reporting some positive aspects about XX’s day,³⁵ and also discussing some challenges regarding toilet flushing. October 11, 2024 Email, P-31. Further, with

³³ The email was also sent to Penny Gast, XX’s general education teacher. See Id.; Tr. Day 1 at 169:15 to 155:24 (XX’s mother).

³⁴ Richards did not recall Panches or anyone else participating in the meeting. Id. The meeting notes do not indicate who was in attendance. See Meeting Notes at 3-4, R-208.

³⁵ Many of McCain’s emails discussed herein also reported interactions with XX, in addition to negative behaviors. This decision focuses on the relevant facts.

respect to bathroom time, McCain stated that they tried the elephant noise, but XX “became very upset and started to cry and run about [McCain’s] classroom.” Id. McCain stated that they ended up using the headphones again but would continue trying the elephant noise. Id.

Around October 15, Sarah Richards, the school psychologist started accompanying XX and lunch and providing reinforcers as described in a video provided by Punches. Tr. Day 8 at 2086:11 to 2088:8 (Richards); see also Lunch Reports/Data Tracking, P-112. At some point, Richard’s schedule did not allow her to continue monitoring XX at lunch. Tr. Day 8 at 2090:1 to 2091:2 (Richards). Richards stated that she trained a para to take over. Id. Richards did not know when the change in duties occurred or where the data collected by the para would be. Id. Exhibit P-112 indicates that no lunch report was given from November 21 to December 20, 2024. Lunch Reports/Data Tracking at 7, P-112.

On Wednesday, October 16, McCain sent an email to parents reporting on XX’s eating for the first day of using M&Ms as reinforcers. October 15-16, 2024 Email String, P-32. The email indicated that XX did not like the adult sitting next her, and that XX got up from the table 3-4 times and told the adult to go away. Id. In the email, McCain also reported about toileting issues, stating that toilet flushing was “ongoing with headphones.” Id. McCain stated that she had tried the elephant noise, but XX ran around and refused to flush, and that XX found the headphones herself, returned the restroom, flushed, and washed her hands. Id. McCain stated that she would try to start pairing the elephant noise while XX wears the headphones, and try to fade out the use of headphones over time. Id.

On the same day, Mom replied to McCain’s email. Mom stated that it sounded like XX had already gotten used to things and knew that she could “get away” with refusing to eat and using headphones to flush. October 15-16, 2024 Email String, P-32. Mom stated that, by giving into XX’s behaviors, the school was promoting the behaviors. Id. Mom further stated that, once a demand is placed on XX, it must be followed through regardless of the amount of time it takes. Id.

Mom advised that the school could start fading out the headphones by setting up a reinforcer (one M&M or one gummy) beforehand, to let XX know that if she flushed without the headphones and made the elephant sound, she could have the reward. Id.

c. Mid-to-Late October: Negative Behaviors Escalate

i. Mid-to-Late October: Changing Events and Escalating Behaviors Generally

McCain testified that, from October 2024 through January 2025, she believed that XX’s IEP was inadequate.. at. Tr. Day 2 at 417:6-11 (McCain). When asked whether behavior goals were developed to meet XX’s needs in the fall of 2024, McCain testified that it was “an ongoing development.” Tr. Day 2 at 394:3-9 (McCain). McCain agreed with parents that there was a “massive” delay in this regard. Id.

In mid-October, McCain began observing concerning behaviors with XX, including hitting, eloping, self-injury, and disrobement; these behaviors became more frequent as the fall progressed. Tr. Day 2 at 375:21 to 376:8 (McCain).

During this timeframe, XX’s parents also observed her behavior spiraling downward. Tr. Day 7 at 1771:17 to 1772:8 (XX’s stepfather). At home, XX was saying things like, “[XX’s] bad,” “[XX] goes to timeout,” “[XX] doesn’t want to go to school,” and “They no like [XX].” Id.

Around mid-October, the RBT who had been providing ABA services to XX after school moved on to another job. Tr. Day 1 at 241:18 to 242:7 (XX's mother). When the RBT left, XX stopped attending after-school care at the Club until the family found support again.³⁶ Id. At this time, XX began riding the bus home from school in the afternoons. Tr. Day 5 at 1045:23 to 1046:5 (XX's mother).

In November of 2024 and continuing over the next few months, XX was experiencing numerous issues with riding the bus; she was engaging in problem behaviors and was refusing to get on the bus to ride home, when required her parents to leave work early to pick her up from school. Tr. Day 1 at 237:3 to 239:1 (XX's mother); see, e.g., November 15, 2024 Email Chain, P-53 (email sent at 3:30 p.m. stating that XX is refusing to get on the bus and will need to be picked up by 4:00 p.m.). In the mornings, the bus driver was not cooperative, which led to tantrums and XX often missing the bus. Id. It took many months, until the end of April, for the school to get a workable bus solution into place. Id.

As XX's negative behaviors began increasing, Ritchey was called to assist on multiple occasions. Sometimes the behavior involved aggression towards other students, and Ritchey would try to help body block, redirect XX, and/or remove the other student from the room. Tr. Day 8 at 1883:17 to 1884:6, 1884:24 to 1885:17 (Ritchey). Other times, XX was refusing to go back into the general education classroom. Id. at 1889:12 to 1890:10. In those instances, staff would use different strategies to try to get her back into the classroom, such as using different motivators, tangibles, or preferred activities. Id. at 1889:12 to 1890:10, 1896:10 to 1897:5. School policies prohibited staff from physically move XX into the classroom. Id. at 1889:12 to 1890:10. Other situations involved XX trying to elope from the classroom, and Ritchey would block the door to stop her from running out of the room. Id. at 1890:11-25. Ritchey also assisted in times that XX had disrobed by intervening with a blanket and/or body blocking while facing away from her to protect her dignity. Tr. Day 8 at 1950:12 to 1951:9 (Ritchey).³⁷

At some point in the school year, the school put strategies in place within the building to try to stop XX from leaving the building. Tr. Day 8 at 1891:8 to 1892:14 (Ritchey). These strategies included stop signs on the doors and closing the fire safety doors on each end of the kindergarten hallway. Id. The record does not indicate when these strategies were put into place.

ii. Mid-to-Late October: McCain's Emails to Parents

Over the last two weeks of October, McCain sent emails to parents reporting about multiple behavioral issues, including physical aggression, throwing objects, and elopement.

On Thursday, October 17, McCain sent an email reporting that, late in the day, XX had become upset with a peer when he went to use the one-stall bathroom in McCain's special education classroom. October 17-21, 2024 Email String, P-33. Specifically, McCain said that XX pulled on the classmate's arm, yelling "No! No! No!" Id. McCain was unsure about what made XX upset and stated this was "something

³⁶ It appears that the timing of XX's increased behaviors at school coincided with at or near the time of the departure of her RBT at after-school care. Tr. Day 1 at 241:18 to 242:17 (XX's mother). The record is not fully developed to make a determination in this regard. In any event, the Hearing Officer finds the cause of the increased behaviors is not relevant to the issues determined in this Decision. In other words, the school's obligation to provide a FAPE remained the same, regardless of the reason why the behavior changed.

³⁷ Prior to Paxton's training in the spring of 2025, (as discussed below), Ritchey had not received any training on how to body block. Id. at 1900:9-12. Ritchey received specific input on how to deal with XX's behaviors when Holcomb and Harrison became involved (as discussed below). Id.

new," in that McCain had never seen XX become angry or upset with a peer or put her hands on anyone. Id. McCain said she tried to ask XX about what prompted the behavior and asked Mom for any suggestions she might have. Id.

Mom responded that she was "honestly not surprised this happened." October 17-21, 2024 Email String, P-33. Mom stated that, in the past, XX had faded in and out of an aggression stage. Id. Mom further stated that she had previously talked with McCain about how XX had problems with aggression in the past and "can get very aggressive at times." Id. Mom asked McCain to "please watch [XX] carefully and try to block that behavior before someone ends up [getting] hurt." Id. Mom further stated: "These situations are the kind of things that we should collaborate with [Punches] about to try to help understand and/or give suggestions and advise on things to do." Id. Mom included Punches on the email string. Id.

On Friday, October 18th, Punches responded to the email with the following information:

Typically the aggressive behavior [XX] displays function of behavior is to access (attention) or to escape a demand. In the past, this looked like asking her to sit in circle time, so she would kick the child in front of her; when asked to wash hands, she would slap the kid next to her; at daycare graduation, she slapped the girl next to her because she didn't want to sit next to her, but it was the assigned order. Examples of attention: another peer would talk to me, she would push or hit them with her hand. Another peer would join and play with us, she would hit them.

How we worked on replacement behavior: I created goals and we worked on playing with others and accepting the changes, but we were ready to block knowing the behavior. During circle time, we started with her scooted back and reinforced the appropriate behavior of sitting in circle time and were able to shape that up where she independently sat on the carpet with peers on all sides and attended over 5 minutes. On goal for demand being placed, we blocked her from hitting others and followed through with the demand before moving on to another activity. So, she still had to wash her hands before going outside to play or eating a snack, etc.

October 17-21, 2024 Email String, P-33.

On Monday, October 21, McCain emailed parents reporting that, at two of the three recesses that day, XX ran away from staff outside and refused to come inside. October 21-23, 2024 Email Chain, P-35. McCain stated that she would "look for an antecedent to help talk through this more." Id. McCain further stated that she wanted to make sure that XX is safe at school and talk further with the parents about what school staff could do to prevent running. Id.

On the same day, XX's mother responded that XX was "having a rough time overall today" and has been "engaging in lots of problem behaviors like we had explained before." October 21-23, 2024 Email Chain, P-35. Mom provided the following examples of problem behaviors that they were seeing at home and during after-school care at the B&G Club:

Spitting, smacking, kicking, tantrums on the floor, throwing objects, stripping naked, and ELOPING (always been a problem, can be worse at times such as running farther away – please keep eyes on at all times because sometimes she will wait until eyes are off her to run).

Id. Mom further stated that it was very important to watch carefully for antecedents and that, while they could talk about what happened in the past, "the only true way to know is if someone is 1:1 (including lunch and recess) with her to be able to recognize those things." Mom stated that she knew the teachers

were not with XX all of the time, and it would be “very helpful if her paras are able to recognize antecedents to report.” Id.

In the email, XX’s mother stated that Amy PUNCHES would be available to provide training to teachers or paras, as follows:

Part of the services that Amy [PUNCHES] offers is caregiver training which applies to anybody working with [XX]. [PUNCHES] is here to help and give advice, not trying to tell anybody specifically what to do or take over everything. If at any point, any teachers or paras would like more education on certain areas to help manage behaviors, [PUNCHES] can provide those services in person or on video. This is all provided and covered by my insurance. [PUNCHES] did this at [XX’s] daycare and it greatly helped the staff I am just letting you know in case anybody is ever interested in more education or understanding of certain processes regarding [XX’s] behaviors.

October 21-23, 2024 Email Chain, P-35.

McCain replied that she would like to continue discussing the behaviors that they were seeing at home and at school. October 21-23, 2024 Email Chain, P-35. McCain further stated:

Advice is always welcome, but in a school setting it can be tricky at times to make it look as smooth as in other settings. Not that it can't happen. I just worry that since we aren't officially ABA trained/certified, we may unknowingly modify a strategy. I appreciate you being open minded as we try to figure out ways to implement strategies in a school setting.

Id. (emphasis added).

On Tuesday, October 22, McCain emailed XX’s parents regarding an increase in XX’s behaviors. October 22, 2024 Email Chain, P-36. Specifically, McCain reported that XX had a “tough day,” as follows:

*She ran several times in the library, climbed on some shelves, and put toys in her mouth then threw them. The para with her said that she could not determine an antecedent. ****

She ran from recess teacher and went up to the top of the slide and hld. Teacher felt this was because she didn't want to come inside after recess was finished. We will keep working on it, but I wanted to let you know there's been an increase in behaviors it seems.

Id.

On Wednesday, October 23, McCain emailed parents that XX had eloped at recess again, as follows:

She did try to run away again at recess, and this time she went further than the toy area. I am concerned with her safety. She does have a para out there, who is able to assist when she was unsafe by running today. However, she went further today than she ever has before.... We did tell her that if she came inside with the group she could choose a sticker. That seemed to help with her transition at the final recess of the day.

Please let me know if you have more ideas on how to keep her safe. I am reaching out to our district's functional classroom teacher to see if she has ideas as well.

October 23, 2024 Email Chain, P-37 (emphasis added).

On the same day, XX’s mother replied, in part, as follows:

*This is a huge problem. [XX] will continue to try to run away until the appropriate precautions and monitoring are put into place. She will continue to test the limits and run farther.... We do not want to chase her due to making it seem like a game. However, since the playground is not all fenced and there are huge safety issues, we will have to chase her. I feel the best way to address the elopement and safety issues starts with having a para be 1:1 just for her, not helping to watch additional kids as well. The para should be staying right by her side wherever she goes to play.... [This] can help her communicate with other kids to promote socializing and playing with others [and also help] with safety situations [and transition warnings]. ****

October 23, 2024 Email Chain, P-37.

During parent-teacher conferences in October, Mom met with McCain for about two hours. Tr. Day 1 at 199:3-16 (XX's mother). Based on the conversation, Mom understood that McCain was struggling for resources to deal with XX's behavior. Id. McCain was asking Mom for resources and was also reaching out to PUNCHES for educational resources. Id.

d. October 28 to November 30: Daily Emails and Data Collection

Beginning from the time when XX's behaviors started escalating in October, McCain did not feel like she was supported or trained properly to provide XX with the necessary supports that she needed to be successful. Id. at 401:20 to 402:2, 466:1-3. McCain did not feel supported by her building's leadership and the District's special education department. Id. at 401:20 to 402:2. McCain did not feel that she could do her job well with the current level of support and training that she had during the 2024-25 school year. Id. at 408:3-7.

Beginning on October 28 and continuing through the end of January 2025, the school began collecting daily data to record XX's behaviors to be used for the purpose of writing an FBA and BIP. See Data Collection Sheets, P-128; Tr. Day 7 at 1611:9-23 (O'Brien). Richards described that the data collection process began at the very end of October, when the school began looking at daily data, observing XX, and interviewing staff to determine a hypothesized function of the behavior. Tr. Day 8 at 2028:10 to 20219:2 (Richards). McCain also recalled the school began collecting data for the purpose of creating a behavior plan. Tr. Day 2 at 430:8 to 431:2 (McCain).

O'Brien described that the data sheets were purely to collect information on the behaviors themselves, so that staff would know how many times the behavior was happening within an interval. Tr. Day 7 at 1647:6 to 1648:5 (O'Brien). The data sheets were not used to document any strategies that staff was using in response to the behaviors. Id.

O'Brien testified that, as XX's behaviors escalated from October to December, school staff knew they needed to get a BIP in place. Tr. Day 7 at 1632:8-14 (O'Brien).

During this time, McCain continued to send daily emails to parents regarding XX's behaviors. The school did not share the daily data sheets with parents, as it was considered "just for school use to collect data."

Tr. Day 7 at 1611:9-23 (O'Brien).³⁸ McCain testified that school staff determined that it was not necessary to send all of the data sheets home to parents. Tr. Day 2 at 400:2-6 (McCain)

As discussed below, the categories of data changed over the time period in which is collected. Generally speaking, the school used a chart that was divided into 15 half-hour time slots for the school day (from 8:30 a.m. to 4:00 p.m.), with columns for each category of behavior for the data keeper to circle Y for "yes" or N for "no" on each topic. See Data Collection Sheets, P-128. Many of the data sheets also contain handwritten notes regarding XX's behavior. The data sheets do not indicate who completed the forms or who wrote the notes. See Id.

During this time frame, Mom was told that the school was collecting data; however, she did not see the data sheets and not know in what manner the data was being collected. Tr. Day 5 at 971:15-25, 976:2-10 (XX's mother). During this time, Mom felt that she was not being kept updated on the process that was going on at the school. Tr. Day 1 at 182:1 to 183:17 (XX's mother). When Mom asked for information, she was repeatedly told that the school was still collecting data. Id.

During this time, Mom and Punches were trying to give input and advice to help staff deal with XX's behavior based on information received in emails from McCain. Tr. Day 5 at 1020:16 to 1021:8 (XX's mother). However, they were hindered in their ability to provide input because they were left in the dark about much of XX's behaviors. Id.

As set forth below, the information recorded on the daily data sheets contained extensive details about XX's behaviors at school that were not shared with parents until later in time. More specifically, with respect to the daily data sheets collected from October 28 to January 28, the school did not share the data sheets with parents at the time the data was collected or at the January 28th IEP meeting (discussed infra). Id. Parents did not see these daily data sheets until they requested the educational record in the spring of 2025 (discussed infra). Tr. Day 5 at 1173:8-18 (XX's mother).

i. Monday, October 28

On Monday, October 28, McCain email parents regarding elopement and disrobing behavior, as follows:

At first recess, staff used the verbal countdown and visual timers prior to recess being over. [XX] tried to run to the top of the slide when para told her "one more minute." She refused to come down. She eventually came down, but again tried to run away from staff.

The second and third recesses went better using the same strategies and [XX] was able to get into line at the same time as her peers, with the help of the timers/verbal countdowns.

In the morning, when she was unable to elope from the classroom, she attempted to remove her clothing. Staff intervened and stated "we wear our clothes at school." She complied, continued to refuse work, but stopped trying to run out of the classroom. We used the planned ignoring once clothes were on and it was very helpful.

³⁸ When asked about the purpose of the data sheets that school began collecting on October 28th, O'Brien stated: "The data sheets were going to be used for writing the FBA and BIP." Tr. Day 7 at 1611:9-23. O'Brien further stated that the data sheets were not shared with the parents because "it was just for school use to collect data." Id. O'Brien further described that the data sheets were used only to record the behaviors, not how staff responded to the behaviors. Id.

We will continue to use the strategies and also keep her safe.

October 28, 2024 Email Chain, P-38.

After consulting with Punches, Mom responded that, in addition to the timers and countdowns, the school should offer reinforcers to reward [XX] if she comes inside from recess without any issues. Id.

The school's data sheet for October 28 indicates that XX completed the activity in 11 of 14 times and stayed with the class 11 of 15 times. Data Collection Sheets (10/28/24), P-128. Additionally, the sheet contains handwritten notes stating that XX "refused to come in from recess for 27 min.," "refused to work & put shoes on," and "ran down the hill once." Id. No additional information is given regarding the time or location of the behaviors. See Id.

ii. Wednesday, October 30

On Wednesday, October 30, McCain reported to parents that that day they had seen the first "aggression toward others." October 28, 2024 Email, P-39. Specifically, XX had pushed another student when the student was coming to McCain's classroom to use the restroom. Id. McCain stated that the school believed [XX] was jealous of the other student, who also used McCain's bathroom and came into McCain's classroom for small group lessons. McCain also reported that XX had squeezed and hit the teacher's hand when they tried to take her by the hand to transition down the hallway. Id. McCain stated that she believed it was because [XX] did not want to hold the teacher's hand while walking in the hall. Id.

The school's data sheet for October 29th indicates that XX completed the activity in 15 of 15 times and stayed with the class 14 of 15 times. Data Collection Sheets (10/29), P-128. The sheet contains handwritten notes indicating "a small outburst," "trouble transition from recess to classroom," and "struggled transition to Music & Movement – only made it to last 5 minutes." Id.

iii. Monday, November 4

On Monday, November 4, McCain reported to parents that XX had a "tough day," as follows:

She removed all of her clothes on multiple occasions, and one of the times she put them all in the sink and got them soaked. She also hit teachers multiple times today and hit two different peers at different times of the day.... We will continue to keep everyone safe and try to brainstorm how to reduce physical aggression. Ideas appreciated. Function could possibly be attention seeking [and/or jealousy].

[At the end of lunch, XX] became very upset and tried to line up with [another class who had a para that she wanted] while crying, then pushed another student in line, causing that student to fall down and hit the wall. [Mrs. Richards took her] to the sped room for a time out.

November 4-5, 2024 Email Chain, P-41.

XX's mother responded that XX had had a difficult weekend at home as well, and expressed concern as to whether the paras are able to block XX from hurting other kids. Id. XX's mother also stated that it appeared that XX may have been confused and jealous if a para that XX was used to being with was suddenly with other kids. Id. XX's mother emphasized that it was helpful to explain changes in routine ahead of time. Id.

McCain replied that the school has “paras in and around the area.” Id. McCain further stated that, when XX was physically aggressive, it seemed to be “sudden and unexplained.” Id. McCain further stated that the particular para at issue goes into multiple classrooms each day, including XX’s classroom, and the school wanted to find ways to help XX understand that staff needed to work with all students, and they did not want XX to be attached to just one person. Id.

The school’s data sheet for November 4 indicates that XX completed the activity 7 of 11 times and stayed with the class 5 of 11 times. Data Collection Sheets (11/04), P-128. The data sheet does not indicate why 4 time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Physical aggression towards para.
- Upset couldn’t go outside for recess b/c of rain. Had recess in McCain’s room.
- Wouldn’t put markers away.... Mad – took off shirt, sat under table – waited her out. She eventually got dressed and did work.
- Left music, tried to run – got her to McCain’s room – said had to go to bathroom – took clothes off.
- Took shirt off and hid under desk.
- Ran to the bathroom and was hitting and kicking para.
- Refused to put toys away when asked multiple times.
- Pulled [another student’s] head on jacket and then pushed him.
- Also pushed at lunch time.
- When they went to snack and she couldn’t go because of not listening, she took all her clothes off.
- At end of day, didn’t want to go to the bus and got upset and hit para.

Id.

iv. Tuesday, November 5

On Tuesday, November 5, McCain reported to parents that XX had a “difficult day,” as follows:

*She hit multiple people, both adults and students. This seems to be ongoing and increasing in frequency. Staff are intervening and keeping other safe but [XX] does not seem to understand that hitting others is not an appropriate way to communicate. ****

She seemed to throw herself on the ground a lot today when she was not wanting to comply with teacher requests.

November 5-19, 2024 Email Chain, P-42.

On Wednesday, November 6, PUNCHES responded to the email chain with detailed information that stated, in part, as follows:

Frontloading and letting [XX] know of schedule transitions and transition warning are important. If the function of these behaviors are attention seeking, then she’s receiving attention afterwards [i.e. talking to her about the inappropriate behavior, 1:1 time in the sped room, etc.], it will inadvertently give her the attention she is seeking. That inadvertent attention consequence will maintain that aggressive behavior, disrobing and potentially increase it. When she does engage in that inappropriate behavior,

we give as little attention as possible and remove her away from others. Later when she is calm, during natural opportunities, we work on teaching appropriate behaviors.

*Mrs. McCain, I know you mentioned in the email response that paras are in and around the area, we were 1:1 with her at all times. I would recommend this to reduce the aggression and to work on reducing other problem behaviors like disrobing. Having a para with her 1:1 would allow them to block when she's trying to remove clothing and catch it before she has it in the sink. It will also help reduce the aggression by being there to block or remove her from the situation. ****

November 5-19, 2024 Email Chain, P-42. In the email chain, McCain and Panches set up a time to meet virtually on November 18, 2024, to discuss strategies. Id.

The school's data sheet for November 5 indicates that XX completed the activity 8 of 12 times and stayed with the class 7 of 12 times. Data Collection Sheets (11/05), P-128. The data sheet does not indicate why three of the time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- At lunch recess, she saw a friend swinging on a pole and got frustrated (she was doing it first) so she shoved her off the pole.
- Started hitting and throwing things.
- Spit on herself.
- Walked around pretending to hit friends. Walked around with scissors. Went to McCain's room.
- Took pants and underwear off.
- Pushed.
- Threw chair when went to time out.
- Hit para.
- Throwing chairs, kicking friend, wasn't listening.
- *Was in Ritchey's office for hitting teachers and not listening.*
- Refused to go Music – knocked over chair.
- When got to Music, took off shirt – ran around the room.
- Did her own thing in gym – eloped once.
- Tried to elope going to the bus.

Id. (emphasis added). Parents were not informed that XX was sent to Ritchey's office for hitting teachers and not listening. Tr. Day 5 at 977:24 to 979:22 (XX's mother).

v. Wednesday, November 6

On Wednesday, November 6, 2024, McCain emailed parents that the school was “continuing to see physical aggression.” McCain stated that she believed XX was “hitting others because she wants to have certain spaces (bathroom and timeout room) just for herself.” November 6, 2024 Email, P-43. McCain reported that, on multiple occasions, XX was targeting a particular student, and that XX ran after another student who needed the calm down room (i.e., who was coming to McCain's classroom for a break). Id.

The school's data sheet for November 6 indicates that XX completed the activity 10 of 13 times and stayed with the class 8 of 13 times. Data Collection Sheets (11/06), P-128. The data sheet does not

indicate why two of the time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Under tables trying to climb book shelf, started hitting.
- Ran to the bathroom because she didn't want to do groups.
- Hitting para when she was trying to run.
- Trying to leave classroom was hitting, pushing, and pulling para.
- Mad at [unidentified student] for using McCain's bathroom and hit him.
- Mad about 1st grader using our time out room – eloped.
- Refused Music time – tried to elope.
- Mad and hit teacher and para – calmed down but eloped when tried to transition.
- Ran away when it was time to come inside.
- Melt down getting on bus – unsure what set her off but too upset to send her on the bus.
- Parent pick up.

Id.

vi. Thursday, November 7

On Thursday, November 7, McCain emailed parents stating that the school was continuing to work with XX on physical aggression. November 7, 2024 Email, P-45. No factual details were provided in this email.

Id.

On this day, Mom emailed Dr. O'Brien and asked to meet about XX. November 7-12, 2024 Email Chain, P-44. They agreed to meet on Wednesday, November 13th. Id.

Also, around the same day, Ritchey emailed Holcomb asking her to come to observe XX and offer any ideas that school staff could do differently to address her behaviors. Tr. Day 8 at 1800:19 to 1801:6 (Holcomb). Holcomb understood that XX's first quarter had gone well and then things started to go downhill, and staff reached out to her. Id. at 1840:16-20.

The school's data sheet for November 7th indicates that XX completed the activity 10 of 14 times and stayed with the class 9 of 14 times. Data Collection Sheets (11/07), P-128. The data sheet does not indicate why one time of the time slots is left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Class had to leave the room. She was repeatedly hitting para. Tore mirror off wall. Threw multiple chairs. Scribbled on table. Also hit [another student] when he walked by.
- Inside recess after did work.
- Hit [another student] - time out – went back to class – did work.
- Eloped going to lunch.
- Hit [another student] when lining up for recess.
- Time out – did not make it to Music and Movement.
- Didn't finish a page. She got mad. Threw her paper away, pulled para's shirt and hair ... took her shirt off.

- Coming in from recess, she threw mulch at para. Then when it was time for timeout, she got more upset when she was in the timeout room. She slammed cabinet doors, tried to bite the counter, also tried to play and draw on the floor.

Id.

vii. Friday, November 8

On Friday, November 8, Mom emailed McCain to let her know that XX had had a “rough morning” and did not want to go to school, which was unlike her. November 8, 2024 Email, P-46. Mom stated that she had gotten XX to calm down and brought her to school late. Id. At the due process hearing, Mom testified that XX typically loved going to school. Tr. Day 1 at 223:14-20 (XX’s mother). The fact that XX did not want to go to school was unusual and made Mom think there was something going on at school that she did not know and that XX was unable to tell her about. Id.

The school’s data sheet for November 8th indicates that XX completed the activity 12 of 12 times and stayed with the class 11 of 12 times. Data Collection Sheets (11/08), P-128. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Transitioning from Music to Movement – tried to hit [another student] aggressively, going after him – tried chasing him down the hall – difficult trying to keep her away from him. Told her “time out” – she asked to go to Ms. Austin’s room for timeout....
- At library, she got upset when I told her to check her books out [and was] hitting me. Then she got upset when they moved spots so she tried to squeeze my leg and hit me multiple times. Then at the end, she didn’t want to leave so she held onto my arm and hit.
- Outside, I was sitting helping [another student] and [XX] got upset and wanted to hit [the other student]. She was trying to get me to get up. She pushed [the other student]. Once she did that, I told her hands aren’t for hitting. Then she started hitting me so I took her inside for a time-out.

Id.

viii. Monday, November 11

On Monday, November 11, Holcomb observed XX for about an hour.³⁹ Tr. Day 8 at 1801:5 to 1803:25 (Holcomb). At the time of the observation, XX was taking a break with toys and a timer in the resource room (i.e., McCain’s classroom). Id. at 1801:5 to 1803:25, 1865:10 to 1866:21. Holcomb observed that XX became upset when it was time to transition to the kindergarten room. Id. at 1801:5 to 1803:25. Staff used visual aids and then XX transitioned nicely into the kindergarten room. Id. Holcomb also observed staff use visuals to transition XX into the music and movement room. Id. In both classrooms, Holcomb observed XX become upset, remove herself from her peers, regulate on her own, and then move to a separate table to complete her work. Id. During the hour that Holcomb observed XX, the same two paras were working with XX the entire time, and they were consistently using what Holcomb perceived to be the appropriate strategies with her. Id. at 1844:21 to 1845:18, 1846:17-19, 1847:3-5, 1848:19-21, 1858:20-21, 18:60:19-25.

³⁹ Before the observation, Holcomb looked over XX’s IEP, but not any other information. Tr. Day 8 at 1828:13-23 (Holcomb). Holcomb described that she likes to go into an observation without a lot of background information so she can offer a “fresh set of eyes” as to what she observes. Id.

Immediately following her observation, Holcomb met with McCain to discuss strategies. Tr. Day 8 at 1804:1 to 1805:5 (Holcomb). At the due process hearing, Holcomb recalled that McCain already had several strategies in place. Id. Holcomb and McCain discussed visual schedules, first-then, and giving her a preferred activity immediately following a nonpreferred task. Id. Holcomb understood that XX was more comfortable going to her own table to do her work, and that staff was honoring that but was concerned because she was very possessive of things and items. Id. Holcomb suggested that they create a space that belonged only to XX (i.e., so the rest of the room could be used by other people), and to find out what her preferred items were. Id. at 1804:1 to 1805:5, 1873:16 to 1874:3. Holcomb understood that McCain promptly took steps to do so. Id. at 1804:1 to 1805:5.

On the same day, McCain emailed parents, stating: “[XX] continues to work on physical aggression and eloping.” November 11, 2024 Email Chain, P-47. No factual details were provided. Id. In the email, McCain stated that the school was “putting some strategies in place to help with incentives when following expectations.” Id. McCain also asked whether XX had any favorite characters, animals, etc. that she could use with reinforcers. Id.

The school’s data sheet for November 11th indicates that XX completed the activity 6 of 13 times and stayed with the class 5 of 13 times. Data Collection Sheets (11/11), P-128. The data sheet does not indicate why three time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Threw a fit, hit para, and pinched.
- Indoor recess b/c of Veteran’s Day (cars on playground). Eloped b/c wanted to go outside.
- Lunch recess inside.
- Lunch in McCain’s room.
- Went to Music but not Movement.
- Threw a chair b/c she didn’t want to work. Also tried to kick [unknown person] when [unknown people] tried to get her to go to McCain’s room.
- Tried to go to class for snack – she eloped to bathroom and hid in a stall. Then eloped to front door. Went out the 1st door but not the second. Time out. Never had time for snack because time to get on bus.

Id. (emphasis in original).

Exhibit P-128 contains a blank, undated sheet that falls after the November 11th sheet with the following handwritten note:

She wanted to go to gym but Movement was outside today. Took her outside to Movement but she eloped. We brought her back into play b/c concerned about her eloping outside, but she ran back outside again and into the parking lot. Stayed in McCain’s room.

Data Collection Sheets (sheet after 11/11), P-128. Although the sheet is undated, the context of the notes appears to relate to events referenced on the November 11th data sheet.

ix. Tuesday, November 12

On Tuesday, November 12, McCain emailed parents, stating that XX had a “difficult day.” November 12, 2024 Email Chain, P-48. McCain reported that XX had run away from staff members multiple times and

ran outside the building. Id. No factual details were provided. Id. McCain stated the school was putting safety measures in place and adding more visual supports, such as stop signs. Id.

This was the first time that parents learned that XX had eloped to outside the school building. Tr. Day 1 at 22419 to 225:10 (XX's mother). At the IEP meeting in May of 2024, XX's parents had raised concerns about XX's history of elopement; at that time, the school assured them that the school had a plan in place to deal generally with elopement. Id.

The school's data sheet for November 12th indicates that XX completed the activity 5 of 10 times and stayed with the class 6 of 10 times. Data Collection Sheets (11/12), P-128. The data sheet does not indicate why five of the time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- After we were in McCain's room, she pulled on my pants and shirt and hit. Then I took her to timeout and she climbed up the door and tried to push me.
- Didn't want to rotate so she threw a chair and hit a para.... I took her to McCain's room.
- Indoor recess - mad and threw a game - hit and pushed - she calmed down in timeout room - played fine after that.
- Rough transition - eloped to front door - finally did work in class.
- Rough transition to lunch - eloped but got to lunch.
- When everyone was going outside, she took her shirt off and put her vest on. Then she started to hit me and she pulled my shirt to put it in her mouth. Pulled at my pants as well when we went to McCain's room for recess and it was time to clean [and] she hit me several times. McCain took her to timeout then she came back to clean and started hitting me again. She didn't want to go to snack, so she hid under the tables.
- Did not want to do Math - threw a fit (hit) but finally completed some work. Got to play on iPad after did work. Under tables trying to climb book shelf, started hitting.

Id.

x. Wednesday, November 13: Emails and Data Sheet

On Wednesday, November 13, McCain emailed parents that XX had a "very difficult day." November 13-14, 2024 Email Chain, P-49. McCain reported that XX was "upset more often and with more intensity than we've seen in a long time." Id. McCain stated that XX tried to run away from staff several times, and they were able to block her from leaving the building. Id.

In the email, McCain described the following event:

She did rip her underwear when she was frustrated. She was showing self harm behaviors. She scratched herself on the neck and arm and her knuckle. She tried pushing her fingers into her private area until her face turned red and she was shaking.

November 13-14, 2024 Email Chain, P-49. In the due process proceeding, parents have referred to this incident as XX's "sexual assault" on herself.

Mom responded by email, asking for more details, as follows:

I have never seen this behavior before. Was this over or under her clothes? How was this handled?

November 13-14, 2024 Email Chain, P-49.⁴⁰

McCain replied as follows:

I have never seen her put her fingers in her private parts. Yesterday though, she took all of her clothes off when she was upset. She was hitting the walls, trying to hit staff, then hit herself in the stomach and hit her private parts. Then she put her fingers in her private parts. Staff tried to offer redirect to calm her down, again requesting deep breaths. [XX] stopped and took breaths. She was asked to wash her hands, which also helped redirect. She was able to calm down after that.

November 13-14, 2024 Email Chain, P-49.

McCain testified that XX's self-harm behavior involving her private area on November 13 was a single event that McCain did not witness. Tr. Day 2 at 460:18 to 461:14. McCain understood that two adults were with XX at the time. Id. McCain did not know if the adults tried to stop XX. Id. Dial testified that staff members who witnessed the incident "froze" because it was something that they had not seen before. Tr. Day 4 at 817:20 to 818:25 (Dial). Dial also stated it was a onetime incident. Id. Dial stated that staff put strategies in place, such as having a blanket to cover up XX, with plans to keep other kids away in case it happened again. Id. Ritchey did not know the specifics about this incident. Tr. Day 8 at 1975:14 to 1978:25 (Ritchey).

Beginning November 13th, the school revised its data sheet to include two additional categories of behavior involving positive peer interactions and aggression, in addition the previous categories of data collection and staying with the class.

The school's data sheet for November 13th indicates that XX completed the activity 4 of 13 times; stayed with the class 5 of 13 times; had positive peer interactions 8 of 12 times; and displayed aggression 8 of 13 times. Data Collection Sheets (11/13), P-128. The data sheet does not indicate why two to three of the time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Hit para.
- Hit and kicked para; threw chairs for attention. When ignored threw more. When escorted out, she smiled and went right for timeout.
- Recess in McCain's room – mad when timer ended to clean up. Could not transition to work in Gast's room.
- Threw chairs, hit para – took timeout and reset and finally went back to class with two people holding hands.
- Eloped to front door when asked to not stand on a cart that was unsafe.
- Would not transition to Music and Movement. By the time got her ready, she missed Music – went to gym- walked bleachers then eloped. Came back to McCain's room.
- Got upset right before bus came when [another student] came into the classroom crying. Tried to go for him – hit [unknown person] when she tried....

⁴⁰ In her email(s), XX's mother also asked questions about other subjects mentioned in McCain's, including, inter alia, the details of elopement. See Id.

- After we were in McCain's room, she pulled on my pants and shirt and hit. Then I took her to timeout and she climbed up the door and tried to push me.
- Didn't want to rotate so she threw a chair and hit a para.... I took her to McCain's room.
- Indoor recess – mad and threw a game – hit and pushed – she calmed down in timeout room – played fine after that.
- Rough transition – eloped to front door – finally did work in class.
- Rough transition to lunch – eloped but got to lunch.
- When everyone was going outside, she took her shirt off and put her vest on. Then she started to hit me and she pulled my shirt to put it in her mouth. Pulled at my pants as well when we went to McCain's room for recess and it was time to clean, she hit me several times. McCain took her to timeout then she came back to clean and started hitting me again. She didn't want to go to snack, so she hid under the tables.
- Did not want to do Math – threw a fit (hit) but finally completed some work. God to play on iPad after did work. Under tables trying to climb book shelf, started hitting.

Id.

Exhibit P-128 contains a blank, undated sheet (i.e., with no chart) that falls after the November 13th sheet. This sheet contains, among other things, the following handwritten notes:

When it was time for recess, she threw a fit and scratched me and broke the skin barrier and hit multiple times. Then it was recess and when it was time to clean she got upset and hit and put my shirt in her mouth, went to timeout, threw a fit there, took her shirt off, put it back on, but took pants and underwear off, was digging down there wiping it on the floor, tore her underwear, threw another chair at end of day.

Id.⁴¹ The record is unclear as to who made this notation and whether it is referring to the same incident that McCain reported to parents in her email on November 13.

The blank, undated sheet also contains, among other things, the following notes:

Eloping – leaving building

Physical aggression

-Hitting

-Throwing chairs

Cleaning up = tantrum



McCain's room – full day? Teach time?

Timer: work/reward

Sensory diet

First/Then

Data Collection Sheets (sheet after 11/13), P-128 (emphasis added).

xi. November 13: Meeting with Mom and Dr. O'Brien

⁴¹ An identical copy of this blank, undated sheet also falls after the November 6 data sheet in Exhibit 128. The record is unclear as to when the events reported on this page occurred.

On or about November 13th, Mom and her sister met with Dr. O'Brien. Tr. Day 1 at 182:1 to 183:17 (XX's mother). During the meeting, Mom told O'Brien that McCain was struggling for resources and needed help. Id. at 199:19-23. O'Brien indicated that she would talk with McCain about what was going on, and that they would need to get other people involved for consultations. Id. at 182:1 to 183:17. Additionally, Mom and O'Brien discussed whether PBS could provide training to TSE staff. Id. at 236:11-19. Following this meeting, O'Brien became more engaged with staff and parents regarding XX. Tr. Day 5 at 1144:6-9 (XX's mother).

At the due process hearing, O'Brien recalled that, at the meeting, Mom raised concerns regarding transportation and lunch, and that mom was also interested in having staff trained. Tr. 6 at 1520:11-20 (O'Brien). O'Brien stated that she told mom that staff would be interested in looking at the training videos from PBS. Tr. 6 at 1502:12 to 1503:6 (O'Brien).

Following the meeting with O'Brien, Mom learned from Punches that, to provide formal training to TSE staff in a situation where PBS was not providing services to a student in the school, PBS would require a contract with the school that would require the school to pay for the training. Tr. Day 1 at 234:10-15 (XX's mother); see also Tr. Day 3 at 640:14 to 642:8 (Punches).

On November 15, 2024, Punches emailed O'Brien. In the email, Punches stated that, on top of the current collaboration meetings that Punches had been having with some school staff, PBS had options for school contracts for training. November 15, 2024 Email Chain, P-52.

O'Brien testified that she did ask for training from PBS, because the District had its own specialists that had gone through TASN training, and she wanted to use those people first. Tr. Day 6 at 1483:24 to 1484:4 (O'Brien). After learning the information from Punches about PBS's training, O'Brien asked to have Harrison come in to the school to provide consulting services. Tr. Day 6 at 1520:11-25, 1527:10-23 (O'Brien).

Additionally, O'Brien spoke with McCain about lunch, training, and transportation issues, along with the need to schedule an IEP meeting. Tr. 6 at 1520:11 to 1521:15, 1527:10-23 (O'Brien). The record does not reflect the date of this discussion. In December, O'Brien learned that IEP meeting was scheduled for early January. Id. at 1504:11 to 1505:17.

xii. Thursday, November 14

On Thursday, November 14, McCain emailed parents, stating that XX had a "much better day," but they were "continuing to work on hitting when she is frustrated." McCain further reported that XX spent lunchtime in the sped room, as follows:

She was upset right before lunch and was trying to hit staff. She was not being safe so we brought the lunch to her and she had to eat in the sped classroom today. She still used reinforcers with Mrs. Richards in the sped room at lunch..

November 14-15, 2024 Email Chain, P-50. Mom replied, asking what XX was doing to be unsafe; McCain responded that XX was trying to throw a chair and hitting staff. Id.

The school's data sheet for November 14th indicates that XX completed the activity 10 of 12 times; stayed with the class 9 of 12 times; had positive peer interactions 9 of 13 times; and displayed aggression 4 of 12 times. Data Collection Sheets (11/14), P-128. The data sheet does not indicate why

two to three of the time slots are left blank. See Id. Some of the handwritten notes indicate that XX displayed the following behaviors:

- Yesterday hit about 59 times.
- Today hit about 20 times.
- Threw puzzle and chair.
- Threw chair. Colored on my face.
- Indoor recess in McCain's room – did not want to clean up – tough transition back to class – tried to elope.
- Outside recess – hitting herself and pinching her stomach.
- Indoor recess in McCain's room – did not want to stop and go to Music & Movement. Tried to elope – hit [unnamed person] when she blocked door. Time out -very upset for quite a while – took long time to calm down. Did not make it to Music & Movement.

Id.

The school collected similar data sheets for November 15, 18, 19, 20, 21, and 22, 2024. All of the sheets indicate multiple incidents of negative behavior including hitting, throwing chairs, and refusing to transition. Many of the sheets indicate refusal to get on the bus and parent pick up. See Data Collection Sheets (11/15, 11/18, 11/21, 11/22), P-128. Examples of behavior listed on these data sheets are set forth below.

On Friday, November 15, XX hit about 61 times. Data Collection Sheets (11/15), P-128.

A blank, undated sheet falling after the November 18th sheet indicates another incident of XX digging in her private area, as follows:

[XX] didn't want to do math, so we came over to McCain's room after hitting. She didn't have underwear or pants on and she was digging down there and pushing trying to cause harm. She was licking the door and spitting on it (timeout). She also threw multiple chairs. At end of the day, she hit me and pulled my hair and sweatshirt because she didn't want to get on the bus.

Data Collection Sheets (sheet after 11/18), P-128 (emphasis added). Because the sheet is undated, the record is unclear as to when the events reported on this page occurred.

On Wednesday, November 20, the data sheet reflects an elopement, as follows:

Ran out of McCain's room after using restroom, went to front of school, ran out of first set of doors, sat in breezeway. Hit when asked to take hand and return to class.

Data Collection Sheets (11/20), P-128.

On Thursday, November 21, XX spent the entire day in McCain's room due to behaviors. Data Collection Sheets (11/21), P-128. The data sheet for this day indicates that XX completed the activity 5 of 9 times, stayed with the class 1 of 9 times, had positive peer interactions 1 of 9 times, and displayed aggression 4 of 9 times. Id. Handwritten notes indicate that she hit others multiple times, had indoor recess, and ate snack in the general education classroom. Id.

A blank, undated sheet falling after the November 21 sheet indicates another incident of XX digging in her private area, as follows:

[XX] pushed [another student] when he came in to use the bathroom.... She threw red chair. I tried to get her to calm down but was unsuccessful – she was running around and threw a chair that hit [unknown person] in the leg. I told her that it hurt and I didn't like that – she got very upset and wrote on her face, the calm-down door, and the chair with a pencil. Had to call care team to help get her to calm-down room. Did not make it to Music & Movement/gym.

Data Collection Sheets (sheet after 11/21), P-128. Because the sheet is undated, the record is unclear as to when the events reported on this page occurred.

xiii. Monday, November 18: Meeting With Mom and Punches

On Monday, November 18, a monthly meeting was held with McCain, Richards, Mom, and Punches. Tr. Day 8 at 2005:16 to 2008:1 (Richards).⁴² The meeting notes indicate that the following topics were discussed:

1. [Punches] suggested child lock for door to help with eloping – she will send link and we will check into regulations/legality with fire marshal.
2. ABC data collection – paras would need training. We will discuss.
3. [Punches] recommended to saturate with attention for positive behaviors. Be mindful of ratio of positive to negative attends.
4. Transition warning to end recess is a common antecedent to eloping or aggression. [Punches] suggested another preferred, but less preferred, activity for recess for 5 minutes (shorten time as behaviors improve). Make sure not the same activity every day so she doesn't satiate.
5. McCain explained break/reinforcement trial – first work, then XX < she is choosing break activity before work. Timing/threshold is inconsistent right now.
6. McCain shared that as work is getting harder, she is having more problem behaviors. [Punches] shared that she will needs lots of repetition of concepts.

Meeting Notes at 4, R-208.

At the meeting, Mom and Punches requested that the school collect a particular type of data (i.e., ABC data), which is different than the interval data collection that the school had started on October 28th. Tr. Day 8 at 2093:1 to 2094:14 (Richards).⁴³ The school's paras were not trained in the ABC collection method.

As discussed, at the time of the November 18th meeting, the school had not shared its daily data sheets with parents. Richards testified that, at the meeting, they discussed the possibility of a data collection system, and that para training would be required if they implemented that system (i.e., an ABC data collection). Tr. Day 8 at 2006:4-7 (Richards). Richards further stated that, at the meeting, McCain described "the break and reinforcement trial," in which XX would be allowed to choose in advance a break activity that she would earn as a reward/reinforcement for doing work. Id. at 2006:22 to 2007:2.

⁴² Richards did not recall anyone else in the meeting. Id. The meeting notes do not indicate who was in attendance. See Meeting Notes at 4, R-208.

⁴³ After the January 28th IEP meeting (discussed *infra*), Richards sent home some examples of ABC data collection forms. Id. at 2094:3 to 2096.

xiv. Tuesday, November 19

On Tuesday, November 19, McCain emailed parents stating that XX had an “excellent day!” November 19-20, 2024 Email Chain, P-56. In the email, McCain asked whether XX was still doing any therapy after school, like she did at the Club. Id. McCain further stated that the school had “an Autism specialist in the district who wants to make sure [XX] and family are set up for success down the road.” Id.

Mom responded, stating that she would like to meet with the autism specialist to see what they could offer. November 19-20, 2024 Email Chain, P-56. This was the first time that XX's parents had heard the District had an autism specialist. Tr. Day 2 at 277:16-21 (XX's mother). Nobody from the school provided Mom with information regarding the name of the autism specialist or an opportunity to meet with him. Id. at 266:15 to 277:21.

Mom also responded that XX did not currently have any active ABA therapy services, due to the previous RBT graduating from college and moving on. November 19-20, 2024 Email Chain, P-56. She stated that PBS was currently looking for someone to work with XX, but it was difficult to due to the limited hours of the position. Id.

Also on November 19th, Mom received information about a resource called TASN that the Special Education Director could request to come in and help. November 19-21, 2024 Email Chain, P-59. Specifically, the email described the following service (found on the KSDE website), as follows:

The Kansas Autism and Tertiary Behavior Supports (ATBS) project is comprised of an interdisciplinary team of master educators, behavior specialists, speech language pathologists, and social workers with the goal of supporting Kansas school districts in building local capacity to serve children with diverse learning or complex and challenging behavioral needs. In collaboration with KSDE, the ATBS team provides on-site support; technical assistance and consultation; resources; and interrelated, evidence-based professional development on the educational identification of autism, structured teaching, behavior interventions, communication assessment and instruction, social competencies, coaching, and skills for Kansas educators.

Id.

xv. Friday, November 22

On Friday, November 22, McCain emailed parents that XX had a “difficult day.” November 22, 2024 Email Chain, P-60. McCain stated that XX continued to refuse to get on the bus, and was “demonstrating physically aggressive behaviors toward staff, peers, and self when it gets close to the end of the day.” Id.

Mccain further reported that XX had spent much of the day in the resource room, as follows:

During the school day, [XX] worked hard in the morning and took several earned breaks as a result of task completion. She spent much of her day in the resource room, though, as a result of attempting to elope from the classroom and for being physically aggressive toward peers.

Id. (emphasis added).

XX's mother responded that “[XX] needs to be staying in the general classroom most of the day per the IEP.” November 22, 2024 Email Chain, P-60 (emphasis added).

XX's mother further stated, in part, as follows:

I am sorry that she is having bad behaviors and this creates safety issues, however, she will not receive extra or special attention by being put into the other room. It comes down to the district figuring out how to manage and control her behaviors appropriately and provide safety to her and others while doing it. All these behaviors were worked through before in a general [preschool] classroom with 26 kids – 2 teachers and then RBT with [XX] at all times. So, it is 100% possible to manage and decrease these behaviors in the general classroom while also keeping her and the other kids safe.

Id.

xvi. Monday, November 25: School Requests Harrison's Services

On Monday, November 25, the school requested autism consultation services from Harrison services. Harrison Time Sheet, P-61. The following Thursday, November 28, was Thanksgiving Day.

e. December: Continued Escalated Behavior

On Friday, December 5, McCain emailed parents that XX had a “tough day at times,” and they were “working through physical aggression and eloping.” December 5-6, 2024 Email Chain, P-64. The email did not include factual details.

McCain further stated as follows:

I'm brainstorming with staff to see what we can do to help her have good school days. At this time, will keep gathering data, and look for trends to understand how to support her best.

Id. In response, Mom asked, “Who all does the data tracking? Is it limited to teachers or are paras tracking for you as well?” December 5-6, 2024 Email Chain, P-64. McCain replied, “Paras and teachers track the data. It's collected by the person who is with her at the time. Id.

At the due process hearing, Mom testified that, in October, she was told that the school was tracking data. Tr. Day 2 at 278:21 to 280:5 (XX's mother). By December, she felt that there had been undue delay in the school saying that it still needed to collect data to come up with plan to get a BIP in place, especially considering the information the parents knew already. Id. XX's mother was also concerned about the accuracy of the data, in that it appeared that multiple people were collecting it, and it was not clear that they were all trained in the same way. Id. at 280:24 to 281:7.

On Monday, December 9, Holcomb returned to TSE with Peacocke to follow up and observe XX. Tr. Day 8 at 1806:1 to 1809:7 (Holcomb). However, XX was out sick, so they could not observe her. Id. Holcomb and Peacocke ended up discussing strategies with McCain; they told her that sometimes it takes time before you will see changes. Id. Holcomb understood from McCain that XX's behaviors had continued to escalate since the time when Holcomb had observed her on November 11. Id. at 1811:4-9.

Also, on December 9, Holcomb attended a professional team meeting with McCain, Gast, Dial, Richards, the speech therapist, and the occupational therapist. XX again. Tr. Day 8 at 1806:1 to 1809:7 (Holcomb). During this meeting, Holcomb offered some of her suggestions, like giving XX her own space in the room. Staff expressed concerns about XX eloping out of the classroom, which Holcomb had not seen. Id.

Holcomb made suggestions including that they put a visual on the doors with a stop sign and break down her down her visual schedule a little bit more. Id.⁴⁴

On December 9, McCain emailed asking parents about what types of things XX used at home to calm down. December 9, 2024 Email Chain, P-65.

XX's mother responded with, *inter alia*, a request to hold an IEP meeting, as follows:

I think we really need to have another in-depth meeting that includes [Punches]. I want her input on a lot of this stuff to give better ideas on what to do that also won't be reinforcing for her.... I know you are collecting data to track behaviors still, however, I think we should be able to form a behavior plan with help from [Punches]. I haven't heard from Dr. O'Brien about extended monthly meeting times as well as paras receiving education.

I would also like to have another IEP meeting with adjustments in addition to putting the behavior plan in place. I know it's getting close to Christmas break so I understand if there isn't time to have this extended meeting before then [or on developments before school resumes or as soon as possible when school resumes]. I would like to have some available days and times as soon as possible to be able to get this scheduled around everyone's availability.

December 9, 2024 Email Chain, P-65 (emphasis added).

On Tuesday, December 10, McCain emailed parents stating that XX displayed aggression and refused to go into her classroom for most of the day, as follows:

Today she did show aggression. She did not go into her classroom, as she was refusing most of the day and was hitting, kicking, pulling on clothes of staff. I agree that we need to meet to determine a plan of action for [XX]. She's so smart and I know she will make great gains. I want to make sure I'm doing what's best for her. I will let you know when we can meet.

December 10, 2024 Email, P-66.

On Friday, December 13, McCain emailed Mom stating that she would like to schedule an IEP meeting to discuss concerns and ideas for supporting XX. December 13, 2024 Email Chain, R-213, #742.2. McCain asked if Mom would be available on any dates the following week. Id. Mom responded that she was not sure they could set something up in such a short time frame. Id. Mom further stated that she planned to bring extra people to the meeting for support, including Punches, and that she thought they would need at least two hours for the meeting. Id. Through subsequent communications, an IEP meeting was scheduled for January 7, 2025; however, that meeting ended up needing to be rescheduled to January 28th, due to snow. Tr. Day 5 at 115-“10 to 1151:6 (XX's mother).

On Monday, December 16, McCain emailed parents that XX had shown aggression, tried to elope several times, and “*was unable to make it in her general education setting.*” December 16, 2024 Email, P-70 (emphasis added). McCain further reported that XX was “showing aggression and eloping when she does

⁴⁴ Holcomb observed XX on only one occasion (i.e., November 11th). Tr. Day 8 at 1809:21 to 1810:10 (Holcomb). At the time of the observation, Holcomb did not have any information about disrobing. Id. at 1836:13-19. After December 9th, Holcomb attended one additional meeting with Harrison and O'Brien and then pulled off the case. Id. at 1809:21 to 1810:10.

not want to do an activity or doesn't want to follow directions given by staff." Id. McCain did not provide details regarding the length of time, if any, that XX spent in her general education classroom.

On Wednesday, December 18, McCain again informed parents that XX *"was unable to make it to gen ed."* December 18, 2024 Email, P-71 (emphasis added).

The school collected data sheets for December 2, 3, 4, 5, 10, 11, 12, 13, 16, 17, 18, and 19, 2024. See Data Collection Sheets, P-128. These sheets indicate that XX essentially was not with the class on any of the days in December. See Id. Further, the data sheets indicate that, each day, XX continued to engage in multiple acts of aggressive, refusal, escalated, disrobing, and elopement behaviors. See Id.

In December, Mom submitted a request with TASN and was assigned to work with Jennifer Paxton, BCBA. See TASN Ticket Request, P-68; December 13-16, 2024 Email Chain, P-69; Tr. Day 2 at 266:15 to 267:14 (XX's mother). Over email, the two arranged to speak over the telephone on December 17, 2024. Id. December 13-16, 2024 Email Chain, P-69. In her communications with Paxton, Mom learned that the name of the District's autism specialist was Rich Harrison. Mom then looked up Harrison and reached out to him on December 20 (see below). Id.

In December, O'Brien learned that McCain was in communication with parents to schedule an IEP meeting that ended up getting scheduled for January 7, 2025. Tr. 6 at 1504:11 to 1505:17 (O'Brien).

Winter break started on Friday, December 20. Tr. Day 6 at 1512:14-21 (O'Brien).

f. November and December: Involvement by Richards

As discussed, in November and December, XX's negative behaviors continued to escalate. Tr. Day 8 at 2008:2-25 (Richards). During this timeframe, Richards interacted with XX several times a day. Id. In these interactions, Richards would do things like observe, help XX to deescalate, and model for staff. Id. Sometimes, Richards was called in because of a crisis situation, and other times she stopped by as part of her normal duties. Id.

During this time, Richards worked with McCain and the paras on different strategies, which she described as follows:

So we talked about ... lots of different strategies. So we did a lot of work with the first-then concept. So there's lots of different ways that you can do that and sometimes it takes lots of different iterations of try this, let's try this, to find what's the right fit there.

With [XX], something that we were finding that was difficult was that the behaviors were always kind of a moving target, but the triggers were a moving target and so were the reinforcers that were the most powerful, so it was difficult to find consistency there so we did lots of discussion about those types of things. We talked about calming strategies and how to help model those but also teach her those skills. We talked about prompting for social skills and prompting for her communication because we know that that's a frustration point for her.

We talked through lots of environmental things within the classroom that we could do differently in terms of seating and having her own seating space, things like that. We talked through the rate of reinforcement. Those are the things that come to mind.

Tr. Day 8 at 2008:23 to 2010:2 (Richards).

Richards described that, during this time, if XX was displaying aggressive behaviors towards herself, peers, or staff in the general education setting, staff was taking XX to the special education classroom next door to remove whatever “the trigger” was from the general education room and help XX to try to calm down and calm her body. Tr. Day 8 at 2010:20 to 2011:6 (Richards). Additionally, the school sought assistance from Holcomb and Harrison, “because they are also experts in the field of autism and behavior, and we wanted to make sure that anybody that would have knowledge that would be helpful to our team was brought in.” Tr. Day 8 at 2011:7-20 (Richards).

When asked about XX’s removal from the general education in December, Richards stated that, at this time, staff had not made a “decision” to change XX’s placement. Tr. Day 8 at 2011:7-20 (Richards). More specifically, Richards stated that “XX was having a more difficult time going into the general education setting in terms of refusing, eloping, but that was not because it was a choice [that school staff] were making for her.” Id. at 2016:6-22. Richards further stated that staff could not physically coerce XX to enter the classroom. Id.

When asked what staff was doing to try to get XX back into the general education classroom, Richards stated that it “looked at different points in the year,” and staff used strategies like “prompting, time and space, reminding of expectations, visuals.” Tr. Day 8 at 2071:1-11 (Richards). Richards further stated that there was not a systematic plan to provide reinforcers or preferred activities to try to get XX back into the general education room. Id. at 2079:7-11.

Under Mandt procedures, school staff are prohibited from a number of procedures such as picking up students, holding students in a supine or prone position, or applying pressure to the student’s body. Tr. Day 8 at 2026:2-15 (Richards). Mandt procedures do approve an “escort” prompt in which staff places one hand in the student’s biceps area and another hand on the student’s hip. Id. at 2067:19-24.

Richards described that, when XX was engaging in self-harm behavior, staff would try to help her regulate and calm her body, and teach her replacement behaviors. Day 8 at 2013:5-13 (Richards). For incidents of disrobing, staff would try to block the behavior, if possible, and also block others’ view with their bodies or a blanket and get XX to a private area as soon as possible to help preserve her dignity. Id. at 2014:1-14.

Richards testified that, by December, everyone agreed that the IEP was not working and changes were needed. Day 8 at 2014:22 to 2015:9 (Richards). Due to scheduling challenges and winter break, the meeting was initially scheduled for early January; the meeting was then moved to January 28 as a result of snow days. Day 8 at 2018:18 to 2019:9 (Richards).

g. December: Involvement by Harrison

Harrison’s time sheet, Exhibit 61 reflects the formal time that Harrison spent as a consultant with respect to XX. Tr. Day 6 at 1262:14 to 1263:21 (Harrison). Harrison did not keep a log of any training he performed. Tr. Day 6 at 1271:16-20 (Harrison).

During the week of December 9th, Harrison spent about five hours at TSE to observe XX and gather information to try to determine the function of her behavior. Tr. Day 6 at 1269:13-25 (Harrison). During this time, Harrison talked with staff and observed XX to try to understand who she was and the conditions under which she might be aggressive. Tr. Day 6 at 1270:1 to 1271:3 (Harrison).

On December 9, Harrison came to the school to observe XX, but she was sick that day. Tr. Day 6 at 1270:1 to 1271:3, 1284:20 to 1285:4 (Harrison). On that day, Harrison spent about one hour talking with her teachers and paras. Harrison Time Sheet, P-61.⁴⁵ On December 10, Harrison returned to the school and observed XX for two hours. Id.

On December 11, Harrison met with the school team; however, his time sheet does not indicate how long the meeting lasted. Id. On December 13, Harrison observed XX for two hours and continued his discussion with school staff. Id.

In his observations, Harrison saw that XX had emotional regulation needs. Tr. Day 6 at 1333:14 to 1334:7 (Harrison). She could be triggered by multiple things, and she responded better to clear expectations and a high frequency of reinforcement. Id. Also, Harrison observed that staff needed to be careful about how the visual parts were delivered to XX. Id. He saw that XX has a tendency to perseverate on things, so if she sees something in the schedule that is going to come next, she sometimes focuses on what is going to happen later and becomes frustrated that it is not happening now. Id.

In December, Harrison would have been asking staff questions. Tr. Day 6 at 1269:13-25 (Harrison). He did not have enough information to advise or train staff on how to deal with XX. Id. However, in December, Harrison did discuss with staff the correct techniques under Mandt on how to respond to aggressive behavior, such as how to position yourself away and put your hands up. Id. 1335:18 to 1336:6.

Harrison testified that he does not make any recommendations unless he understands what the function is. Tr. Day 6 at 1270:1 to 1271:3, 1362:8 to 1363:1364:1 (Harrison). He describes his role as providing “technical support” to the school’s education team. Id. at 1274:11-20. Harrison leaves it to the school team to determine his level of involvement. Id. at 1285:17-25.

Harrison’s next involvement regarding XX was on January 22, 2025, when he met with parents (discussed below).

h. December: Mom’s Correspondence with Harrison

On Saturday, December 20, Mom sent an email to Harrison introducing herself and asking to meet, stating as follows:

My daughter is [XX]. I only recently heard about the district having an autism team after requesting TASN to go into the school. Jennifer [Paxton] from TASN wasn't sure if you were still working at the district and I couldn't find you in the staff directory. I don't know if you've had any involvement with my child because the school never told me there was an autism team. That is very disappointing. I've been fighting and fighting to get more help. I thought the only resources I had was the staff members at the school that I have been trying to help and give advice to. No one has wanted to listen to me from the start. Once her behaviors started again, they got out of hand real quickly. With the information I've been getting, it seems as though her behaviors have been unable to be managed by the staff. The

⁴⁵ Holcomb observed XX on only one occasion (i.e., November 11th). Tr. Day 8 at 1809:21 to 1810:10 (Holcomb). At the time of the observation, Holcomb did not have any information about disrobing. Id. at 1836:13-19. After December 9th, Holcomb attended one additional meeting with Harrison and O'Brien and then pulled off the case. Id. at 1809:21 to 1810:10.

*school has provided no support for me, only making things harder for me with my daughter. I've been seeking other resources because my daughter needs more help. This isn't okay for her or others. I am very worried about the safety of my daughter and other kids. It's so hard to see her regression when I finally got the help she needed. We were making huge progress and then it all just gets taken away. I'm a huge advocate for my daughter. I've had to constantly fight this hard for her almost her entire life, until ABA therapy came into the picture in August 2022. They saved me and my daughter and were the only option we had left to try. ****

My daughter is clearly struggling. All I want is to get her the help she needs. We already know what that is. I feel so ridiculous that I have to beg for the help my daughter needs. I've heard really good things about you and I would love talk to find out what you can do to help her. I'm not sure if you'd be able to before the IEP meeting. So far, I've been getting resources from PBS (her ABA therapy company), families together, her manager at CDDO, and now TASN as well. Her BCBA can't help me a whole lot when I don't know what's going on at school either. Please let me know if you are available before then. I appreciate your time.

December 20-21, 2024 Email Chain, P-72.

The next day, Harrison responded as follows:

Thank you for reaching out to me. I am sorry to hear about your struggles with the team at [TSE]. I split my time between Shawnee Heights and Seaman [school districts]. I started observing [XX] the week of December 9th. We are in the process of developing a supportive plan. I have observed [XX] do lots of academic work as well as connective activities. I have also observed her become frustrated with the schedule as well. I have interviewed all of the staff that work with her. I look forward to meeting you on [January 7th] and having you help make a good communication system that works for you as well as a successful plan. I understand the BCBA will be coming as well which should be very helpful. My master's degree is in Behavior Analysis.

December 20-21, 2024 Email Chain, P-72.

i. January: Continued Escalated Behaviors

The school continued to collect similar data sheets for January 9, 13, 14, 15, 16, 17, 22, 23, 24, and 25, 2025. Data Collection Sheets, P-128. These sheets indicate that XX essentially was not with the general education class on any of the days.⁴⁶ See Id. Additionally, the sheets indicate that, each day, XX continued to engage in escalated behaviors including aggression, refusal, escalation, disrobing, and elopement. See Id.

For Thursday, January 9th, the data sheet contains a handwritten notation that continues to the next blank page, stating, in part, as follows:

Tried to transition from drawing to reading and writing. [XX] didn't want to so she started hitting. Redirected to reflection room. Slamming door closed, trying to escape. Sat for 2 minutes then asked her to touch nose and jump. Wasn't ready, so she sat then escaped. Scratched hand on metal part of

⁴⁶ On the data collection sheets for January 17, 22, 23, 24, and 25, the wording on the second column was changed from "stay with class" to "stayed in assigned area." Data Collection Sheets, P-128.

door. Cleaned it up. Got band aids. Had to go potty After clean up then went back, tried to run in hallway. Got in room. Started pulling at clothes and hitting. Redirected to reflection room. Screaming, yelling, crying, and pulling pants down, digging. Eventually calmed down at about 2:00. Checked schedule and moved on..

Data Collection Sheets (01/09), P-128 (emphasis added).

On Thursday, January 16, McCain emailed parents that “[XX] was able to be safely with her general education classmates several times today,” and “she participated in reading, snack, and math with her peers.” January 16, 2025 Email Chain, P-74. McCain further stated, “We did have aggression toward staff and students at times, and will continue to monitor.” Id. McCain also stated that, three times that day, XX had to be escorted out of McCain’s room (i.e., the sped classroom) and “was able to come back after calming down with several adult support people.” Id. McCain further stated, “She removed all of her clothes today out of frustration and needed adult support to calm down and was able to redress herself.” Id.

On Thursday, January 23, McCain emailed parents about XX’s refusal to use the bathroom, as follows:

[XX] got upset today and refused to use the bathroom. It was offered to her several times, she then went into the bathroom, removed her clothes and proceeded to pee on the bathroom floor. She then sat down and began playing in it. She was upset and aggressive at the time of the incident. She was prompted to calm/breathe and was taken out of the bathroom to clean herself up and was given dry clothes. Her wet items are in a bag insider her back pack.

January 23, 2025 Email Chain, P-75. Mom responded this was new behavior, and she had never seen XX play in her urine before. Id.

Harrison testified that, by the end of January, obviously something needed to be changed; XX was struggling and had been struggling for a few months. Tr. Day 6 at 1265:6-17 (Harrison). When asked whether there could have been a delay in getting an FBA and BIP for XX from October 2024 through January 2025, Harrison stated that “it could.” Id. at 1388:8-16. Harrison further stated, “I mean she’s struggling for sure. No question about that. Like she is really struggling.” Id. Harrison further stated that, when there is a rapid change in behavior, it often takes time to figure out the complexities. Id. at 1391:11-18.

j. Use of Timeout for Deescalation vs. Punishment

As reflected in the data sheets, XX was often taken to “timeout.” Additionally, the data sheets indicate that she sometimes spent time in the “time out room” and the “reflection room.” The record does not indicate whether these rooms are the same as McCain’s classroom or another location. At the due process hearing, witnesses sometimes referred to a room in the back of the special education room as a “deescalation” room or “timeout” room. See, e.g., Tr. Day 6 at 1371:6 to 1372:2 (Harrison). The record does not clearly reflect if or when XX may have spent time in this room.

Further, the record does not clearly reflect whether, at times, staff may have been using “timeout” as a form of punishment as opposed to purely for deescalation purposes. The data sheets reflect the use of “timeout” commonly after XX displayed aggressive behavior. See, e.g., . Data Collection Sheets (11/07), P-128 (indicating multiple timeouts after aggressive behaviors, including hitting others); Data Collection

Sheets (11/08), P-128 (same); Data Collection Sheets (11/13), P-128 (same). The record does not contain first-hand testimony from the individuals who completed the time sheets.

Richards testified that she did not observe timeout being used as a punishment for XX. Tr. Day 8 at 2010:10-24 (Richards). Instead, Richards described it being used as “[m]ore of a way to calm her body, like a calm down period.” Id. Richards agreed that using timeout as a punishment for XX would not be an effective strategy. Id.

Harrison described that, in practice, staff can sometimes use the word “timeout” to describe a deescalation spot, as oppose to a “punishment” or disciplinary measure. Tr. Day 6 at 1365:23 to 1370:22 (Harrison). Harrison did not have first-hand knowledge as to how staff was using the term “timeout” with XX. Id. He agreed that it generally would not be helpful to use punitive responses that would cause her behavior to escalate more. Id. Harrison stated that staff should have been using positive reinforcement from the beginning. Id. He did not know if that was the case. Id. XX responds well to praise and reinforcement. Id. The aim should be to not emotionally escalate a kid ever, and to go to a deescalation spot if she becomes escalated. Id.

Punches learned early on that timeout was not an effective strategy for XX. Tr. Day 3 at 572:20 to 574:7 (Punches). At first, PBS staff tried putting XX in timeout as a consequence for hitting other kids. Id. However, they observed that the frequency of her hitting increased, which helped them to identify that the function of her behavior was escape. Id. For example, if she was told to wash her hands after snack, she would hit a kid that was standing in front of her to avoid that task. Id. After PBS staff identified the correct function of behavior (i.e., escape), they started making XX follow through with the unwanted activity (i.e., washing her hands in this example) instead of putting her in timeout. Id. Once they began targeting the correct function, PBS staff was successful at reducing the unwanted behavior. Id.

Mom testified that putting XX in timeout would not be a negative consequence for her because she likes to be alone and receive all the attention from an adult; therefore, placing XX in timeout would be reinforcing her negative behavior. Tr. Day 1 at 220:23-4 (XX's mother).

Mom also stated that some of the notations in the data sheets indicated that staff were not responding or communicating effectively to XX. For example, on November 8, the data sheet indicates that the staff member told XX that “hands are not for hitting.” Data Collection Sheets (11/08), P-128. Parents have learned that the way that communications are worded affect XX's behavior. In particular, parents have been taught to not say the word that they do not want. Tr. Day 5 at 987:16 to 990:4 (XX's mother). In other words, if parents do not want XX to hit another person, they would not say, “don't hit.” Id. Instead, parents would describe the positive or appropriate behavior that they are looking for, such as “hands to yourself or safe hands.” Id.

k. November 1 to January 28: Removal from General Education Classroom

The evidenced established that, from November 1 through January 28, XX spent most of her time outside the general education classroom. Further, the evidence established that, during this time, parents were not informed of the extent of their daughter's removal from the general education classroom.

McCain testified that, from the end of October 2024 through January 2025, on her best days, XX was in her general education classroom for about 20 percent of the time. Tr. Day 2 at 409:10 to 411:21

(McCain). On some days, XX was not in her regular classroom for any part of the day. Id. McCain stated that the expectation always remained that XX would return to the general education classroom when she calmed down, but there were often times when XX refused to enter the general education classroom. Id. at 419:23 to 421:12. Staff were not permitted to physically move XX into the classroom. Id. Staff tried a number of strategies from various sources to try to get XX to return to her classroom, including visual aids and supports, preferred items, rewards, and timers. Id. at 420:19 to 425:7.

McCain stated that school staff made the decision to remove XX from the general education classroom when she displayed concerning behaviors. Id. This happened on a daily basis, resulting in XX not being in her general education classroom for 80 percent of her school day. Id. McCain described that this situation developed as a result of “ongoing concerns,” and that, if XX had an “aggressive display of behavior, she would be asked in the moment to demonstrate calm body.” Id. Staff would then go through a number of steps to try to prevent her from coming out of the general education classroom. Id. One of the final steps would be to remove her from “the trigger environment,” i.e., the general education classroom. Id.

McCain testified that the parents were not notified of XX’s removal from the general education classroom, because it was a “reactive plan” that was “being trialed as a result of collaboration with district-employed specialists,” including Rich Harrison. Tr. Day 2 at 376:12 to 385:9 (McCain).

McCain described that staff was “trialing a variety of strategies to see what would be effective and we were taking data to determine its effectiveness.” Tr. Day 2 at 376:12 to 385:9 (McCain). McCain stated her understanding, as follows:

It was my understanding that we would try a variety of strategies in the general education setting, collect data, and determine its effectiveness. Once we did that and determined that [the strategies that we used in general education setting were] not effective, ... we moved to propose a separate setting [in the special education resource room]. That proposal, again, given by our district-employed consulting teachers or district-employed staff.

Id. McCain stated that, during this “trial period,” she did not believe there was a change in placement, because the expectation was that XX would return to class every day when she demonstrated readiness. Id.

Dial testified that, due to an increase in aggressive behaviors, XX began spending more and more time in the sped room. Tr. Day 4 at 822:3-23, 909:11-21 (Dial). Dial described that staff “made accommodations at the moment to help [XX], her classmates, and staff.” Id. He further stated that, “sometimes,” if a student is being physical or scaring other kids, staff have the student work in a separate area with less peers and more staff around. Id. As Dial explained it, if a special education student is aggressive or needs a break from the general education classroom, then the student will “often go into a sped room.” Id. at 876:8-15. Dial further stated, “students can be removed from classrooms for being aggressive, or poor behaviors, or distracting peers, and that is a normal part of school or strategies at Tecumseh South.” Id. at 909:17-21.

Dial testified that no MDR was performed because staff knew there was an IEP meeting scheduled for early January, which ended up getting postponed for three weeks because of weather. Id. at 908:14 to 909:3. Dial further stated that, in his experience, an MDR would typically come into play when a student

was suspended for ten times, not when the student was spending additional time in the sped room. Id. at 909:22 to 910:17.

From October to November of 2024, Dial estimated that XX was spending about 70 percent of the time in the sped classroom. Tr. Day 4 at 823:20 to 824:13 (Dial). Dial further stated that it was “her choice,” in that XX did not want to go into the general education classroom. Id. Dial further stated that McCain would have the most information regarding the amount of time that XX was spending in the sped classroom during this time period. Id. at 825:6-11.

O'Brien described that XX was moved to the special education room (also called the resource room, Room 501, or McCain's classroom) to deescalate so that she could become regulated and return to the general education classroom. Tr. Day 7 at 1612:24 to 1614:21 (O'Brien). O'Brien did not consider it a change in placement, because the objective was to return her to the general education classroom. Id. at 1614:18 to 1615:22.

In XX's case, staff was unable to get her to return to the general education classroom after she was removed to de-escalate in the sped room. Id. at 1650:13-20. O'Brien described it as follows:

we couldn't move her to the classroom. That was our problem. We always expected her to go back to the classroom but she would do things like drop the floor. She wouldn't go in there.

Id.

O'Brien stated that the reason XX was moved to the special education classroom, as opposed to another location like the counseling office, was because the sped room was located in close proximity (i.e., right next door) to XX's general education classroom. Id. at 1614:18 to 1615:22. O'Brien stated that it is not good to move a dis-regulated child, and the school might utilize a number places to deescalate depending on how dis-regulated the child is and the distance to the room. Id.

O'Brien estimated that from October 14, 2024, to January 1, 2025, there were approximately 29 school days, taking into account a couple of days that XX was sick. Tr. Day 7 at 1559:12 to 1560:3 (O'Brien). Dial estimated that from November 22, 2024 to January 28, 2025, there were approximately 25 school days (taking into account Thanksgiving, winter break, and snow days). Tr. Day 4 at 827:10 to 829:9 (Dial).

I. January 22: Parents Meet with Harrison

In early January, after the IEP meeting was rescheduled due to weather, and Mom reached out to Harrison and asked if parents could go ahead and meet with him before the next IEP meeting, since they had never met him. Tr. Day 2 at 268:6 to 277:21 (XX's mother).

On January 22, 2025, parents met with Harrison for about two and a half hours. Tr. Day 2 at 268:6 to 277:21 (XX's mother); Harrison Time Sheet, P-61. In the meeting, Harrison discussed that the school planned to propose a BIP that would place XX in the sped room for 100 percent of the time, with a plan to reintegrate her to the general classroom based on positive behavior changes. Tr. Day 2 at 268:6 to 277:21 (XX's mother). Parents strongly objected, on grounds that XX's negative behaviors would be reinforced because she enjoyed having special, alone time in the sped room, and it would be “impossible” to get her back into the general classroom due to the functions of her behaviors. Id. At the meeting, parents believed that Harrison became convinced and was in agreement with their thinking. Id.

In the meeting, parents learned for the first time that the school had been removing XX from the general classroom and had not been following the IEP's requirement that she spend at least 80 percent of the time in the general classroom. Id.

m. October 28 to January 28: Functional Behavioral Analysis (FBA)

As discussed, on October 28, 2024, the school began collecting data on XX's behaviors for the purpose of preparing an FBA and BIP. As noted, the data sheets were not shared with parents. See, e.g., Tr. Day 2 at 280:6-23 to 283:22 (XX's mother). The parties agree that the school did not request parents' consent to perform an FBA, and no PWN was signed in this regard.

At the due process hearing, Richards emphasized that, when she drafted the FBA on January 24, it was based on existing data (i.e., that was collected beginning on October 28). Regardless when the FBA was drafted, However, the record as a whole clearly establishes that data was collected over this time period for the purposes of conducting an FBA. Further, the evidence shows that Harrison's involvement in December was also part of the FBA process.

Harrison testified that, in December, he was observing XX in order to determine the function of her behavior. Tr. Day 6 at 1270:1 to 1271:11 (Harrison).⁴⁷ Harrison described that he was doing a "functional behavior assessment," that he viewed his role as "ongoing," and that he was assisting Richards with the FBA. Id. at 1363:8 to 1364:25. Harrison did not prepare any type of summary or report of his findings. Id. Harrison stated that each district has its own "special paperwork" that the school psychologist manages, and he generally sits down together with school psychologist, and often the sped teacher, to discuss it. Id. at 1270:1 to 1271:11.

Harrison described that, as part of the FBA process, he is trying to come up with strategies that the school tries to implement to see if they work, and the school collects data to see if the strategies are working. Tr. Day 6 at 1336:7 to 1337:3 (Harrison). Harrison viewed his role as trying to determine the function of XX's behavior as a functional behavior assessment and to assist the school psychologist, who would be the one to prepare the school's paperwork. Tr. Day 6 at 1270:1 to 1271:3, 1362:8 to 1363:1364:1 (Harrison).

Harrison testified that he also reviewed the data sheets that had been collected by the school. Tr. Day 6 at 1336:7-19 (Harrison). Harrison stated that he could not rely on the data sheets alone to determine an FBA or BIP; he would also need to talk with staff and make his own observations as well. Id. at 1381:18-23. Harrison read through the data sheets only briefly and did not read through all of the comments.⁴⁸ Id. at 1380:90 to 1381:3. Harrison said that he was primarily interested in the interval data (i.e. the number of Ys and Ns on the data chart). Id. at 1437:10-22. Harrison described that he would mostly use the data to create a baseline so that he see could see if the behavior changed after he determined function. Id.

⁴⁷ Harrison stated that, through his discussions with school staff, observations of XX, and review of the school's data, he was trying to determine the function of her behavior, which would then be open to debate and further discussion by the IEP team. Id. at 1331:13 to 1332:10.

⁴⁸ Harrison described that the "struggle" with anecdotal reporting is that, while it appears to indicate everything that is going on, it is really a subjective report that is written down after the fact and is often emotionally based. Tr. Day 6 at 1380:8-13 (Harrison).

At the due process hearing, O'Brien testified that purpose of collecting the data sheets was to use for writing the FBA and BIP. Tr. Day 7 at 1611:9-23 (O'Brien). The school did not share the data sheets collected from October to mid-January with parents.

Similarly, at the due process hearing, McCain testified that the data sheets "began as a tool to create a behavior plan, so we kept them at school for planning purposes only." Tr. Day 2 at 430:8 to 431:8 (McCain). In other words, McCain stated that "to create a behavior plan was the intention of collecting the data." Id. McCain further stated that Richards and Harrison suggested that the data sheets "should be kept at school for data collection purposes" and were "not for communication between school and home." Id.

Initially, Richards also described that the school began the data collection process as part of an FBA as follows:

So the data collection process began at the very end of October as we began taking daily data . . . to look to see if there is a pattern, cays of the week, time of the day, activities, particular antecedents, thing like that, conducting interview with staff that work with her, observations, things like that,, to come up with a hypothesized function of the behavior. And at that time we discuss[ed] the behavior plan in conjunction with the functional behavior assessment.

Tr. Day 8 at 2028:10 to 2029:2 (Richards).

Richards further testified that the FBA was an "ongoing process" that was based on the date range of daily behavior data collection sheets that began on October 28, 2024, through the time that the first BIP was drafted in late January of 2025. Tr. Day 9 at 2149:2-5, 2157:6 to 2158 (Richards). Richards further stated that all of the daily data tracking sheets (i.e. Exhibit P-128) were part of the FBA. Id. at 2158:3-15.

In a series of questions asked by the Hearing Officer, Richards testified that she was responsible for drafting the FBA with input from others. Tr. Day 9 at 2160:19 to 2161:3, 2168:6-9 (Richards); see also FBA (01/28/2025), R-204. When asked who made the decision to conduct an FBA and when that decision was made, Richards stated firmly that the decision to conduct an FBA was made around October 28, 2024 by the IEP team. Id. at 2161:4 to 2162:14. When asked whether parents were part of that decision, however, Richards' testimony wavered. At first, Richards stated that parents had requested an FBA at the first meeting in August, before school started. Id. Richards then repeated several times that decision to conduct the FBA was made around October 28th. Id. When asked again whether the team decision included the parents, Richards stated: "I believe so, yes. Again, it's difficult to remember what – you know each conversation that took place because there were so many." Id.

Later in her testimony, Richards stated that the decision to conduct the FBA was not made by the entire IEP team, but by members of the IEP team in response to parents' request for a behavior plan back in August 2024 (i.e., before the school year started). Id. at 2175:8 to 2177:4. Richards further explained:

[If we were] not seeing the behaviors at that time, or if the school year hadn't started, we could not, you know, draft a behavior plan. We need to collect the data.

*So once we began seeing those behaviors, we began collecting the data. And once those behaviors continued and we're seeing that there is a pattern and we're seeing that this isn't, you know, something that's going to go away in two weeks, we know that we need to move toward a behavior plan. We know that we need to conduct an FBA as part of that[.] ****

Tr. Day 9 at 2176:15 to 2177:4 (Richards).

When asked whether the school obtained parental consent to conduct the FBA, Richards stated that parental consent would not be required because the school was reviewing existing data. Id. at 2162:16 to 2164:10.

When asked how the FBA could have been based on existing data on October 28 (i.e., at the time when the decision was made to collect data), Richards' testimony again wavered. Id. Richards stated: "I may have misspoke.... – we started seeing those more difficult behaviors toward the end of October [and we] began data collection at that time." Id. When asked again whether staff decided on October 28th to conduct an FBA, Richards stated, "I – I don't – I don't recall. I may have misspoke. We began collecting data and ... [t]he data daily sheets that were used as part of the FBA began that day." Id.

Later in her testimony, Richards tried to clarify that she had previously misspoken and, when the FBA was *drafted* on January 24th, it was based on existing data sheets that had been collected since October 28. Tr. Day 9 at 2173:1 to 2174:15, 2178:23 to 2180:6 (Richards).

When asked to identify the other parts of the FBA (i.e., in addition to the data sheets), Richards stated: "Staff interviews, [and] observations of [XX] throughout her school day." Tr. Day 9 at 2164:11-18 (Richards). When asked whether parents were consulted during the FBA, at first, Richards stated: "Yes. We have – we had lots of meetings in that interim period." Id. at 2164:19-25. When asked for more specifics about the meetings, Richards cited the monthly meeting on November 18th, which Punches attended. Id. 2165:1 to 2167:20. Richards then stated that there may not have been another meeting during the FBA time period (i.e., October 28 to January 28), but that Richards also referenced notes from the meeting on August 16, 2024, in which Punches shared that XX's functional behavior "has nearly always been escaping or avoiding demands placed, things like that." Id.

The FBA document that Richards prepared indicates two data sources: (1) observations in the general and special education settings; and (2) teacher interview. FBA at 1 (01/28/2025), R-204. At the due process hearing, Richards confirmed that the observations would have occurred during the October-January timeframe. Tr. Day 9 at 2149:2-5, 2157:6 to 2158 (Richards). When asked why the FBA document did not list parents or Punches as a data source, Richards stated, "Uh-huh. That's a good question. I don't know what – I'm not sure why I didn't do that." Id. At 2168:1 to 2169:10.

As discussed, the school did not share with parents the data sheets collected during the FBA process, beginning on October 28 and continuing through February. Parents first saw these data collection sheets in March of 2025, when they requested and received XX's educational record. Tr. Day 2 at 280:6-23 to 283:22 (XX's mother). When XX's mother saw the data collection sheets, she found many more details regarding XX's behavior that she had not seen and had been asking staff for. Id. These details would have helped her to understand more about what was going with XX and to give better advice to staff on how to handle the situations. Id.

XX's parents had been told that the school had conducted an FBA; however, they had not seen the information. Tr. Day 2 at 305:10-18 (XX's mother). XX's mother was told that the school did not need parental consent for the FBA, because the school was merely reviewing information from other sources to put the plan in place. Id.

n. January 24: Harrison and Richards Prepare FBA and proposed BIP

On January 24, 2025, Harrison worked with Richards as she wrote an FBA and proposed BIP for the IEP meeting scheduled for January 28. Tr. Day 8 at 2027:11 to 2029:2 (Richards); Harrison Time Sheet, P-61; Tr. Day 6 at 1263:22-25, 1420:17-20 (Harrison). This was the only FBA performed by the school for XX during her Kindergarten year. Tr. Day 9 at 2167:21-25 (Richards).

Ultimately, after observing XX and looking at the data it had collected, the school came to the same conclusion that Punches had described at the meeting on August 16, 2024 – i.e., that the function of XX's behavior was nearly always escape, avoidance, or demand. Tr. Day 7 at 1661:22 to 1662:15 (O'Brien); see Meeting Notes at 2-3, R-208 (Punches shared that, based on her data, "function is nearly always escape/avoidance or demand").

i. FBA

The FBA that Harrison helped Richard prepare is dated January 28, 2025. Functional Behavioral Assessment Summary Report (01/28/2025), R-204. The FBA lists two data sources: (1) observations in general and special education settings; and (2) teacher interview. Id. at 1.

The FBA describes the following behaviors, frequency, and duration:

*Description of Behaviors: ****

- *Physical Aggression: Hitting peers or staff, pushing peers or staff, kicking peers or staff, pulling on adults' clothing, throwing chairs or other furniture and/or items, tearing up work/materials*
- *Self-harm: Hitting herself, pinching or grabbing herself, banging her head*
- *Disrobing: Taking off her clothing in common spaces (shirt, pants, socks, underwear, shoes)*
- *Eloping: Leaving the expected space and running or crawling through school hallways or dropping to the ground in the hallway and refusing to re-enter the expected space. Occasionally, [XX] has eloped out of the school building.*

*Frequency: * * **

- *Physical Aggression: 47%*
- *Self-harm: 4%*
- *Disrobing: 10%*
- *Eloping: 10%*

Duration:

- *Physical Aggression: From one to fifteen minutes*
- *Self-harm: From one to three minutes*
- *Disrobing: From one to twenty minutes*
- *Eloping: From one to thirty minutes*

** * **

Functional Behavioral Assessment Summary Report at 1 (01/28/2025), R-204 (emphasis omitted).

The FBA provides the following information regarding setting events and antecedents, consequences, and positive behavior supports attempted:

Setting Events and Antecedents: (Identify circumstances that appear to come before behavior or make the problem behavior more likely)

- Non-preferred tasks

- Peers receiving attention from her preferred adults
- Changes in schedule/routine in and out of school
- Communication barrier
- Non-rota learning tasks
- Planned ignoring
- Wanting an adult other than the person who is currently instructing or supporting her

Consequences: (What is the response of others after the behavior occurs?)

[XX's] maladaptive behaviors are ignored, when possible, so as not to reinforce the behavior by giving attention.

When ignoring is not possible due to safety concerns, staff will employ the following response:

1. Staff will physically block the maladaptive behavior when possible (block door from elopement, guard other students, etc.)
2. Staff state appropriate behavior (do not ask questions)
3. Prompt (physically and verbally) to move to calm area
4. Allow her time to calm down
5. Have her demonstrate that she is ready with simple compliance tasks
6. Clean up or restore area, apologize to injured persons
7. Explain why we conduct ourselves in a safe manner with rationale. Example:
"We are safe so that we have friends."

Positive Behavior Supports Attempted:

- Visual schedule
- When/then visual support and schedule
- Saturate with positive reinforcement, both verbal and tangible
- Shape peer interactions with social greetings, etc.
- Student has separate work space
- Communication support
- Re-integration plan: 7 consecutive school days of 100% nonaggression and 50% work completion; reverse inclusion with older peers – 7 days with peers from her room, no aggression, 50% work completion; Classroom end of day

Functional Behavioral Assessment Summary Report at 1-2 (01/28/2025), R-204 (emphasis omitted).

The FBA provides the following hypothesis statement and suggested replacement behaviors:

Hypothesis Statement:

*** The Team hypothesizes that [XX] is displaying these maladaptive behaviors (physical aggression, self-harm, disrobing, and eloping) in order to Escape or Avoid tasks, activities or environments when presented with a prompt or task that is nonpreferred.

Suggested Replacement Behavior(s): (What behaviors need to be taught to enable the student to meet her needs in a more constructive way?)

- Emotional regulation skills
- Requesting help
- Requesting a break
- Persisting through difficult or non-preferred tasks
- Following a pre-determined schedule

- Complying with teacher/adult directive
- Transitioning (within school day and to/from school)
- Sharing spaces/work areas
- Sharing attention
- Turn-taking

Functional Behavioral Assessment Summary Report at 2-3 (01/28/2025), R-204 (emphasis omitted).

At the due process hearing, Richards testified that the duration and intensity of the behaviors was determined based on the daily data sheets and observation. Tr. Day 8 at 2047:11 to 2048:11. However, the daily data sheets did not track data for the categories of self-harm, disrobing, or eloping. See Data Collection Sheets, P-128. Moreover, as to the category of aggression, the data sheets provide no information regarding the duration of the behavior. Id. Further, the data sheets only indicate whether the behavior occurred during a 30-minute interval (yes or no), and not whether it may have occurred multiple times during that time period. Id. Thus, it appears that the data sheets could not have been used to reasonably determine the duration or intensity of the behaviors. The record does not indicate what observations were used for the FBA, or when they made, by whom, or for how long they occurred. As discussed, Harrison testified that his observations in December were part of the FBA process. Tr. Day 6 at 1270:1 to 1271:11, 1331:13 to 1332:10, 1363:8 to 1364:25 (Harrison)

ii. January BIP

The January BIP describes the following problem behaviors:

Problem Behaviors

What is the behavior and what exactly does it look or sound like?

- Aggression: Hitting, kicking, or scratching adults and/or students, pulling on adults' clothes, throwing chairs, furniture, other items, tearing up work/visual prompts, climbing on furniture
 - Self-harm: Hitting herself, pinching or grabbing herself, banging her head
 - Disrobing: Taking off her clothing in common spaces (shirt, pants, socks, underwear, shoes)
 - Eloping: Leaving designated area (work space, classroom, resource room, gym, out of building, playground, hallways) and running or crawling through hallways, dropping to the floor in the hallway and refusing to re-enter expected area.
- Occasionally, [XX] has eloped from the school building to the parking lot.

January BIP at 1 (01/24/2025), P-76 (emphasis omitted).

The January BIP provides the following information regarding precursor behaviors and setting events and antecedents:

Precursor Behavior(s)

What student behaviors often occur before the problem behavior occurs?

- Pacing
- Visually scanning room
- Whining

Setting Events and Antecedents

What large events often occur that make the problem behavior more likely?

Identify Circumstances that appear to come before the behavior or make the problem behavior more likely.

- Planned ignoring
- Sharing classroom materials or work areas (bathroom, reset room, direct instruction/small group tables, free time area)
- When attention is on anyone but [XX]
- Wanting an adult other than the person who is currently instructing or supporting her
- Non-preferred tasks, including any activity that [XX] is not wanting in that moment (ex: books, puzzles, bubbles, shaving cream, dolls, preferred activities, academic tasks)
- Changes in schedule/routine in and out of school
- Communication barrier
- Non-rota learning tasks

January BIP at 1 (01/28/2025), R-204 (emphasis omitted).

The January BIP provides the following information regarding hypotheses of behavior function, replacement behavior(s), proactive strategies, and reactive strategies:

Hypothesis of Behavior Function:

*** The team hypothesizes that [XX] is displaying these maladaptive behaviors in order to escape or avoid non-preferred, activities, and environments, people.

Replacement Behavior(s):

What behaviors need to be taught to enable student to meet his/her needs in a more constructive way? *Must match hypothesized function.

- Emotional regulation
- Requesting help
- Requesting a break
- Persisting through difficult or non-preferred tasks
- Following a pre-determined schedule
- Complying with teacher/adult directives
- Transitioning (within school day and to/from school)
- Sharing spaces/work areas
- Sharing attention
- Waiting her turn and taking turns

Proactive Strategies

What should staff do to prevent the problem behavior?

- Visual schedule
- Compression vest and other sensory tools
- When/then visual support and schedule
- Saturate with positive reinforcement, both verbal and tangible
- Shape peer interactions with social greetings, etc.
- Student has separate work space
- Communication support

- For eloping: Doors to classrooms remain closed with icons on doors (her classrooms and exterior doors) of a stop sign and a hand. Verbal prompt of "stop, hand."
- Errorless learning
- Re-integration plan: 7 consecutive school days of 100% nonaggression and 50% work completion; reverse inclusion with older peers – 7 days with peers from her room, no aggression, 50% work completion; Classroom end of day

Reactive Strategies (Least to Most Restrictive)

What should staff do if the problem behavior occurs?

- When possible, block maladaptive response (eloping, physical aggression, disrobing, etc.) with Mandt-approved techniques.
- Staff state appropriate behavior (do not ask questions) in flat/monotone voice
- Prompt (physically and verbally) to move to calm area
- Allow time for her to calm down
- Have her demonstrate that she is ready emotionally by completing three simple compliance tasks
- Clean up or restore area, apologize to injured persons
- Explain why we conduct ourselves in a safe manner with rationale. (Ex: "We are safe so that we have friends.")

January BIP at 1-2 (01/28/2025), R-204 (emphasis omitted).

o. January 28th IEP Meeting

On Tuesday, January 28, the school held an IEP meeting that lasted over three hours. Tr. Day 2 at 302:15 to 306:12 (XX's mother).

During the IEP meeting, parents heard significant information for the first time, including that XX had eloped outside the school building on multiple times, and that XX was already spending the majority of her time in the sped room. Tr. Day 2 at 306:17 to 308:24 (XX's mother). At the meeting, Mom asked who had authorized for XX to be taken out of the general education classroom. Id. After a moment of silence, McCain spoke up and said that the IEP team had made the decision. Id. Parents had no notice of and were not involved with that decision. Id.

At the due process hearing, McCain agreed that, at the meeting, parents learned new information about multiple elopements. Tr. Day 2 at 376:12 to 377:10 (McCain). McCain testified that she had informed parents of any elopements that she believed involved safety concerns. Id. at 428:22 to 492:17. However, the elopements were happening on a "regular basis," and she may not have been informed of every elopement that happened. Id. McCain also agreed that, at the meeting, parents discovered that XX had not been spending the majority of her time in the general education classroom, as required by the IEP. Tr. Day 2 at 376:12 to 385:9 (McCain).

At the meeting, the school proposed the January BIP, which would effectively change XX's placement to 100 percent in the special education room with a reintegration plan that would gradually move her back into the general education classroom upon demonstration of positive behavior. Id. Specifically, the proposed IEP provided the following reintegration plan:

[Seven] consecutive school days of 100% non-aggression and 50% work completion; reverse inclusion with older peers – [seven] days with peers from her room, no aggression, 50% work completion; Classroom end of day.

Proposed BIP at 2 (dated 01/24/2025), P-76.

As Richards described it, the school was proposing a temporary change of placement in order to have a smaller, less distracting setting to work through some of the problem behaviors like aggression, disrobing, and eloping. Day 8 at 2015:14 to 2016:1 (Richards). Under this plan, after XX went seven days without exhibiting that behavior, staff would start adding in more time in the general education setting. Id.

XX's mother strenuously objected to the proposed BIP. Day 2 at 302:15 to 306:12 (XX's mother). She thought they should not move XX straight to the most restrictive environment when this was the first plan they were putting in place. Day 2 at 302:15 to 306:12 (XX's mother). The IEP meeting ended without an amendment to the IEP or change in placement for XX. Id. 335:4 to 337:17. Even though no amendment was made, parents understood school staff to say at the meeting that they would still keep XX in the sped room if it was necessary for safety concerns. Id.

Due at least in part to Mom's objections, the school ended up not implementing the proposed change in placement.⁴⁹ Day 8 at 2016:4-6 (Richards).

Harrison described that, at the IEP meeting, parents expressed their strong desire to keep XX in the general education classroom. Tr. Day 6 at 1319:9-15 (Harrison). Harrison thought it was "brilliant" on parent's part. Id. To that point in time, Harrison had not observed XX in the general classroom. Id. His observations of XX had only been in the sped room. Id. at 1340:2-18. Harrison did not know how XX would respond in the gen ed classroom; he did not have data on it and had not observed her there. Id. Harrison recalled that others on the IEP team also thought it was a good idea. Id. at 1340:19-21.

Harrison testified that, at the January 28 meeting, the team discussed concrete steps to take with XX, such as reinforcement structure; use of her deescalation space; the type of clear, specific prompting that she required, especially when she was being aggressive; and following the Mandt procedures that the District has about how staff should position themselves and use their hands. Tr. Day 6 at 1334:23 to (Harrison). Harrison also recalled that parents discussed using the hallway as a deescalation spot. Id.

Harrison further stated that it was good to have PUNCHES participating in the meeting. Tr. Day 6 at 1443:10-17 (Harrison). PUNCHES provided helpful input by describing how PBS staff had been blocking XX's aggressive behaviors. Id.

The January 28 meeting notes indicate that, among other things, the following topics were discussed:

- *M&M's no longer reinforcing enough to motivate for non-preferred tasks/activities/settings. ****
- *Planned ignoring: No longer effective, she is escalating to the point of being unsafe and can no longer be ignored.*
- *Mom wants to be sure we are not reinforcing her behaviors by giving in. ****

⁴⁹ At the due process hearing, witnesses discussed that XX's biological father consented to the change in placement, while Mom did not. See, e.g., Day 8 at 2016:2-4, 2018:3 to 2021:20, 2032:11 to 2039:18 (Richards). The Hearing Officer finds these facts immaterial to the rulings made in this decision

- Mom wants daily report of why she wasn't able to be in gen ed setting – was she aggressive or did she refuse to go in?
- Mom wants daily data sheet sent home with ABCs. Team discussed frequency and duration data vs. interval. [Harrison] explained value in interval data. Team requested preschool data for ideas of what has been helpful before. [Punches] said she will send and we can look [at] it when developing our data sheet.
- Team discussed disrobing and digging incident, peeing, etc. Stepdad asked about males vs. females in the room. Mom requested that we block her from self-injurious behaviors, digging, and disrobing. Team explained Mandt and logistics of blocking these responses.
- Add to BIP: door icons, doors closed, “Stop, hand” prompts. Add sensory tools. Add errorless learning. Add “clock response” to reactive strategies.
- Team discussed gen ed vs sped settings. Parents not consenting to sped setting.

01/28/2025 Parent Meeting Notes, part 2 of P-79 (emphasis added).⁵⁰ The meeting notes do not mention elopement outside the building; however, this topic was also discussed. Tr. Day 5 at 1225:14-19 (XX's mother).

At the January 28th meeting, the school and parents agreed to switch their communication from daily emails to sending home the data tracking sheets daily. Tr. Day 2 at 282:6- to 277:21 (XX's mother).

Punches's session description of the January 28th meeting states, *inter alia*, as follows:

**** We discussed the behaviors that occurring. [XX] is engaging in problem behaviors to complete an activity. They are using a first-then board. They have removed her choice of reinforcement after a work task after 12/15. The school caregivers stated because she would change her choice after the end of work task for a different reinforcer and they thought it was a “power/control issue.” So they are now making the choice and requiring her to complete it. They are recording behaviors in intervals in 30-minute sections from door-to-door (14-15 intervals). Precursors include pacing, whining, visually scanning the room, etc. They used some planned ignoring but initially giving vocal responses “nice hands” which upset her mom. They started using a pad for her to hit instead, but it increased the behavior so it then was removed. This BCBA discussed using FCT to address the functional communication piece that [XX] is trying to communicate by engaging in the aggression Typically, the behaviors occur after demand is placed, nonpreferred activity, and using timers. [Mom] discussed them using preference assessments which it appears they haven't done. They asked for clarification. This BCBA discussed different [types] of preference assessments. Proactive they are using a visual schedule, saturate with positive reinforcement, shape peer interactions, rainbow breathing, have separate work space, communication support, re-integration plan. For reactive strategies: don't ask questions, state appropriate behavior, prompt, allow time to calm down.... This BCBA recommended using one visual with all of the reinforcers on it on the first-then board. Mr. Harrison (Autism specialist) discussed using a token board. This BCBA recommended making the token board with barbies or other preferred choice on a FRI of FI because currently her aggression and other behaviors on upward trending. ****

⁵⁰ The notes do not reflect who was in attendance. Richards recalled that Mom and Punches were there. Day 8 at 2023:18 to 2024:3 (Richards). The witness testimony indicates that Harrison and McCain were there as well.

PBS Session Description at 7 (01/28/2025), P-111.

At the due process hearing, PUNCHES recalled that, at the end of the meeting, it was “shocking” to hear school staff describe that XX was so violent they could not have her in the general education classroom out of concern that she would hurt others, and they were not going to allow their staff to get hurt. Tr. Day 3 at 671:20 to 672:3 (PUNCHES).

PUNCHES further stated that some of the staff's descriptions of what was going on sounded to her like the school may have been unintentionally or inadvertently reinforcing XX's negative behavior. Tr. Day 3 at 672:12 to 673:18 (PUNCHES). For example, PUNCHES stated that, by removing XX to the special education room where she was alone with individualized attention from one or more adults, the school was likely reinforcing her negative behavior by allowing her to escape the unwanted circumstance and gain attention, which she liked. Id. Similarly, PUNCHES stated that, by creating a special section in the room with XX's favorite things, the school was making that special place desirable, which would also inadvertently reinforce her behaviors by giving her the escape and attention that she seeks. Id.

p. January and February: Post-Meeting Communications

Following the January 28th meeting, Mom received data sheets for January 30 and 31. Tr. Day 5 at 1177:6-15 (XX's mother); see also Data Sheets, P-128A.⁵¹ On Monday, February 3, 2025, Mom sent an email to Harrison, Richards, and McCain asking that the data sheets be modified to include much more detailed information. See February 3, 2025 Email, P-80. Mom did not receive a response to that email. Tr. Day 2 at 353:4 to 355:17 (XX's mother). Mom testified that parents did not receive another data sheet until March 6th. Tr. Day 5 at 1177:6-15 (XX's mother); see also Data Sheets, P-128A. During this time frame, Mom sometimes received email updates from McCain. Tr. Day 5 at 1177:2-15 (XX's mother).

The day after the IEP meeting, on or about January 29, XX's parents submitted their original due process complaint for this proceeding. Tr. Day 2 at 362:7 to 363:12 (XX's mother).

Also, around the same time, Mom provided consent for the school to release XX's records to TASN. January 29-February 2, 2025 Email Chain, P-81.

Two days after the IEP meeting, on Thursday, January 30, Harrison sent parents an email asking if they knew when ABA supports would begin again for XX at the B&G Club or at home. January 30-February 3, 2025 Email Chain at 7, P-83. Harrison further stated that it was fine if these ABA supports would not be in place, but it was helpful for the school to know. Id. Harrison also asked, among other things, whether the parents had an idea of the rate of aggression in the home, and whether XX was more aggressive with certain people or whether the aggression was equally distributed. Id.

Mom responded that they had chosen not to use ABA services in the home at that time, and they had not been able to find an RBT to provide services during after-school care. January 30-February 3, 2025 Email Chain at 7, P-83.

⁵¹ In other words, Mom testified that she did not receive a daily data sheet for the entire month of February. Tr. Day 5 at 1177:6-15 (XX's mother). Mom testified that Exhibit P-128A contains all of the data sheets that were sent home from school. Tr. Day 5 at 1176:22 to 1177:15 (XX's mother). The school presented no contrary testimony. Mom further testified that the handwritten notes on the data sheets for January 30th in Exhibit P-128A are notations that she made to herself. Tr. Day 5 at 1035:12 to 1040:1 (XX's mother).

In the response email to Harrison, Mom attached all of XX's behavior plans under ABA therapy with PBS and asked that they be made a part of XX's school record. Id. This was not the first time parents had provided this information to the school. As discussed, the information was provided to Peacocke in the spring of 2024. At the due process hearing, Mom testified that she had sent the information at least three times to different people, but it seemed like they did not look at it and/or did not put it in her file. Tr. Day 2 at 324:17 to 326:11 (XX's mother).

Harrison thanked Mom for the information and stated: "We will look it over and use it to help [XX]." January 30-February 3, 2025 Email Chain at 5, P-83.

Several additional emails were exchanged, including an email with detailed information from Punches. Id. at 1-4. At one point, Harrison stated it was a lengthy conversation and suggested that they "find a time to meet and build an agenda with scheduled times for each topic." Id. at 4.

On Thursday, February 6, Paxton emailed XX's mother to let her know that Paxton had not had a chance to visit with Dr. O'Brien yet, and was hoping to do so soon. February 6, 2025 Email Chain, P-85.

On February 12, Mom emailed Paxton information from PBS, including five behavior plans, a VB-MAPP, and two Vineland assessments. February 12, 2025 Email Chain, P-86. This was the same information that Mom had previously provided to the District. Tr. Day 5 at 1056:21 to 1057:2 (XX's mother).

q. February: Harrison's Continued Involvement and Change in Strategies

After the January 28 meeting, Harrison reviewed information that he received from Punches. Tr. Day 6 at 1263:22-25, 1354:21 to 1355:25 (Harrison). Additionally, on two occasions, Harrison met virtually with Punches. Tr. Day 6 at 1278:21-23, 1337:24 to 1338:23 (Harrison). The record does not indicate when the meetings events occurred.

Harrison testified that he took Punches' ideas into account as he continued to work with the school team. Tr. Day 6 at 1337:24 to 1338:23 (Harrison). Harrison described that Punches has training similar to himself, and that she has "good ideas." Id.⁵²

Harrison does not know how much of Punches' behavior plan was used by the school. Tr. Day 6 at 1279:19 to 1280:5 (Harrison). Harrison testified that concepts of reinforcement were used from Punches plan. Id.

Harrison stated that parents had had a lot of success with having a BCBA work full-time with XX. Tr. Day 6 at 1315:8-14 (Harrison).

After the January 28 IEP meeting, when parents voiced their objection to removing XX from the general education classroom, TSE staff worked to get XX back in the general education classroom more often and to create strategies for keeping her there. Tr. Day 4 at 865:10 to 866:5 (Dial). These strategies included having two paras with XX, having a safe space area in the classroom or in the hallway where she could take a break, looking for the precursors, and using a lot of positive reinforcement. Id. at 877:9-20.

⁵² The Harrison believed that the frequency data provided by Punches should have been converted to rate data (i.e., that the number of times something was observed should be bounded by the amount of observation time). Tr. Day 6 at 1338:24 to 1339:20 (Harrison). Harrison stated that, when he asked Punches about it, she said that all of the sessions were the same length of time and could easily be converted to rate. Id. at 1401:8-10. Harrison further stated that school's data collection system uses an interval system that overcomes rate. Id. at 1401:18 to 403:25.

For example, if staff could pick up that XX was getting agitated, they would give her two options such as safe space, take a break, give a hug, etc. Id.

Also, at some point in January or February, the school and parents come to a conclusion that XX's failure to eat lunch might be negatively affecting her behaviors. Tr. Day 5 at 10:1106-18 (XX's mother). At that time, they decided to implement a morning healthy snack. Also, at some point later in the year, McCain started eating lunch with XX, and XX's eating began to improve.

Immediately following the January 28th meeting, the school began using an area in the hallway for XX to deescalate. Tr. Day 7 at 1625:3-20 (O'Brien). Additionally, staff began making sure that XX used the big restroom in the hallway rather than the individual restroom in the sped classroom. Id.

During the first week of February, Harrison spent 4.5 hours observing XX and working with staff. Harrison Time Sheet, P-61.⁵³ During this time, Harrison observed XX in the gen ed classroom and saw staff using the deescalation spot in the hallway. Tr. Day 6 at 1340:19 to 1341:3 to (Harrison). Harrison did not prepare any type of summary or report of his findings regarding XX. Tr. Day 6 at 1308:21 to 1309:7, 1364:6-21 (Harrison).

Harrison instructed the school team on how to deliver the primary reinforcers and how frequently to give them. Id. at 1361:3 to 1362:13. Harrison described that staff was "struggling with some of that kind of stuff." Id. For example, it is common to put primary reinforcers in a fanny pack that is easily accessible and can be easily transferred to a new person, but staff did not have that. Id.

In the weeks and months that followed, staff observed "small improvements" in the amount of time that XX spent in the general education classroom as they approached the end of the year. Tr. Day 2 at 431:25 to 433:20 (McCain). As Dial described it, from the beginning of February, staff observed "small gains" from week-to-week. Tr. Day 4 at 946:2-22 (Dial).

During this time period, staff changed its strategy and started removing XX into the hallway most of the time (instead of the resource room), and then tried to get her back to the gen ed classroom as quickly as possible. Tr. Day 2 at 431:25 to 433:20 (McCain).

Harrison testified that concepts and tools from behavior analysis have been very beneficial to XX. Tr. Day 6 at 1282:22 to 1284:7 (Harrison). Harrison talked with staff and showed them the type of language and the type of praise to give XX, and how to deliver the primary reinforcers (edibles) in the correct way. Id. Harrison testified that training is an ongoing part of everything, and it must be tailored to the function of behavior for each individual child. Id. On several occasions, Harrison met with McCain and her paras and modeled how to deliver primary reinforcers. Tr. Day 6 at 1267:12-14 (Harrison).

r. February to Early March: Daily Data Sheets

In February and March, the school continued to keep daily data sheets on days that were not provided to parents. It appears the record does not contain a data sheet for each school day. Compare Data Sheets, P-128 with Data Sheets, P-128A. The data sheets indicate that XX continued to engage in problem behaviors during February and March. Additionally, the data sheets indicate that XX was still

⁵³ Specifically, Harrison spent one and half hours on February 4, one hour on February 5, and two hours on February 6. Harrison Time Sheet, P-61. The time sheet does not delineate how this time was spent.

being removed from the general education classroom. The data sheets do not track the amount of time that XX was spending in the general education classroom.

As discussed below, the type of data that was collected varied at different points during this time frame. The record does not reflect who recorded the information, what criteria was used, or how the data was used. Primarily, the data sheets appear to be recording the whether the problem behavior occurred (i.e., yes or no) during each 30-minute interval. The data sheets do not provide information regarding what strategies or steps staff was taking in response to the behaviors, or the effect of those strategies.

For example, for February 4th, the data sheet indicates that XX engaged in disruption in 13 of 15 intervals; followed directions in 2 of 15 intervals; had positive peer interactions in zero of 15 intervals; and displayed aggression in 13 of 15 intervals. See Data Sheets (02/04/2025), P-128. The column for "activity completion" is left blank. Id. There are no additional notes on this sheet. Id.

For February 5th, the data sheet indicates that XX had activity completion in 7 of 13 intervals; engaged in disruption in 7 of 13 intervals; followed directions in 5 of 12 intervals; had positive peer interactions in 2 of 11 intervals; and displayed aggression in 6 of 13 intervals. See Data Sheets (02/05/2025), P-128. The sheet does not indicate why data was not collected on all behaviors for all intervals.

The handwritten notes for February 5th indicate that, at certain times in the day, XX engaged in, *inter alia*, the following behaviors:

9:48 – indoor recess – eloped towards front – refused to return to Gast's room
9:55 – running in halls – very escalated
10:40 – tried to hit – did hit – had to remove from classroom – would not go to reset room
10:44 – went to reset room
11:40 – tried to stand on a stool, told "no," and eloped. Hitting & headbutting. Adult/staff member came to help get her to reset room
11:50 helped escort to M&M – ran out when class doing loud/animated actions. Eloped to get headphones, assisted her back...[illegible].

Data Sheets (02/05/2025), P-128.

For February 6th, the data sheet indicates that XX had activity completion in 2 of 11 intervals; engaged in disruption in 10 of 11 intervals; followed directions in 1 of 11 intervals; had positive peer interactions in 0 of 11 intervals; and displayed aggression in 10 of 1 intervals. See Data Sheets (02/06/2025), P-128. The sheet indicates no data was collected after 2:00 p.m. As discussed below, XX was suspended for the afternoon on this day.

The handwritten notes for February 6th indicate that XX engaged in, *inter alia*, the following behaviors:

8:51 – left room, hit, running halls
9:05 – B.T.C. [back to class]
9:31 – hit [unknown person] passing in hall – transition to Adams – [unknown person] just kept walking, [unknown person] was not crying or talking (he was minding his own business)
9:33 – on task with Adams – testing & play dough
9:50 friendly exchange w/ [unknown person]
9:54 – eloped to hallway – mad at a classmate [who] said she couldn't join (in his defense those were the rules of only 3 at a play station). When told she could play, mad & eloped.

10:14 – back to class – unhappy with schedule choices – went for [unknown person]
- tried to hit & pinch him – grabbed clothes. Eloped when going to reset room....
[illegible].

Data Sheets (02/06/2025), P-128.

For February 7th, the data sheet indicates that XX engaged in disruption in 12 of 14 intervals; followed directions in 3 of 14 intervals; had positive peer interactions in 0 of 14 intervals; and displayed aggression in 12 of 14 intervals. See Data Sheets (02/07/2025), P-128. The column for “activity completion” is left blank. Id.

The handwritten notes for February 7th indicate that, at certain times in the day, XX engaged in, *inter alia*, the following behaviors:

8:40 Hit, yelled, kicked, got frustrated doing a puzzle...

9:00 Back to class with 4 adults

Biting door handle hard when Frustrated

9:10 escalated

9:31 B.T.C. [back to class]

9:45 recess, got frustrated Eloped. 11:40

Recess in Ritchey's room * * *

Data Sheets (02/07/2025), P-128.

Exhibit P-128 does not contain data sheets for days between February 7 and 24. After February 24, the data sheets contain noticeably fewer handwritten notes. Also, beginning on February 24, the categories listed on the data sheet changed to (1) activity completion; (2) stayed in class; (3) positive peer interaction; and (4) aggression. See Data Sheets (02/24/2025), P-128. The record does not reflect the reason for this change.

For February 24th, the data sheet indicates that XX had activity completion in 5 of 10 intervals; stayed in her assigned space in 5 of 10 intervals; had positive peer interactions in 5 of 7 intervals; and displayed aggression in 5 of 10 intervals. See Data Sheets (02/05/2025), P-128. The sheet does not indicate why data was not collected on all behaviors for all intervals. Further, the sheet does not contain any handwritten notes.

For February 25th, the data sheet indicates that XX had activity completion in 7 of 14 intervals; stayed in her assigned space in 6 of 14 intervals; had positive peer interactions in 7 of 14 intervals; and displayed aggression in 7 of 14 intervals. See Data Sheets (02/25/2025), P-128. Handwritten notes indicate that: (1) in the morning, XX “eloped to front;” (2) around 11:00 a.m., she “hit/eloped” from cafeteria; and (3) at 12:51 she was “BTC” (or back to class). Id.

Beginning on February 26, the category of “stayed in assigned space” was changed to “stayed with class.” See Data Sheets (02/26/2025), P-128. The record does not indicate the reason for this change.

For February 26th, the data sheet indicates that XX had activity completion in 7 of 11 intervals; stayed with class in 6 of 11 intervals; had positive peer interactions in 4 of 11 intervals; and displayed aggression in 4 of 11 intervals. See Data Sheets (02/25/2025), P-128. The data sheet indicates that XX arrived to school a half an hour late; however, it does not indicate why data was not collected for some

of the other time intervals. Handwritten notes indicate that XX “ran off playground,” “hit student, tried to headbutt student,” and “hit staff & ripped hallway artwork.” Id.

The data sheets for February 27 and 28, and March 3 and 10 appear similar inform to the February 26th data sheet. See Data Sheets (02/27/2025, 02/28/2025, 03/03/2025, 03/10/2025), P-128. The data sheets contained in Exhibit P-128 end on March 12.

Beginning on or about March 4, the data sheets were modified to track the following categories of behavior: (1) aggression toward self; (2) aggression toward adults; (3) aggression toward peers; and (4) elopement. See Data Sheets (03/04/2025, 03/05/2025, 03/06/2025, 03/11/2025, 03/12/2025), P-128. The record does not reflect the reason for this change. As discussed below, around this time, the school started sending the daily data sheets home to parents.

s. February 6: One-Day Suspension From School

On Thursday, February 6, XX was suspended from school for one day. Notice of Short-Term Suspension, P-84. The notice of suspension stated the following reason for the suspension:

[XX] hit a student while walking past him in the hallway and kicked the same student while in the classroom. While outside at lunch recess, a student hurt themselves and then [XX] ran after her but retreated when the staff member said “no.” When the student got on the wood chips, then [XX] ran up to her and started hitting her. She stopped when the para intervened and went into the grassy area. [XX] went after her again, grabbing her coat and hitting until her hands were blocked. While a teacher was walking the student to the health room, [XX] Went after the student again.

Id. As a practical matter, the suspension lasted less than a day; XX was picked up in the afternoon on February 6 and returned the next school day. Tr. Day 4 at 894:5 to 896:12 (Dial).

Parents believe the school issued the suspension in retaliation because parents had recently filed their initial due process complaint in this proceeding. Tr. Day 2 at 362:7 to 363:12 (XX’s mother).

School staff testified that XX’s behavior on February 6 was different than her previous behavior, in that she was targeting a new student with a higher level of intensity and frequency. Tr. Day 4 at 894:5 to 896:12 (Dial).

The fact of the February 6th suspension and/or whether it was justified is not material to the rulings made in this Decision. Accordingly, the Hearing Officer makes no further factual findings in this regard.⁵⁴

t. February 26: Elopement from Playground

On Wednesday, February 26, McCain emailed parents, Dial, Richards, and Ritchey that XX had eloped from the playground, as follows:

[XX] was given several reminders of what is next. She repeated what’s next, then on the last time down the slide, I was able to take her hand and we took two or three steps before she pulled away from me and ran. She ran across the playground and past the fence toward the front parking lot. She ran

⁵⁴ Petitioners did not raise a retaliation claim in their Amended Complaint. Accordingly, the Hearing Officer also makes no legal findings in this regard. See 34 C.F.R. § 300.511(d) (the party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise).

[through] the grass area at the front of the building and was stopped near the front school doors and escorted into the building.

I do not feel that we have provided a safe learning environment for her.

February 26, 2025 Email Chain, P-88 (emphasis added).

XX's mother responded by, *inter alia*, expressing deep concern about her daughter's safety, and copying Dr. O'Brien on the email response. Id.

At the due process hearing, McCain testified that she included the parents on the February 26 email for the following reasons:

I feel like we had trialed a number of strategies to keep Ember safe across all learning environments during the school day. I did not feel like we were making adequate progress with the individuals that I reached out to; therefore, I included the parents in my concerns.

Tr. Day 2 at 387:13-23 (McCain) (emphasis added).

McCain testified that, at this point in time, she felt that she was still in need of training on how to deal with XX. Id. at 393:10-12. McCain believes that continued training would have helped to prevent the escalation in XX's behaviors. Id. at 400:10-18. She sought ongoing training from a variety of people and places. Id.

Ritchey followed up with an email to parents stating, among other things, that the school would take steps to block the open sidewalk area that leads to front of the building when XX was recess. February 26, 2025 Email Chain, P-88. Ritchey further stated that the school was looking into the possibility of adding a gate in this area, and that they would evaluate other options, including a restricted play area, if XX continued to elope from the playground. Id.

Shortly after the February 26 elopement incident, the school installed a gate to block students at recess from accessing the parking lot area on the north side of the building. Tr. Day 8 at 1893:6-17 (Ritchey); Tr. Day 2 at 428:8-12 (McCain).

u. February: Amended Proposed BIP

During the first week in February, Harrison spent another 4.5 hours observing XX and working with staff. Harrison Time Sheet, P-61.⁵⁵ During this time, Harrison worked with Richards to prepare a revised BIP ("February BIP"). Tr. Day 6 at 1438:20 to 1439:4 (Harrison); see also February BIP (02/25/2025), P-89.

With respect to the description of problem behaviors, setting events and antecedents, hypothesis of behavior function, and replacement behaviors, the February BIP is virtually identical to the January BIP (discussed above). See February BIP at 1-2 (02/25/2025), P-89; January BIP at 1 (01/28/2025), R-204.

As to precursor behaviors, the February BIP included "pacing" and "visually scanning the room," which were also included in the January BIP. February BIP at 1 (02/25/2025), P-89; January BIP at 1

⁵⁵ On February 4, Harrison spent 1.5 hours to "observe and discuss." Id. Additionally, he spent one hour on February 5 and two hours on February 6; the time sheet does indicate how this time was spent. Id.

(01/28/2025), R-204. The February BIP replaced the behavior of “stating ‘no’” for the behavior of “whining” in the January BIP. Id.

Additionally, as to precursor behaviors, the February BIP added the following description:

When [XX] begins to display precursor behaviors, staff should offer her two regulatory options: “safe space or hug.” Her safe spaces is a taped off square in her classroom and taped off square in the halls. Staff should get down to [XX’s] level when speaking to her and offering options. Give her time to make her choice; [XX] sometimes requires a longer “think time” than same-age peers. Limit words during this time, as [XX] needs space and time to process. If [XX] does not choose one of the regulatory options and continues displaying precursor behaviors, remain in close proximity to her while blocking her access to other students and the door. Continue to provide verbal prompts of two options.

February BIP at 1 (02/25/2025), P-89.

As to proactive strategies, the February BIP was completely rewritten, as follows:

Proactive Strategies:

What should staff do to prevent the problem?

When [XX] is at baseline, staff working with her should be highly engaging (animated facial expressions, warm tone of voice, attending to what she is doing, engaging her in conversation). Staff should provide her with behavior-specific praise for meeting expectations (ex: “You are sitting in your chair in Mrs. Gast’s class! Great job!”). At variable intervals, staff will provide [XX] with edible reinforcers paired with the behavior-specific praise.

Refer to [XX’s] schedule any time you are transitioning (ex: between classroom activities, back from reset room, coming in from recess, coming back from an elopement). As you start the transition back to the general education classroom, say, “Let’s check your schedule.” Then, refer to her schedule (which will travel with her) to see what activity she will go to. If she’s coming back from the reset room, verbalize to check her schedule, which means you are going to re-join classmates and she will be escorted to class to look at her schedule which is sitting in her work space.

Staff should have a basket prepared of activities/tasks for [XX] when she completes her classwork early. This should include both preferred activities and academic tasks.

At this time, two special education staff members should be accompanying [XX], at all times. While at baseline, one staff member should be providing direct support and the second staff member should be recording data. During times of escalation, both staff members will be providing direct support to [XX]. Staff should be in close proximity to [XX] at all times, including lunch and recess. During recess, one staff member will be positioned by the area in which she has most recently or most commonly tried to elope.

When [XX] appears to be physically uncomfortable but without an identified basic need (toileting, hunger, pain, etc.), staff will offer her a break.

February BIP at 2-3 (02/25/2025), P-89 (emphasis omitted).⁵⁶

Additionally, as to reactive strategies, the February BIP was rewritten, as follows:

Reactive Strategies (Least to Most Restrictive):

What should staff do if the problem behavior occurs?

During escalation, coming back from the reset room, or coming back from her safe space, no incentives are provided. Those are neutral processes and she will learn to move through those steps with no emotion or reinforcement from adult expression, tone of voice, or tangible items. Incentives come when she's already doing the right thing and are given intermittently (and often at first) for being on-task.

If [XX] chooses one of the regulatory options, remain in close proximity until she displays a calm body and is ready to resume her schedule. If it is a hug, wait for [XX] to let go of you first, give her the input via hug/gentle squeezes of hand/gentle squeeze biceps until she disengages. If she chooses her safe space, staff will walk with her to her square and allow her to pace/sit/etc. within the boundaries of the square. Staff will not enter the safe space but will be ready to use body positioning if she tries to come out of the square while still upset. Redirect her back to her safe space (square). No time limit on her use of the safe space.

If [XX] begins to display aggressive behaviors (physical aggression toward herself, staff, or students, throwing or kicking furniture or objects), [XX] needs to be removed from the classroom to maintain safety. Staff will use body positioning and/or a Mandt-approved physical escort out of the classroom/current setting and into the reset room. Staff will use verbal prompt of "calm body, then X (next activity or schedule)" to communicate the expectation to [XX] with a neutral voice and facial expressions.

Often, [XX] will not walk to the reset room right away and will either drop to the floor or will attempt to run around the school hallways. If [XX] drops to the ground, staff will sit or stand near [XX], maintaining alertness in an attempt to anticipate her next movements. As long as she is on the ground, staff will continue providing the verbal prompts described above and will give her time. If [XX] attempts to run away in the hallways, staff will say "stop, hand" in a firm voice. Staff will attempt to block [XX's] access to other hallways using body positioning and closing hallway doors when possible. If [XX] is physically aggressive toward staff during an escalation, staff will step back and say "safe hands." With time and continued prompting, [XX] will comply and choose to walk to the reset room. Once in the reset room, [XX] is expected to sit on the back wall for two minute using a visual timer. When the two minutes are complete, staff will prompt [XX] to complete three compliance tasks (ex: spell your name, touch your nose, jump three times), then apologize to any injured persons. Staff will remind [XX] of the expectation to have "safe hands." Upon leaving reset room, remind [XX] that we will "go check your schedule" which means we are going back with classmates. Escort her back to class, check her visual schedule which is at her seat, and resume activity with class.

⁵⁶ Although this was the first written document stating that XX would have 2:1 support, school staff had previously discussed the change in meetings with parents. Tr. Day 4 at 919:13-24 (Dial).

February BIP at 3 (02/25/2025), P-89 (emphasis omitted).

v. February 24: Meeting with School Staff and Parents

On Monday, February 24, a meeting was held with parents, Richards, O'Brien, Ritchey, McCain, and Gast. Meeting Notes (02/24/2024), P-87. Notes from the meeting indicate that, among other things, staff shared that XX was doing better with using the hallway bathroom (instead of the bathroom in McCain's room), that disrobing had gotten better, and that praise and reinforcement were going "really well." Id. The notes further reflect that the parties discussed the format of having two paras support XX (one providing direct support, and one taking data), and that Mom requested a para "right by her side at all times, including recess." Id. Further, the notes state that the parties discussed adding elopement to the data sheet, and that Mom would like aggression to be defined as to self or to others on the data sheet. Id. The notes further indicate that staff shared a previously proposed draft BIP for Mom to potentially edit (i.e., the February BIP, discussed above),⁵⁷ and that O'Brien brought up the subject of tracking the percentage of time in the classroom each day. Id.

Parents were supportive of the school's proposal to have two paras with XX. Tr. Day 5 at 1064:11 to 1065:2 (XX's mother). Mom asked for a para "right by her side" due to her elopement behaviors and the potential dangers associated therewith. Id. Mom felt that the recess situation was unsafe due to a lack of staff training combined with "a lack of boundaries, lack of fencing in the area with a public road right there." Id. at 1239:24 to 1240:4. Mom testified that XX was still eloping, and nothing was changing. Id.

Mom understood that the idea of tracking whether XX was in the classroom would give parents a better understanding of whether the IEP was being followed (i.e., whether XX was spending at least 80 percent of the time in the general education classroom). Tr. Day 5 at 1059:20 to 1060:16 (XX's mother). However, parents did not receive any sort of tracking information regarding how much time XX was spending in the general education classroom for the remainder of the school year (or at any point in the school year). Id.

On March 6, 2025, XX's mother signed a proposed IEP amendment that purported to, among other things, add the February BIP to the IEP. IEP Amendment Between Annual IEP Meetings dated 03/03/2025, P-90; Day 8 at 2030:12 to 2032:10 (Richards).

The record is unclear whether the school implemented the February 25th BIP. Richards testified that the BIP was not implemented, because the school never received a signed PWN from parents. Day 8 at 2030:12 to 2032:10, 2039:18 to 2040:7 (Richards). The record is not clear as to the reason why a PWN was not signed; at least some testimony indicated that Richards was trying to send the PWN home to Mom, and Mom indicated an intent to sign it. See, e.g., March 7-13, 2025 Email String (Richards), R-216.

⁵⁷ The record does not reflect whether the school had shared the February 2024 BIP with parents before this time.

4. March to May: End of Kindergarten

As noted, beginning in February and over the following weeks and months, staff observed “small improvements” in the amount of time that XX spent in the general education classroom as they approached the end of the year. Tr. Day 2 at 431:25 to 433:20 (McCain); see also Tr. Day 4 at 946:2-22 (Dial) (staff observed “small gains” from week-to-week). The record does not contain data or testimony regarding the percentage of time that XX spent in the general education classroom during this time period.

Beginning in February and continuing through the end of the school year, McCain put herself on the schedule as a full-time person assigned to XX (in addition to a second para assigned to XX as well). Tr. Day 2 at 437:7 to 438:11 (McCain). McCain attributes this factor, along with the training by Paxton (discussed below), as the main changes that resulted in an improvement in XX’s behavior during this timeframe. Id.

The change to having McCain work 1:1 with XX was extremely helpful to XX’s progress. Tr. Day 4 at 866:19 to 867:15 (Dial). Dial also agreed that the support and input that staff received from Paxton/TASN (discussed below) was helpful in these efforts. Tr. Day 4 at 865:10 to 866:5 (Dial).

McCain testified that, during this time, the changes in 2:1 staffing to XX were not part of XX’s current IEP or BIP. Tr. Day 2 at 438:12 to 439:7 (McCain). McCain stated these were “resources that [staff was] using to formulate a new IEP and a behavior plan, so we were trialing strategies to formulate the behavior plan.” Id. McCain testified that: “We never found, in our opinion, something that justified a solid behavior plan so trials continued, and no behavior plan was created until the end of the school year.” Id. In other words, McCain described that the “trialing” of different strategies was “ongoing” since October 2024 and did not culminate into a formal behavior plan until May 2025. Id.

Beginning on March 6 and continuing through May 22, the school sent home the data sheets contained in Exhibit P-128A. See Data Sheets, P-128A. These data sheets tracked XX’s behaviors in the following categories: (1) aggression toward self; (2) aggression toward adults; (3) aggression toward peers; and (4) elopement. See Id. Other than “yes” or “no” information for each 30-minute interval, the data sheets contain little-to-no handwritten notations regarding specific details of XX’s behavior. See Id.

Over the course of the school year, the paras working with XX received input from various sources including Holcomb, Harrison, and Paxton. Tr. Day 4 at 905:15 to 907:6. Beginning in February or March, 2025, Dial offered an optional weekly or biweekly time to meet with the paras after school to talk through questions and issues relating to XX. Id.

O’Brien described that, during the school year, staff was “working on training,” and she thought it was something that they were “gradually making progress on.” Tr. Day 7 at 1587:11-16 (O’Brien). O’Brien further stated that staff were “putting strategies in place in response to the behaviors [they] were seeing.” Id. at 1589:21-22.

In March 2025, PBS secured another RBT and resumed providing ABA services to XX during the B&G Club after-school program. Tr. Day 3 at 633:7-10 (Punches).

Around this time, Punches recommended to Mom that XX needed 30 hours of ABA therapy direct services weekly to reduce problem behaviors and increase skill acquisition goals. March 12, 2025 Email, P-92; Tr. Day 5 at 1070:10-19 (XX’s mother). Punches further stated that XX needed “1:1 support to help

her in social settings, communication, and as antecedent and management strategies to reduce problem behaviors." March 12, 2025 Email, P-92.

On March 25th, Mom met with Paxton for the first time. Tr. Day 5 at 1151:26 to 1152:25 (XX's mother). Mom does not believe that Paxton worked with anyone at the school regarding XX before March. Id. at 1153:1 to 1154:20, 1153:4-7.

On March 25, Paxton came to observe XX at TSE and make recommendations. Tr. Day 7 at 1636:20 to 1637:5, 1712:21 to 1713 (O'Brien). Paxton then met with the District did more training with staff. Id. at 1712:21 to 1713.

On April 2, Paxton emailed Mom that she planned to provide training to TSE staff as follows:

I am going to [TSE] next Thursday, April 10th Admin is getting a sub for Mrs. McCain. We are going to tighten the afternoon structure with visual cues and a visual schedule so [XX] can continue to remain as independent as possible and give her a little more predictability at a more challenging time during her day.

I will do the training with Mrs. McCain that day and work with the paras as they are available. Dr. O'Brien asked me if I could come on the 21st to do some training as it is a PD day. I have availability that afternoon and will be there. I will respond to the toileting conversation once I get more details. Thank you.

April 2, 2025 Email, P-99.

On April 18, Paxton emailed Mom that she would be at TSE in the afternoon on April 21 to do some training with the paras. April 18, 2025 Email, P-102.

In April 2025, Paxton provided on-site training to McCain and paras at TSE. April 2, 2025 Email Chain, P-100; Tr. Day 2 at 403:17 to 407:12 (McCain). The training provided by Paxton was the best and most comprehensive training that McCain received during the 2024-25 school year. Tr. Day 2 at 403:17 to 407:12 (McCain). McCain described that, according to data, parts of Paxton's plan showed improvement in XX's behavior. Id. McCain stated that the training provided by Paxton "was well received and implemented to the best of staff's ability." Id.

Mom understood from McCain that the training provided by Paxton was "a big help." Tr. Day 5 at 1074:13 to 17 (XX's mother).

On April 24, Dial emailed Mom stating that he had worked out a solution with the bus company. April 24, 2025 Email, P-104. Under the new procedure, the bus driver would proceed as follows: (1) pull up to the house and count to 30; (2) if no one came outside, the driver would honk; and (3) after the honk, the driver would count to 30 again and then leave if no one came outside. Id. This was a good plan for parents; however, it took a long time for the school to come up with it. Tr. Day 5 at 1078:22 to 1079: 24 (XX's mother). At the January 28th IEP meeting, parents understood that Dial was going to work something out. Id. It took almost two months for him to do so. Id.

By the end of the school year, McCain felt like she was receiving adequate training to make an impact with XX. Tr. Day 2 at 465:14-22 (McCain).

As the school year progressed, Harrison saw many occasions on which XX was highly successful around her general education peers. Tr. Day 6 at 1319:9-15 (Harrison).

In May of 2025, Harrison informally observed XX and/or talked with staff several times when he was in the building working with other students. Tr. Day 6 at 1333:1-13 (Harrison). Based on these observations, Harrison saw that progress had been made with XX since December. Tr. Day 6 at 1355:9-14 (Harrison).

5. Academic Progress in Kindergarten

a. Progress on IEP Goals

XX's progress report for Kindergarten indicates that, in the first three quarters, she made inadequate progress on many of the goals.⁵⁸ See Progress Report, P-126.

As noted, the May 2024 IEP included five goals targeting functional needs, with no quarterly measurable objectives listed for any of the goals. The first goal aimed for XX to be able to sit in the group for 5 to 15 minutes without disruptive behavior on at least 80 percent of opportunities by the end of the IEP year. May 2024 IEP at 3, part 2 of P-25. For the first quarter (as of October 11, 2024), the progress report stated that XX's progress was adequate to meet the first goal, that she was able to sit in the group for 10-15 minutes without disruptive behavior/attempting to leave at least 80 percent of the time. Progress Report at 1, P-126. However, for the second quarter (as of December 17, 2024), the report stated that XX's progress was inadequate, in that she was "demonstrating aggressive behaviors and is unable to participate in the general education setting for more than 2 minutes." Id. Similarly, for the third quarter (as of March 13, 2025), the report stated that her progress was inadequate, in that she was able to sit with her group with safe behaviors for up to five minutes, but it was not consistent at that time. Id.

The second goal aimed for XX to transition off of an uncompleted activity or to an adult directed activity at least 90 percent of the time. May 2024 IEP at 4, part 2 of P-25. For the first quarter (as of October 11, 2024), the progress report stated that XX's progress was adequate to meet the second goal, in that she was able to smoothly transition in accordance with the goal approximately 20 percent of the time. Progress Report at 2, P-126. However, for the second quarter (as of December 17, 2024), her progress was inadequate, in that she was able to smoothly transition less than ten percent of the time and was "unable to demonstrate safe behavior in the general education classroom at this time." Id. For the third quarter (as of March 13, 2025), XX's progress was also inadequate, in that she "require[d] teacher/adult prompt 90% of the time to transition from one activity to the next." Id.

The third goal aimed for XX to be able to imitate different sequences of actions (3 or more components) when prompted at least 80% of the time. May 2024 IEP at 6, part 2 of P-25. For the first quarter (as of October 11, 2024), the progress report stated that XX's progress was adequate to meet the third goal, in that she was able to imitate different sequences of actions (3 or more components) when prompted at least 50% of the time. Progress Report at 3, P-126. For the second quarter (as of December 17, 2024), her progress was inadequate, in that she was "unable to demonstrate safe behavior in the general education classroom at this time." Id. For the third quarter (as of March 13, 2025), XX's progress was reported as adequate, in that she was able to imitate different sequences of actions (3 or more components) when prompted at least 80% of the time. Id.

⁵⁸ The record does not contain information regarding XX's progress report for the fourth quarter of Kindergarten.

The fourth goal aimed for XX to be able to take turns independently at least 75 percent of the time. May 2024 IEP at 7, part 2 of P-25. For the first quarter (as of October 11, 2024), the progress report stated that XX's progress was adequate to meet the fourth goal, in that she was able to take turns independently at least 10 percent of the time. Progress Report at 4, P-126. For the second quarter (as of December 17, 2024), her progress was reported as inadequate, in that she was able to take turns on zero percent of the opportunities of observed. Id. For the third quarter (as of March 13, 2025), XX's progress also adequate, in that she was able to take turns independently on only 10 percent of the opportunities. Id.

The fifth goal aimed for XX to increase her functional communication skills by providing an appropriate short answer to the question at 50 percent accuracy as measured by Short-Cycle Assessments. May 2024 IEP at 8-9, part 2 of P-25. For the first quarter (as of October 11, 2024), the progress report stated that XX's progress was adequate to meet the fifth goal, in that she answered grade level "wh" questions (what, where, when, who, and why) with 50 percent accuracy, pictured questions with 28 percent accuracy, and yes/no questions with 60 percent accuracy (noting that she answered all of the yes/no questions with "yes"). Progress Report at 5, P-126. For the second quarter (as of December 17, 2024), her progress was also reported as adequate, in that she answered "what" and "why" questions with 80 percent accuracy, "when" questions with zero percent accuracy, "where" questions with 60 percent accuracy, and "who" questions with 70 percent accuracy. Id. For the third quarter (as of March 13, 2025), XX's progress was reported to be adequate, in that she answered questions with 75 percent accuracy.⁵⁹ Id.

b. Report Card

XX's report card for Kindergarten indicates that, in the first, third, and fourth quarters, she was either on target (OT) or met the standard (MS) for the subjects taught in those quarters. Tr. Day 4 at 889 to 893:8 (Dial); Kindergarten Report Card, P-210.

For the second quarter, however, XX received all dashes in all subjects. Kindergarten Report Card, P-210. In other words, XX did not receive a grade for any of the subjects taught in the second quarter of Kindergarten. Id. This is because the general education teacher, Mrs. Gast, was not comfortable giving XX a grade because XX was spending so much time in the sped classroom during the second quarter. Id. Either the general education teacher or the special education teacher should have given XX grades for the second quarter. Tr. Day 7 at 1725:7-25 (O'Brien).

From the third to fourth quarters, XX's grades increased from OT to MS in many subjects, and remained at OT for many subjects as well. Kindergarten Report Card, P-210.

c. Punches' Assessment

At the time of the due process hearing (i.e., in the summer of 2025), Punches had recently performed an updated assessment of XX that revealed regression.⁶⁰ More specifically, Punches testified that, based on her personal observations and recent assessment, she found that XX had regressed in areas including

⁵⁹ The descriptions for data collected on the fifth goal differ for each quarter such that it is difficult to determine whether the progress in communication skills was measured in similar ways. See Progress Report at 5, P-126.

⁶⁰ The most recently performed assessment was not submitted as an exhibit in the case. Tr. Day 3 at 632:11-19 (Petitioner).

echolalia, elopement, and play skills with peers. Tr. Day 3 at 629:4 to 631:3 (Punches). Punches stated that, under the new behavior plan that she had recently prepared, she was having to put old goals back into the plan, because XX had moved backwards on the goals over her Kindergarten year. Tr. Day 3 at 694:15 to 695:2 (Punches). Punches further stated that, although the school was reporting increasing behaviors with disrobing, aggression, and self-injury, PBS did not observe these increased behaviors during the time it was providing services in afterschool care. Tr. Day 3 at 635:3-12 (Punches).⁶¹

Punches opined that, if the school had allowed a BCBA consultant with RBTs to support XX during school, or if the school had allowed their own staff to become trained as RBTs, the school would have been able to better handle the situations involving XX's behavior, and further, with proper oversight, the school would have been able to know when something was not working and make appropriate modifications right away. Tr. Day 3 at 685:9-21. (Punches).

Punches further stated that inconsistencies in implementation and reinforcement can have a huge negative impact on children with autism, like XX, as follows:

So one of the hardest things for individuals in autism is that [intermittent] reinforcement.... Because the issue is if you're reinforced one time and then later it's not, you're going to continue to do that behavior because you never know when you're going to get something [and] when you're not going to get something. So it makes it really hard to reduce problem behaviors. That's why we always say we need everybody on the same page. That's why we like collaboration between the schools and [I share my information] to help because I want them to see what's working, what preventative strategies we used, all of that stuff.

Tr. Day 3 at 685:22 to 686:14 (Punches).

Punches opined that XX needs ABA in her environment, including at school. Tr. Day 3 at 691:8-25 (Punches). Punches further stated that XX needs 1:1 direct support in order to continue working on her social and communication skills, and to also work on prevention strategies to reduce problem behaviors. Id.

Punches acknowledged that XX's behaviors can and do fluctuate depending on what is occurring in her environment. Tr. Day 3 at 738:10 to 739:22 (Punches). Punches stated that, if she has 1:1 support of ABA-trained people, they can decrease her behaviors and keep them down to a low frequency. Id.

Punches stated that, with the proper use of ABA principles, and based on her experiences with XX, Punches is confident that XX's behaviors at TSE could have been monitored and controlled, and she would not have been required to be pulled from the general education classroom into the special education classroom. Tr. Day 3 at 749:11 to 752:7 (Punches).

⁶¹ Punches also testified that she observed regression based on information received directly or indirectly from the school. Tr. Day 3 at 629:2 to 635:20 (Punches). The record does not establish that this would be an apples-to-apples comparison (i.e., that the data was collected by the school was done in the same way and in a similar setting to the data collected by Punches). Accordingly, to establish regression, the Hearing Officer does not rely on this portion of Punches testimony, including the school's data regarding WH questions.

Punches further testified that the fact that a teacher may be using ABA principles in the classroom, such as a visual schedules and reward systems, does not necessarily mean that they are practicing ABA or using the principles appropriately. Tr. Day 3 at 701:7 to 702:7 (Punches).

6. Educational Record

In the spring of 2025, Mom asked the school for XX's educational record. Thereafter, multiple emails transpired as Mom tried to obtain complete information from the school.

On April 28th Mom sent an email to O'Brien, Dial, Richards, and McCain, stating that, in the educational record that she was provided, she did not see certain information, as follows:

In the educational record, I do not see any information regarding speech therapy or OT. No notes or progress. I only have meeting notes for the meetings in 2025. I don't see anything about her suspension or that meeting. I don't have any information regarding staff and parent interaction. One example would be phone calls between us and staff, such as picking up due to not riding the bus. I don't see anything regarding Rich – bringing him in and whatever he did as part of her team. I don't see anything regarding the original IEP with tracking and progress for those goals. I would also like the data sheets from the last one sent which was 3/12, since I do not receive the same one that comes home.

March 7 to May 13, 2025 Email chain at 1, P-116.

On April 30th, O'Brien sent Mom an email and attached the progress reports for the IEP goals. Id. at 13. In the email, O'Brien stated that the last page of the progress report involved XX's speech/language goal, and that there was no goal for OT, because it was an indirect service. Id.

On April 30th, Mom emailed O'Brien, stating as follows:

Thank you for those. Can I get information regarding the tests performed to reach those IEP goals? How was the percentage found to get to their result? Dates for the speech and data towards those goals? I know OT was a consult and yes, that is why there is no goal. Do, does that mean there is no record of OT checking in on her to determine if she did need services? No dates of when they checked on her?

I did not get a response on the other items I mentions. I also need the date(s) the FBA was performed and by who. And how the data was used to get the results presented in the BIP.

Id. at 13.

On May 1st, Richards responded to the April 28th email and attached Harrison's time log, the suspension letter, and IEP documents and meeting notes from 2021-2022. Id. at 1-2. In the email, Richards ask if there were other meeting notes that Mom was thinking of. Id. Richards further stated that staff did not keep notes of every interaction with parents, and there were no notes taken at the meeting regarding XX's suspension. Id. Richards also attached progress reports from the current IEP, stating that they "are sent electronically from our Powerschool system after each quarter." Id. In the email, Richards asked McCain for information regarding the daily data sheets. McCain responded that "[a]ll data sheets are sent home daily." Id. at 2.

On May 9th, Mom emailed O'Brien, asking for more information regarding the FBA, as follows:

I still haven't received any information regarding the FBA. I'm not aware of when it was conducted. Can you please clarify the date or time period [in which] it was completed? Also, who conducted the FBA

and who developed the BIP based on it. Ms. McCain has already replied and I still have not gotten an answer.

Id. at 3.

On May 13th, O'Brien responded with an email that attached three BIPs, stating as follows:

The FBA and BIP (1st one attached), were presented at the January 28th meeting, then revised on 2/25 (2nd one attached), but we did not receive consent to implement it (PWN not signed). The FBA was conducted and draft BIP written by Ms. McCain, Mrs. Richards, [and] Dr. Harrison.

The third BIP attached is the one included in [XX's] new/draft IEP. It was written by Ms. McCain.

Id. at 5-6.

On May 13th, Mom responded to O'Brien stating, among other things, that she already had copies of the BIPs and wanted to know the date(s) on when the FBA was conducted. Id. O'Brien responded that she had misunderstood the request and would need to check with the school on the dates of the FBA. Id.

The email chain does not include an answer to Mom's question as to when the FBA was conducted. See March 7 to May 13, 2025 Email chain, P-116. Mom testified that she never received an answer to her questions as to when the FBA was done. Tr. Day 5 at 1241:15-18 (XX's mother).

IV. Legal Analysis

Petitioners assert that, during XX's Kindergarten school year (2024-25) the District violated its obligations under the IDEA by: (1) failing to adequately develop and/or implement a meaningful IEP; (2) failing to timely and/or adequately address XX's behaviors when they manifested in October 2024; (3) failing to provide parents with full information regarding XX's escalating behaviors from October 28 to January 28; (4) not obtaining parental consent to conduct an FBA; and (5) substantially changing XX's placement without parental consent and in violation of LRE requirements. Amended Complaint at 2-3. Petitioners assert these violations resulted in the denial of a FAPE to XX and/or denied her parents a meaningful opportunity to participate in the educational decision-making process, resulting in educational loss and a denial of FAPE to XX. Petitioners seek equitable relief including: (1) compensatory education services; (2) mandatory professional development; (3) mandatory oversight, coordination, and staff training by a BCBA; and (4) development of an appropriate IEP and BIP in collaboration with a BCBA. Id. at 4.

Respondent denies it violated its obligations under the IDEA and further asserts that, at all times, the school provided XX with a FAPE. District's Response at 12-18. Respondent asserts that the May 2024 IEP was reasonably calculated to enable XX to make appropriate progress in light of her circumstances and that, in fact, XX did make academic progress. Id. at 13-14. Respondent further contends that, in late October 2024, the school responded appropriately to XX's escalating behaviors by collecting data and information over time, as part of an FBA, to create a BIP and propose changes to her IEP. Id. at 14-15. Respondent asserts that, from November 2024 through January 2025, the school conducted an FBA, but no parental consent was required because it was "not part of an evaluation or reevaluation for special education eligibility, but in an effort to provide daily support in the classroom due to XX's escalating behaviors ... and to create a BIP for the same purpose." Id. at 14. Respondent further contends that no change in placement occurred because (1) no formal placement decision was made and (2) staff always had the intent to return XX to the general education after her behaviors deescalated. Id. at 15-16.

Petitioners bear the burden of proving their claims. Schaffer v. Weast, 546 U.S. 49, 61 (2005). In determining whether XX received a FAPE, the Hearing Officer bases the decision herein on substantive grounds. See C.F.R. 34 § 300.513(a)(1); K.S.A. § 72-3416(g)(1). With regard to alleged procedural violations, the Hearing Officer may find a denial of FAPE only upon finding that: (1) the procedural violation did, in fact, occur; and (2) the violation impeded XX's right to receive a FAPE, significantly impeded her parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE, and/or caused a deprivation of educational benefits. 34 C.F.R. § 300.513(a)(2); K.S.A. § 72-3416(g)(2).

A. Failure to Develop and/or Implement IEP

Petitioners assert the school failed to develop and/or implement a meaningful IEP that adequately addressed XX's individualized needs. Specifically, Petitioners assert the May 2024 IEP was "generic" and inadequate because it lacked: (1) an FBA and/or a BIP; (2) measurable behavioral goals; (3) functional safety provisions; (4) individualized accommodations or services responsive to XX's known challenges; and (5) dedicated behavioral support and/or 1:1 adult assistance. Amended Complaint at 2.⁶²

1. FBA and/or BIP

Petitioners assert the May 2024 IEP was inadequate because it did not include an FBA or BIP to address XX's known behavioral needs. Amended Complaint at 2; Petitioners' FOF at 33, 36; Petitioners' Reply at 2, 5-7, 22, 34, 40-41. Specifically, Petitioners assert that, in light of the information they provided to the school in the spring of 2024, the IEP should have included an FBA and/or BIP to address XX's behavioral needs. See Id.

The District disagrees, asserting it could not appropriately complete an FBA or implement a BIP until it could observe XX's behaviors in the school environment. District's Response at 14.

As discussed, in the spring of 2024, parents provided TSE staff with the most recent FBA and BIP prepared by Punches, who was overseeing and/or providing full-time ABA therapy to XX in Pre-K at Jars of Clay. See April 2024 Email String, P-24. These documents indicated that, among other things, XX had deficits involving social, communication, and interverbal skills. See March 2024 Intervention Plan at 13 (03/18/2024), P-23. The information further indicated that XX was receiving 1:1 ABA therapy in the Pre-K setting to address maladaptive behaviors including physical aggression, throwing objects, and elopement. Id. The documents also included, among other things, detailed information regarding the function of XX's behaviors and strategies the BCBA was using to address the behaviors, including 15 short-term goals to reduce or replace the target behaviors. Id.

As part of the school's evaluation, TSE staff observed XX at Jars of Clay. During the observation, a dedicated, ABA-trained support person was prompting and assisting XX. Tr. Day 2 at 473:24 to 474:10 (Peacocke). In that setting, TSE staff observed, among other things, that XX: engaged in parallel play with prompting from a nearby adult; responded to proximity control; occasionally eloped from the classroom

⁶² Petitioners also assert the District failed to implement the IEP's requirement that XX participate in the general education classroom for at least 80 percent of the time. Id.; Petitioners' FOF at 32; Petitioners' Reply at 38. The Hearing Officer addresses this argument below, with respect to Petitioners' claims regarding unilateral change of placement.

setting, requiring adult assistance to return to the classroom; and often responded to “first/then” prompting in understanding the expectations and following the direction of an adult. May 2024 Evaluation/Eligibility Report at 2, part 1 of P-25.

At the due process hearing, the school's witnesses consistently testified that, under the circumstances, staff determined they needed to first see XX's behaviors in the Kindergarten classroom before they could appropriately conduct an FBA and/or draft a BIP for her IEP. See, e.g., Tr. Day 7 at 1601:14 to 1602:9 (O'Brien); Tr. Day 8 at 1992:1-14 (Richards) (once the school began observing a pattern of behaviors, it would be appropriate to put a BIP in place). Additionally, Peacocke testified it is “very, very common” to see kids react differently in general education kindergarten than in the private pre-K setting, because it is “a huge time of growth and development for children.” Tr. Day 2 at 519:2 to 513:19 (Peacocke).

Upon careful consideration of the information available to the school at the time it drafted the May 2024 IEP, the Hearing Officer finds it was not unreasonable for the school to not include an FBA or BIP at that time. In reaching this decision, the Hearing Officer defers to the expertise of the school witnesses' determination that it was not appropriate and/or possible for them to conduct an FBA and/or implement a BIP until they could have an opportunity to observe XX's behaviors in the Kindergarten setting. The Hearing Officer further notes that, at the time the IEP was drafted, the school witnesses expressed their intent to conduct an FBA and/or implement a BIP at the start of the school year, if the need arose based on behaviors displayed by XX in the Kindergarten setting. In other words, the record demonstrates that the IEP team considered the use of positive behavioral interventions and support and determined not to implement them at that time, subject to reevaluation if and when XX displayed behaviors necessitating behavioral intervention in the Kindergarten setting. Such a determination is consistent with IDEA requirements. See 20 U.S.C. § 1414(d)(3)(B)(i); Elizabeth B. v. El Paso Cnty. Sch. Dist., Order and Judgment at 4-5 (Doc. #010110452286), Case No. 19-1299 (10th Cir. Dec. 16, 2020).

On this record, the Hearing Officer finds Petitioners have not shown that the May 2024 IEP was not reasonably calculated to allow XX to make appropriate progress at school because it did not include an FBA and/or BIP. Accordingly, the Hearing Officer finds no IDEA violation on this ground.

2. Measurable Behavior Goals

Petitioners assert the May 2024 IEP was inadequate because it lacked measurable behavioral goals. Amended Complaint at 2; Petitioners' FOF at 32, 36; Petitioners' Reply at 2, 5-7, 22, 34, 37-38, 40-41. More specifically, Petitioners assert the IEP omitted “measurable benchmarks,” which rendered progress “unmeasurable and unevenly implemented.” Petitioners' FOF at 32.⁶³

The District asserts the May 2024 IEP included several measurable goals – including two goals targeting behavior that Peacocke drafted based on Punches' goals, but tailored to a publicschool setting. District's Response at 13. The District further asserts the criteria to meet these goals were appropriately ambitious. Id.

⁶³ Petitioners also assert the IEP “relied on indeterminate criteria” such as “special education supports,” which proved to be “ambiguous and open to varied interpretations.” Petitioners' FOF at 30, 32. The Hearing Officer considers these arguments below, with regard to individualized accommodations or services.

As an initial matter, to the extent Petitioners challenge the adequacy of the IEP based on its failure to include periodic benchmarks or short-term goals (e.g., quarterly objectives within the IEP period), the District correctly points out that such requirements apply only in instances where an IEP provides for the student to take an alternative assessment aligned to alternate achievement standards. District's Response at 13 (citing K.S.A. § 72-3429(c)(1) and 34 C.F.R. § 320(a)(2)(ii)). Petitioner concedes that is not the case here. Petitioners' Reply at 33-34. Accordingly, the Hearing Officer finds no IDEA violation on this ground.

As to Petitioners' claim that the IEP's behavioral goals were not objectively measurable, the Hearing Officer notes that only the first and second IEP goals targeted behavioral needs. More specifically, the first IEP goal targeted the ability to sit in a group without engaging in disruptive behavior, and the second IEP goal targeted the ability to transition off of an uncompleted activity independently without engaging in disruptive behavior. See May 2024 IEP at 3-4, part 2 of P-25.⁶⁴

As noted, an IEP must include measurable annual goals. See 34 C.F.R. § 300.320(a)(2)(i); K.S.A. § 72-3429(c)(2). To satisfy this requirement, an IEP goal must include four components: (1) the timeframe for completion; (2) the conditions or manner in which progress toward the goal will be measured; (3) the behavior or performance that is being monitored; and (4) the criteria that identify "how much, how often, or to what standards the behavior must occur in order to demonstrate that the goal has been reached." KSDE Special Education Handbook, Chapter 4 at 77-78. It essential that the criteria used for measuring the annual goal be based on the same criteria that is used for establishing the present-level baseline. Id. at 77. A well-written goal should pass the "Stranger Test," in that "a teacher who does not know the child could use it to develop appropriate instructional plans and assess the child's progress." Id. at 78.

As discussed, the first IEP targeted XX's ability to sit in a group without engaging in disruptive behavior, as follows:

When presented with the opportunity to sit in a group instruction setting, [XX] will be able to sit in the group (5-15 minutes) without disruptive behavior/attempting to leave the group (story time, circle time, small and large group instruction, etc.) on at least 80% of opportunities by end of the IEP year as measured by Observation.

Id. The IEP indicated baseline data of "33% of opportunities observed." Id. The IEP did not provide any details how the baseline percentage was determined (e.g., the criteria used for length of time and number of observations). Id.

At the due process hearing, Punches testified that, as written, the first IEP goal does not provide criteria necessary to objectively measure progress on the goal. Tr. Day 3 at 648:17 to 650:3 (Punches). In particular, Punches stated the goal does not provide details regarding the number of days and length of observation session, which would be necessary for person collecting data to be able to determine whether XX had consistently or objectively mastered the goal. Id. The record contains no contrary evidence on this point.

⁶⁴ As noted, the IEP included five goals. The remaining three goals did not target behavior. The third goal targeted following directions and imitating actions; the fourth goal targeted turn-taking and social exchanges; and the fifth goal targeted delayed communication skills. See May 2024 IEP at 6-8, part 2 of P-25.

In reviewing the first IEP goal, the Hearing Officer agrees with Petitioners that it does not contain sufficient criteria to be objectively measurable. In particular, the goal fails to specify the length of observation time or number of times that the student needs to be observed to determine if the goal has been reached. Additionally, the IEP lacks necessary information regarding how baseline data was obtained. Without this information, it is not possible to objectively determine whether progress is being made on the goal.⁶⁵ Accordingly, the Hearing Officer concludes that the first IEP goal was not sufficiently measurable to allow parents and educators to monitor XX's progress or achievement on the goal.

The second IEP goal targeted XX's ability to transition off of an uncompleted activity independently without engaging in problem behavior, as follows:

When transitioning off of an uncompleted activity or to an adult directed activity, [XX] will be able to transition independently (without additional prompts/cues) without engaging in problem behavior on at least 90% of opportunities across multiple tasks, settings and with different people over 5 consecutive data days by end of the IEP year as measured by Observation.

Id. (emphasis added). The IEP indicated baseline data of "[less than] 80% of opportunities *with prompts and cues.*" Id. (emphasis added).

Unlike the first IEP goal (discussed above), the language of the second IEP goal provided more details regarding how it was to be measured (i.e., by observation "across multiple tasks, settings and with different people over 5 consecutive data days by the end of the IEP"). However, the IEP did not provide information regarding whether the present-level baseline percentage was obtained in a similar manner, such that progress on the goal could be sufficiently measured. Moreover, the IEP indicates that the baseline percentage was based on opportunities with prompts and cues, whereas the IEP goal measured her ability to transition independently (i.e., without prompts and cues). Because the baseline data was not based on the same criteria used in setting the annual goal, the Hearing Officer finds that the second IEP goal was not sufficiently measurable to allow parents and educators to objectively monitor XX's progress or achievement on the goal.

3. Functional Safety Provisions

Petitioners assert the May 2024 IEP was inadequate because it failed to include functional safety provisions. Amended Complaint at 2. Petitioners' post-hearing briefing does not appear to address this particular claim. See Petitioners' FOF; Petitioners' Reply. At oral argument, XX's mother articulated that this claim targets the District's alleged failure to implement precautionary safety measures for XX's behaviors based on the information provided by Punches in the spring of 2024. Such measures would presumably include steps or strategies to prevent or handle behaviors addressed in Punches' FBA and behavioral plan, including physical aggression, throwing objects, and elopement. See March 2024 Intervention Plan (03/18/2024), P-23.

The Hearing Officer's analysis on this claim is the same as the analysis (discussed above) regarding Petitioners' claim that the May 2024 IEP should have included an FBA or BIP to address XX's known

⁶⁵ The Hearing Officer notes that the third and fourth IEP goals arguably suffer from similar deficiencies; however, the third and fourth goals do not target behavior. See May 2024 IEP at 6-7 part 2 of P-25. Because Petitioners' allegations regarding measurability are directed to behavioral goals, see Amended Complaint at 2, the Hearing Officer makes no findings and/or rulings regarding measurability of the remaining IEP goals.

behavioral needs. More specifically, the Hearing Officer finds it was not unreasonable for the school to decline to adopt precautionary safety measures based on the information provided by Punches. In other words, under the circumstances, it was not unreasonable for the school to wait and determine what, if any, extra safety measures would be necessary after observing XX's behaviors in the Kindergarten setting.

Petitioners argue it was foreseeable that XX's behaviors would surface in Kindergarten, as evidenced by what actually happened after she lost her after-school RBT support in October of 2024. See, e.g., Petitioners' Reply at 4. However, the adequacy of the IEP must be determined as of the time it was offered, not with the benefit of hindsight from a later date. See O'Toole, 144 F.3d at 701. Here, the evidence does not establish that, in the spring of 2024, the school had information indicating that the escalation of XX's behaviors in Kindergarten was reasonably certain or foreseeable to the extent that preemptive safety measures were required. Accordingly, the Hearing Officer finds no IDEA violation on this ground.

4. Individualized Accommodations or Services

Petitioners assert the May 2024 IEP was inadequate because it did not include individualized accommodations or services responsive to XX's known challenges. More specifically, Petitioners assert the IEP relied on indeterminate or "generic" criteria, namely, the broad term "special education support," which rendered progress under the IEP "immeasurable and unevenly implemented." Petitioners' FOE at 32. Petitioners further assert the term "special education support" was vague with respect to whether XX would receive dedicated, 1:1 support in the general education classroom. Petitioners also assert that the term "special education support" was "open to interpretation" as to the "type of support" that XX was supposed to receive from the paras. Petitioners' Reply at 3. Additionally, Petitioners contend the IEP failed to specify the level of staff training and delivery of services, namely, ABA-specific services. See Petitioners' FOE at 32 (untrained/rotating paras and lack of ABA-specific capacity made implementation infeasible); Petitioners' Reply at 2.

The District asserts that, at the due process hearing, the testimony was clear that everyone understood the term "special education support" to mean "there would always be either a special education teacher or para with [XX] at all times." District Response at 2, 5, 13. The District further asserts that the May 2024 IEP was implemented "with full special education support in the general education Kindergarten classroom, direct language services, indirect occupational therapy, and [the] modifications, supports, and accommodations listed." Id. at 13.

Much of Petitioners' argument focuses on whether the term "special education support" is too vague or ambiguous to indicate whether the IEP provided that XX would receive dedicated, 1:1 para support in the general education classroom. Mom testified that she understood from school staff that the IEP would be providing such support; however, the language in the IEP does not necessarily support this reading. Instead, the evidence supports the District's contention that staff universally understood the term "special education support" to mean that a special education staff member would be with XX at all times, but it did not necessarily require that it be dedicated, 1:1 support.⁶⁶

⁶⁶ To the extent Petitioners assert the IEP should have provided dedicated, 1:1 support, the Hearing Officer addresses the claim below.

Petitioners assert the IEP failed to specify the level of staff training and type of services that XX would receive, which “undermined delivery of services” and “made implementation [of the IEP] infeasible.” Petitioners’ FOF at 32.⁶⁷

As an initial matter, to the extent Petitioners assert the IEP was inadequate because it did not specifically provide for the delivery of ABA services (either by Petitioners’ private BCBA or ABA-trained school staff), the Hearing Officer disagrees. As a general rule, an IEP team must consider various instructional methodologies suggested by parents; however, the school is not required to implement a specific methodology so long as it can provide other methods of instruction that adequately meet the student’s needs. See, e.g., Elizabeth B., Order and Judgment at 7 (court does not evaluate whether the IEP adheres to a particular methodology, but whether it is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”) (quoting Endrew F., 137 S. Ct. at 998); N.B. v. NYC Dep’t of Educ., 70 IDELR 245 (2d Cir. 2017) (finding specific instructional methodology not required where IEP reflected commonly used tenets of special education to achieve goals); N.Y. v. NYC Dep’t of Educ., 213 F. Supp.3d 446, 472-474 (E.D.N.Y. 2016).

Here, the record indicates that, at the May 2024 IEP meeting, parents and Punches presented convincing anecdotal evidence indicating that XX had been extremely successful in Pre-K while receiving dedicated, 1:1 ABA support through PBS. However, the record does not establish that, at the time the IEP was drafted, it was clear that dedicated, 1:1 ABA-support was the only method of instruction that would allow XX to make appropriate progress in Kindergarten. Accordingly, the Hearing Officer declines to find the IEP was inadequate on this ground alone. That said, the Hearing Officer’s analysis does not end here.

Although an IEP generally need not specify a particular instructional methodology, it must provide an educational program that is “reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” Endrew, 137 S.Ct. at 1001. In this regard, one of the core requirements that an IEP must contain is:

*a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practical, to be provided to the child . . . and a statement of the program modifications or supports for school personnel that will be provided for the child ... to advance appropriately toward attaining the annual goals [and to] be involved in and make progress in the general curriculum[.] ****

20 U.S.C. § 1414(d)(1)(A)(i)(IV).

As discussed, the May 2024 IEP provided for the delivery of special education services as follows: (1) AC services⁶⁸ for 20 minutes each day in the general education setting for noninstructional times; (2) 20 minutes of speech therapy twice a week; (3) five minutes of indirect occupational therapy services each week; and (4) “the remainder of the school day receiving special education support in the general

⁶⁷ The District’s response does not directly address Petitioners’ argument on these points. See District Response. The District asserts that, once XX’s behaviors escalated, the special education teacher and paras received additional training. *Id.* at 3. The District does not specify the type of training or when it occurred.

⁶⁸ As noted, the record does not reflect what the term “AC services” refers to in the IEP. Based on context, it appears the term could relate to accommodations; however, the undersigned makes no findings in this regard.

education classroom.” May 2024 IEP at 15, part 2 of P-25. Witnesses described that the last provision regarding “special education support” required the presence of a special education staff member with XX (and potentially other students) at all times.

As written, the IEP did not allocate any time for specialized instruction or otherwise provide any indication as to how XX was supposed to learn the skills necessary to master the first four of her five IEP goals.⁶⁹ These goals targeted improving XX's functional abilities to: (1) attend to adult-directed activities in a group setting; (2) transition between activities independently; (3) follow directions and imitate actions; and (4) take turns and engage in social exchanges. May 2024 IEP at 3-7, part 2 of P-25.

The IEP provided program modifications and accommodations targeting transitions, which arguably supported the second IEP goal; however, this alone was not sufficient. See OSEP Letter to Chambers (2012) (once a child has been determined to be eligible for special education and related services under the IDEA, the school must provide the child “specially designed instruction that addresses the unique needs of the child that result from the child's disability, and ensures access by the child to the general curriculum”); 34 C.F.R. § 300.320(a)(4); see also 34 C.F.R. § 300.320(a)(4); compare Elizabeth B. Order and Judgment at 6-7 (school district officials adequately explained that teaching methods outlined in IEP, including “consistent reinforcement, first/then strategies, visual prompts, and errorless teaching strategies,” effectively addressed student's behavior).

Here, the IEP allocated no time for specialized instruction and did not explain how special education staff would teach XX the skills that she needed to master her IEP goals. C.f. Systema, 538 F.3d at 1317 (IEP was substantively adequate where it provide 22.5 hours of instruction per week utilizing discrete trial training, various reinforcement strategies, communication temptations, task analysis of multi-step actions, and shaping procedures to achieve IEP goals) (quotations in original). Without such information, the IEP is substantively deficient. It is not possible for parents, educators, or a reviewing agency to determine whether the IEP was appropriately designed to address XX's unique needs to enable her to make appropriate progress, or whether the IEP was substantially implemented in this regard.

In short, the IEP's provision for the mere presence of special education staff providing “special education support” does not sufficiently describe the specialized instruction that XX is to receive under the IEP. See, e.g., Systema, 538 F.3d at 1316 (“when analyzing the substantive compliance of an IEP, the court should restrict [its] examination to the written document”). Accordingly, the Hearing Officer finds that, because the IEP did not provide a statement of the special education and related services that would be provided to enable XX to advance appropriately toward attaining the annual goals, the IEP was both procedurally and substantively deficient, in that it was not reasonably calculated to allow XX to make appropriate educational progress in light of her circumstances.⁷⁰

⁶⁹ As discussed, the fifth goal addressed communications skills which appears to have been addressed through minutes of service provided by the school's speech pathologist.

⁷⁰ To the extent the District may assert that XX's progress report (indicating she made adequate progress in the first quarter) shows the IEP was adequately drafted, see District Response at 13, the Hearing Officer disagrees for the reasons stated.

5. Dedicated Behavioral Support or Mention of 1:1 Adult Assistance

Petitioners assert the May 2024 IEP was inadequate because it did not provide for dedicated behavioral support or 1:1 adult assistance. Amended Complaint at 2. For reasons stated, the Hearing Officer finds Petitioners have not shown that, at the time the IEP was implemented, it was clear that XX would require dedicated behavioral support or 1:1 adult assistance in order to make appropriate progress in the Kindergarten setting. Accordingly, the Hearing Officer finds no IDEA violation on this ground.

Based on the above analysis, the Hearing Officer finds the May 2024 IEP did not adequately address XX's individualized needs because it failed to provide: (1) measurable behavioral goals (i.e., the first and second IEP goals); and (2) a statement of the special education and related services that would be provided to enable XX to make appropriate progress on four of her five annual goals. The Hearing Officer further finds that, in light these deficiencies, the May 2024 IEP was not reasonably calculated to enable XX to make appropriate progress in light of her circumstances. The Hearing Officer concludes these facts demonstrate a substantive IDEA violation that resulted in denial a FAPE to XX.

B. Failure to Timely and/or Adequately Address Escalating Behaviors

Petitioners assert that, when XX's behaviors manifested in October 2024, the District failed to timely and/or adequately address the behaviors. Amended Complaint at 2. More specifically, Petitioners assert that, once the behaviors appeared, the District was faced with an urgent need to effectively address the behaviors, yet it took months to initiate a consistent behavior plan while XX suffered in the interim with escalating behavior and daily removals from the general education classroom. Amended Complaint at 2; Petitioners' Reply at 40-41.

The District contends that, in late October, the school responded to XX's escalating behaviors by collecting data and information over time, as part of an FBA, to create a BIP and propose changes to her IEP. District Response at 14-15. The District asserts that, in this effort, staff worked in collaboration with its autism experts and also considered recommendations from Mom and Punches. Id. at 15. The District states that, due to scheduling conflicts, the IEP meeting could not be scheduled until January 7, and then had to be continued to January 28, due to snow. Id. The District further states that, after the January 28th meeting, it adopted strategies that allowed XX to "steadily improve" in her behaviors and educational progress throughout the second semester of Kindergarten. Id.

Under the IDEA, where a child's behavior impedes the child's learning or the learning of others, the IEP team must consider "the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 20 U.S.C. § 1414(d)(3)(B)(i). Additionally, the school must conduct a reevaluation if it determines the student's need for educational or related services (including improved functional performance) warrant a reevaluation. 20 U.S.C. § 1414(a)(2)(A)(i).

Further, the school must ensure that it revises the IEP, as appropriate, to address:

- (I) *any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;*
- (II) *the results of any reevaluation conducted under this section;*
- (III) *information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);*
- (IV) *the child's anticipated needs; or*

(V) *other matters.*

20 U.S.C. § 1414(d)(4)(A)(ii); see also 34 C.F.R. § 300.324(b)(ii).

As discussed, in mid-October, XX began displaying behaviors at school involving physical aggression, throwing objects, and elopement. These behaviors were similar to the behaviors that: (1) XX had demonstrated in Pre-K at Jars of Clay; (2) PUNCHES had addressed in the FBA and behavior plan that was provided to the school in the spring of 2024; and (3) parents had anticipated in August 2024, when they asked the school to implement a BIP at that time. In other words, although the behaviors were new to TSE in the Kindergarten setting, the behaviors were not new to XX, and parents anticipated the behaviors would likely surface in Kindergarten.

As set forth above, the Hearing Officer has found that, in the spring of 2024, it was not unreasonable for the school to defer implementing a behavior plan until after it had an opportunity to observe XX's behaviors first-hand in the Kindergarten setting. However, once the behaviors began to manifest in October 2024, the school was obligated to take appropriate action to address her behavioral needs.⁷¹ Here, the school admittedly took some steps; however, the response was unreasonably delayed under the circumstances. In large part, it appears the delay resulted from the school's failure and/or refusal to utilize resources that were readily available through the knowledge and experiences of parents and PUNCHES. Moreover, it appears that, throughout the remainder of Kindergarten, the May 2024 IEP was not amended to include a BIP or otherwise address XX's behavioral needs.

As noted, on October 17, 2024, McCain began sending frequent emails to parents regarding XX's changing behaviors. In the emails, McCain asked for parents' suggestions and input. Mom frequently responded with suggestions. Additionally, Mom suggested that PUNCHES could provide useful information.⁷²

⁷¹ The fact that XX did not display significant behaviors in August and September does not change the Hearing Officer's analysis. The District suggests that the increase in XX's behaviors likely resulted from the departure of the RBT who was providing ABA support to XX in after-school care through PBS. District Response at 2-3, 7-8, 14. The Hearing Officer agrees the record supports a correlation in timing, but makes no causation findings in this regard. The record further supports an inference that the ABA support that XX was receiving in after-school care was helpful to her. Regardless, these facts do not in any way reduce or mitigate the school's independent obligations under the IDEA to appropriately address XX's behavioral needs.

⁷² More specifically, on October 17, 2024, McCain emailed parents that XX had exhibited "new" behavior when she became angry with a peer and pulled on the classmate's arm yelling "No! No! No!" October 17-21, 2024 Email String, P-33. McCain stated that she tried to ask XX about what prompted the behavior and asked Mom for any suggestions she might have. October 17-21, 2024 Email String, P-33. Mom replied that the behavior sounded like previous aggressive behavior that XX had "faded in and out of," and they should collaborate with PUNCHES for advice on what to do. Id. On October 18, PUNCHES sent an email to McCain providing an example of how they had dealt with aggressive behavior in Pre-K. Id.

On October 21, McCain reported that, at two recesses, XX ran away from staff outside and refused to come inside. October 21-23, 2024 Email Chain, P-35. McCain stated she would look for an antecedent to help talk through the situation more. Id. Mom responded that she was also seeing increased behaviors at home. Id. Mom further offered that PUNCHES was available to provide training or advice to the teachers and/or paras. Id. McCain replied that, while advice was always welcome, it can be "tricky" in the school setting; McCain worried that, since staff was not officially ABA-trained, they might "unknowingly modify a strategy." Id.

On October 22, McCain reported that XX again ran from the teacher at recess and that XX also ran several times in the library, climbed on shelves, put toys her mouth, and then threw the toys. October 22, 2024 Email Chain, P-36.

As reflected in McCain's emails on October 17, 21, 22, and 23, the school had adequate notice at this time that XX's behaviors were escalating in the Kindergarten setting. Further, the school knew that Mom and Punches had valuable knowledge and experience in dealing with similar behaviors in other settings, including Pre-K at Jars of Clay.

By the end of October, it was abundantly clear that the school needed to take prompt action to address XX's behaviors using all of the resources that it reasonably had at its disposal. See, e.g., A.B. v. Shawnee Mission School Dist. USD 512, Review Officer's Decision at 132, Case No. 21DP512-001 (Kan. Office of Admin. Hrg. 12/01/2021) (when a school district knows or should reasonably know that a student's behaviors are ineffectively addressed by the IEP in place and are impeding the student's opportunity to receive a meaningful educational benefit, "it ought to rectify the IEP's inadequacies in a timely fashion.") (quoting Colonial Sch. Dist. v. N.S., No. 19-1311, 2020 U.S. Dist. LEXIS 55150, at *34 (E.D. Pa. March 30, 2020)).

Instead, the school took an exorbitant amount of time under the circumstances to try to seek strategies, predominately on its own, by collecting data and making observations as it experimented with trial-and-error strategies through an FBA process that transpired over the weeks and months that followed. During this time, the school did not seek full or complete input from parents or Punches, who had extensive knowledge and experience regarding strategies that could help control XX's behaviors.⁷³ Additionally, as discussed below, the school did not inform parents of the full extent of XX's behaviors at school. Further, throughout the remainder of Kindergarten, it appears the school never amended the IEP to address XX's behavioral needs.

Meanwhile, over the months of November, December, and January, XX's behaviors continued to escalate into extreme situations that threatened the safety of herself, her classmates and staff – and also resulted in incidents of self-harm, including the "sexual assault" on herself that occurred on at least one occasion. See Data Collection Sheets, P-128.⁷⁴ Additionally, due to her escalated behaviors, XX was spending little-to-no time in her general education classroom. Tr. Day 2 at 409:10 to 411:21 (McCain).

McCain stated she would "keep working on it" and wanted to let parents know "there's been an increase in behaviors it seems." Id.

On October 23, McCain reported that XX eloped again at recess in a manner that was unsafe (i.e., XX went a further distance than she had gone before). October 23, 2024 Email Chain, P-37. McCain stated that staff had tried giving XX the choice of sticker to come inside with the group. Id. McCain asked parents to let her know if they had any more ideas. Id. McCain stated she was also reaching out to the district's functional classroom teacher to see if she had any ideas. Id. Mom replied this was "a huge problem," and XX would "continue to test the limits and run further." Id. Mom stated she believed XX needed to have a 1:1 para at recess, not only for safety issues and transition warnings, but also help promote socializing and playing with others. Id.

⁷³ As noted, in the spring of 2024, Mom had provided Punches' information to Peacocke, who used it to draft the May 2024 IEP. For reasons not disclosed in the record, it appears that Punches' information did not make its way from Peacocke to the Kindergarten IEP team. Nevertheless, it appears certain that, if the school had asked, parents and/or Punches would have readily provided the information again in October of 2024.

⁷⁴ It appears the incident on November 13 is the only time in which XX has been described as pushing her fingers into her private area "until her face turned red and she was shaking." November 13-14, 2024 Email Chain, P-49. However, there are multiple reports of her removing her underwear and "digging down there." Data Collection Sheets (sheet after 11/13), (sheet after 11/18), (sheet after 11/21), (01/09), P-128. Mom testified that parents were only told about the November 13th incident. Tr. Day 5 at 1008:3-7 (XX's mother); November 13-14, 2024 Email Chain, P-49.

Below is an overview of the timeline of events:

- *October 28: the school began collecting daily data on XX's behaviors for the purpose of conducting an FBA and developing a BIP. Data Collection Sheets, P-128*
- *November and December: Richards observed XX and worked with McCain and the paras on different strategies. Tr. Day 8 at 2008:23 to 2010:2 (Richards).*
- *November 11: Holcomb observed XX for one hour and discussed strategies with McCain; Holcomb suggested that McCain create a special space that belonged only to XX, so that the rest of the room could be used by other people.*
- *November 13: O'Brien met with Mom and decided to reach out to Harrison. At this time, O'Brien knew the school needed to schedule an IEP meeting. Tr. Day 6 at 1504:18-24.*
- *November 18: McCain, Richards, Mom, and Punches held a meeting in which they discussed the possibility of collecting ABC data and various strategies to try with XX. Meeting Notes at 4, R-208.*
- *November 25: the school reached out to Harrison for assistance. Harrison Time Sheet, P-61.*
- *December 9: Holcomb attended a professional team meeting and suggested the team put up visuals with a stop sign and break down XX's visual schedule more. Tr. Day 8 at 1801:5 to 1803:25 (Holcomb).*
- *December 9-13: Harrison spent five hours observing XX and gathering information to determine her function of behavior. Harrison Time Sheet, P-61.*
- *December 9: Mom emailed McCain asking to schedule an IEP meeting. December 9, 2024 Email Chain, P-65.*
- *December 13: McCain emailed Mom asking to schedule an IEP meeting. December 13, 2024 Email Chain, R-213, #742.2.*
- *December 13-20: an IEP meeting was scheduled for January 7.*
- *December 20: winter break began.*
- *January 7: the previously scheduled IEP meeting was continued due to snow.*
- *January 22: upon parents' request, Harrison met with parents.*
- *January 24: Harrison and Richards met to draft an FBA and proposed BIP.*
- *January 28: the IEP meeting was held.*

At the January 28th IEP meeting (i.e., more than three months after the behaviors began to escalate), the school presented its proposed BIP to parents. Under the proposal, XX would be "temporarily" removed from the general education classroom until she could demonstrate appropriate behavior over consecutive days to essentially earn her way back into the general education classroom. Parents strenuously objected to the proposed change in placement. In the meeting, parents and Punches offered helpful suggestions, such as using a space in the hallway, instead of the special education room, for XX to deescalate. This was the first time that Harrison had spoken with Punches.

In the following days, Punches sent information to Harrison, including her FBA and behavior plan from March 2024. The input that Harrison received from Punches and parents was extremely useful in helping to shape the school's strategies moving forward. This was particularly true since Harrison had never observed XX in the general education classroom. Tr. Day 6 at 1319:9-15 (Harrison).

During the first week of February, Harrison spent another 4.5 hours observing XX and working with staff. Harrison Time Sheet, P-61. Additionally, Harrison worked with Richards to prepare a revised BIP. Tr. Day 6 at 1438:20 to 1439:4 (Harrison); see also February BIP (02/25/2025), P-89.

In February, the school began to see small improvements in XX's behavior and her ability to spend increasing time in the general education classroom. Tr. Day 2 at 431:25 to 433:20 (McCain). The changes were gradual. Tr. Day 4 at 946:2-22 (Dial). Even greater improvements were made in March and April, when Paxton, a BCBA with TASN, became involved. Tr. Day 2 at 403:17 to 407:12 (McCain); Tr. Day 4 at 865:10 to 866:5 (Dial).

During the second semester of Kindergarten, the school implemented strategies that resulted in gradual improvements in XX's behavior. However, the IEP was never amended to include a BIP or otherwise address her behaviors. See, e.g., Day 8 at 2030:12 to 2032:10, 2039:18 to 2040:7 (Richards) (stating that the February 2024 BIP was not implemented because the school never received a signed PWN from parents); Tr. Day 2 at 438:12 to 439:7 (McCain) (the "trialing" of different strategies was "ongoing" and the school did not implement a behavior plan until the end of the school year).

Upon consideration of the record as a whole, the Hearing Officer finds that, once XX's behaviors began to manifest and escalate in mid-October, the school had a duty to evaluate her behavioral needs and take appropriate steps to amend the IEP to address those needs. See K.S.A. § 72-3429(f); KSDE Special Education Handbook, Chapter 4 at 88 (school is responsible for determining when it is necessary to conduct an IEP meeting; school staff may "propose an IEP meeting at any time they feel the IEP has become inappropriate for the child and revision should be considered"); see also K.S.A. § 72-3428(h)(A); KSDE Special Education Handbook, Chapter 7 at 133 (school must ensure that a reevaluation is conducted when necessary to determine "whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum").⁷⁵

Certainly, by early-to-mid-November, the need for an immediate change was obvious. XX's behaviors continued to escalate to heightened levels of physical aggression and self-harm, while staff was consistently unable to control her behavior and/or educate her in the general education classroom. As noted, O'Brien testified that, after her meeting with Mom on November 13, she knew it was necessary to schedule an IEP meeting. Tr. 6 at 1520:11 to 1521:15, 1527:10-23 (O'Brien). At least by this time, McCain also knew or should have independently known the same. Yet McCain did not reach out to parents to

⁷⁵ As stated in the KSDE Special Education Handbook, where a child's behavior impedes the learning of herself or others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior, as follows:

The focus of behavioral interventions and supports in the IEP is prevention of the behavior, not just provision for consequences subsequent to the behavior. This means that the team will need to attempt to identify the function of the behavior, usually through a functional behavioral assessment, and develop strategies to prevent the behavior from occurring again in the future.

KSDE Special Education Handbook, Chapter 4 at 72.

The Handbook further states:

Special education statutes and regulations place a strong emphasis on supports and interventions, including positive behavior interventions and supports that are scientifically research-based. Scientifically-based research means that the interventions or supports must be accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. [citation omitted]. These strategies are designed to foster increased participation of children with exceptionalities in general education environments or other less restrictive environments, not to serve as a basis for placing children with exceptionalities in more restrictive settings. No child should be denied access to special education services and the opportunity to progress in the general education curriculum.

KSDE Special Education Handbook, Chapter 4 at 72.

schedule an IEP meeting until a month later, on Friday, December 13, which was exactly one week before winter break started on December 20.

Under the circumstances, the Hearing Officer finds it was unreasonable for the school to delay convening an IEP meeting for multiple weeks – i.e., until after Harrison had an opportunity in his role as a part-time consultant to observe XX and gather information to try to independently determine her function of behavior and work with Richards to formulate an FBA and proposed BIP.

Although the parties' briefing does not directly address the issue in this context, it appears the District's policy against allowing outside providers during school hours may have inhibited the school from seeking effective input from Punches. See, e.g., Tr. Day 3 at 636:17 to 637:24, 670:19 to 671:3 (Punches) (Mom and Punches asked multiple times for Punches to be allowed to come into the school to observe XX and help advise staff on how to handle situations that were arising with XX). While the District certainly would not be *required* to retain Punches, it was obligated to take efficient and timely steps to address the urgency of the situation involving XX's escalated behaviors. Here, record suggests the District flatly refused overtures by parents and/or Punches for Punches to provide in-person input during school hours in any way, likely due to its unwritten policy prohibiting third-parties during school hours.⁷⁶

O'Brien testified that, in mid-November (i.e. at the time when O'Brien learned that IEP changes were needed), she did not seek help from Punches because she wanted to first use the District's own autism specialists who had gone through TASN training. Tr. Day 6 at 1483:24 to 1484:4 (O'Brien). However, the record shows the District's autism specialists (i.e., Holcomb and Harrison) were not readily available and may not have had the qualifications and/or time needed to effectively address XX's behaviors.⁷⁷

Further, the District's autism specialists did not collaborate with Mom or Punches; they essentially started from scratch in trying to determine the function of behavior and strategies that would work effectively with XX. In essence, the school took months to try to figure out answer on its own with regard to the same or similar behaviors for which parents and Punches already had extensive knowledge and experience.

⁷⁶ Although the record is not fully developed in this regard, it appears that at least some in-person observation and/or consultation from Punches may have been available at no charge to the school (i.e., without a formal training contract). Regardless, on this record, the question of whether the school may have been required to pay for Punches' services is not determinative. As noted, it appears the school never considered allowing Punches to observe XX during school hours in any capacity. See, e.g., District Response at 4, 17-18 ("District does not controvert that Punches was not allowed in the school building to work with [XX]"). At the due process hearing, the District did not provide evidence regarding the reasoning behind its policy. To the extent the matter is presented on this record, the Hearing Officer finds the District's policy alone would not be a valid justification for not considering and/or seeking in-person input or consultation from Punches or another BCBA under the circumstances of this case. See, e.g., Jacobs v. Salt Lake City Sch. Dist., 154 F.4th 790, 801 (10th Cir. 2025) ("the IDEA generally requires individualized educational decisions for each disabled student").

⁷⁷ As discussed, Holcomb's primary background is in special education with some training in autism. In early November, she observed XX for one hour and made suggestions that did not appear to have a significant impact. Harrison has a master's degree in psychology and extensive experience in behavior analysis. However, it appears he does not have specific expertise in ABA therapy, which has proven to be highly effective with XX. Moreover, Harrison's availability as a part-time consultant was limited; he spent approximately five hours per month in December, January and February on XX's case. See Harrison Time Sheet, P-61.

In February, after collaborating with parents and Panches at the January 28th IEP meeting, the school found ways to slowly improve XX's behaviors and enable her to gradually remain in the regular classroom for longer periods of time. However, the school did not implement a BIP or otherwise amend the IEP to address XX's behavioral needs throughout the remainder of her Kindergarten year. The record does not indicate the percentage of time that XX was spending in the general education classroom during the remaining months of Kindergarten.

Based on the foregoing analysis, the Hearing Officer finds the District failed to timely conduct an FBA, implement a BIP, and/or otherwise take steps to amend the IEP to address XX's behaviors when they manifested in October 2024 and escalated over the months of November, December, and January. During this time, XX was unable to access her education in the regular classroom and apparently received little-to-no academic instruction, as reflected by the blank grades on her report card for the second quarter of Kindergarten. Further, throughout the remainder of Kindergarten, XX continued to display behaviors that warranted a BIP and/or IEP amendment, yet none was implemented for that school year.⁷⁸ On this record, the Hearing Officer concludes the District's actions substantively violated its obligations under the IDEA to timely and/or adequately address XX's behavioral needs, and that these actions resulted in educational loss and denial of a FAPE to XX.

C. Failure to Provide Parents with Full Information Regarding Escalating Behaviors

Petitioners assert that, by not informing parents of the full extent of XX's escalated behaviors from October 28 to January 28, the District denied parents the right to participate meaningfully in educational decisions.

The District contends it kept parents adequately informed through McCain's daily emails, informal meetings with parents, and the IEP meeting that was initially scheduled for January 7 and then continued to January 28 due to snow. District's Response a 16-17.

The record demonstrates that, during the time when the school collected daily data sheets from October 28 to January 28, the school did not inform parents of the full extent of XX's escalating behaviors and/or how the school was dealing with the behaviors, including the removal of XX from the general education classroom (discussed below). The record further shows this information was material with respect to IEP matters, including the urgent need to conduct an FBA and implement a BIP and/or otherwise amend the IEP to address XX's behavior. Additionally, the information was material to Mom and Panches' efforts to give advice in response to McCain's email requests for their input on strategies during this time.

⁷⁸ To the extent the District may assert or imply that it could not implement a BIP or otherwise amend the IEP to address XX's behavior because it did not have a signed PWN from parents, the Hearing Officer disagrees. Parents do not have an absolute veto power in the IEP process. In other words, even if parents refuse to consent, the school can follow IDEA notice and procedural safeguards to implement IEP changes that are necessary to provide a FAPE. See, e.g., OSEP Letter to Richards (01/07/2010) (while the IEP team should work towards general agreement, the public agency is ultimately responsible to insure that the IEP provides a FAPE; if the IEP team cannot reach agreement, the public agency must determine the appropriate services and provide a PWN notifying the parents of the agency's determinations and the parents' right to seek resolution of any disagreements by initiating a due process hearing or filing a state complaint).

As discussed in the factual findings above, as compared to the information that was shared with parents through McCain's emails, the school's daily data sheets contained a much higher level of detailed information regarding XX's behaviors and how the behaviors were affecting her school day. For example, on November 5, McCain's email to parents essentially reported that XX "hit multiple people, both adults and students" and "seemed to throw herself on the ground a lot today when she was not wanting to comply with teacher requests." November 5-19, 2024 Email Chain, P-42.

By contrast, the school's data sheet for November 5th indicates that that XX displayed the following behaviors:

- *At lunch recess, she saw a friend swinging on a pole and got frustrated ... so she shoved her off the pole.*
- *Started hitting and throwing things.*
- *Spit on herself.*
- *Walked around pretending to hit friends. Walked around with scissors. Went to McCain's room.*
- *Took pants and underwear off.*
- *Pushed.*
- *Threw chair when went to time out.*
- *Hit para.*
- *Throwing chairs, kicking friend, wasn't listening.*
- *Was in Ritchey's office for hitting teachers and not listening.*
- *Refused to go Music – knocked over chair.*
- *When got to Music, took off shirt – ran around the room.*
- *Did her own thing in gym – eloped once.*
- *Tried to elope going to the bus.*

Data Collection Sheets (11/05), P-128.

Although the school had collected the details, McCain's email did not inform parents that XX: (1) shoved her friend off the pole; (2) was throwing things; (3) spit on herself; (4) took off her pants and underwear; (5) pushed; (6) threw a chair when she went to timeout; (7) was throwing chairs and kicking a friend; (8) went to Ritchey's office for hitting teachers and not listening; (9) refused to go to music and knocked over a chair; (10) took off her shirt in music and ran around the room; (11) eloped in the gym; and (12) tried to elope while going to the bus.

Essentially, the record shows a similar pattern over the course of November, December, January. The school collected an extensive amount of daily details regarding XX's behaviors at school and provided parents with only bits and pieces of the information. Without having access to the full information that the school had collected, parents were denied a meaningful opportunity to participate in educational decisions regarding their daughter. For example, with such knowledge, parents might have chosen to try to intervene earlier, provide input, voice their objection to strategies the school was using with XX, and/or request an immediate IEP meeting to address the situation. In short, parents were denied the opportunity to take meaningful steps to try to reduce XX's escalated behaviors sooner rather than later and allow her to spend more time in the general education classroom.

Under the circumstances, the Hearing Officer finds that the school's failure to provide the information on the daily data sheets it collected from October 28, 2024 to January 28, 2025, constituted a procedural

IDEA violation that denied parents of a meaningful opportunity to participate in educational decisions and resulted in denial of a FAPE to XX. See, e.g., M.M. v. Lafayette Sch. Dist., 64 IDELR 31, Case No. 12-15769 (9th Cir. Sept. 16, 2014) (school violated the IDEA's procedural requirements by failing to provide parents with the response-to-intervention data that the school had collected on their child; the procedural violation resulted in a denial of a FAPE because it denied parents of information needed to meaningfully participate in the IEP process).

D. Failure to Obtain Parental Consent to Conduct FBA

Petitioners assert the District violated the IDEA's procedural requirements by failing to obtain parents' written consent before conducting an FBA.⁷⁹

The District asserts that, from November 2024 through January 2025, Richards and Harrison conducted an FBA, but no parental consent was required because the FBA was "not part of an evaluation or reevaluation for special education eligibility, but in an effort to provide daily support in the classroom due to XX's escalating behaviors ... and to create a BIP for the same purpose." District Response at 14.

The question of when parental consent is required to conduct an FBA is not entirely clear. If the FBA is conducted pursuant to an evaluation or reevaluation, parental consent is required. See 34 C.F.R. § 300.300(a) and (c). However, parental consent is not required if the FBA involves only the review of existing data as part of an evaluation or reevaluation. 34 C.F.R. § 300.300(d). Additionally, parental consent is not required to collect data from all students in a general education setting (i.e., where the data collection would not be focused on the educational and behavioral needs of an individual child). OSEP Letter to Gallo at 3 (04/02/2023).⁸⁰

Some school witnesses testified that the FBA on XX involved only the review of existing data. See Tr. Day 9 at 2162:16 to 2164:10 (Richards). However, the evidence overwhelmingly showed that the school decided to collect data on October 28 for the purpose of conducting an FBA. See, e.g., Tr. Day 7 at 1611:9-23 (O'Brien). Accordingly, the Hearing Officer finds that the exception to parental consent under 34 C.F.R. § 300.300(d) does not apply.

In the Letter to Gallo (04/02/2013), OSEP explained that, when an FBA that is "intended to assess the effectiveness of behavioral interventions in the school as whole," parental consent would not be required, because the FBA "would not be focused on the educational and behavioral needs of an individual child." Id. at 2.

By contrast, here, the FBA on XX was clearly focused on the educational and behavioral needs of an individual child and, more specifically, to identify her academic and functional needs under the IDEA. Under these circumstances, it appears that parental consent would be required. See Letter to Gallo

⁷⁹ It appears Petitioners did not assert this claim in the Amended Complaint. However, both parties addressed the matter at the due process hearing and in their post-hearing briefs. See Petitioners' FOF at 33; District Response at 14. Accordingly, under these circumstances, the Hearing Officer will consider the argument. See, e.g., Beer, Memorandum and Order at 43-44 (Doc. #42) (where matter was addressed by both parties without objection at due process hearing, school district waived objection to arguments not included in due process complaint).

⁸⁰ Parental consent is also required if the IEP team seeks to conduct an FBA to determine if a child's conduct was a manifestation of her disability, which is not the case presented here. See generally OSEP Letter to Gallo (04/02/2023) (citing 34 C.F.R. §§ 300.301 through 300.311).

(04/02/2013) at 2. Thus, the Hearing Officer concludes that the District's failure to obtain parental consent to conduct the FBA constituted a procedural violation of the IDEA. However, the record also shows that parents were aware that the school was collecting data in an attempt to address XX's behaviors. See, e.g., December 9, 2024 Email Chain, P-65 (Mom stating to McCain that she knows the school is still "collecting data to track behaviors"). On these facts, the Hearing Officer finds no material prejudice or denial of a FAPE based on the school's failure to obtain parents' consent to perform the FBA.

E. Substantial Change of Placement Without Parental Consent and in Violation of LRE Requirements

Regarding the school's removal of XX from the general education classroom from November 1, 2024, to January 28, 2025, Petitioners assert the District violated the IDEA by: (1) effecting a "de facto" substantial change in placement in violation of the May 2024 IEP; (2) failing to inform parents and/or obtain parental consent for the change in placement; and (3) not educating XX in the least restrictive environment (LRE).

1. "De Facto" Change in Placement

Petitioners assert that from early November 2024 through January 2025, the District unilaterally changed XX's placement in violation of the May 2024 IEP by systematically removing her from the general education classroom without parental consent. Amended Complaint at 3; Petitioners' FOF at 33; Petitioners' Reply at 38, 41-43.

The District contends no change in placement occurred, because (1) no formal placement decision was made and (2) staff always had the intent to return XX to the general education after her behaviors deescalated. District Response at 15-16. More specifically, the District asserts that, when XX demonstrated escalated behaviors, staff removed her from the general education classroom to deescalate, because it was otherwise unsafe for her, other students, and staff. Id. The District asserts that, at all times, it was the school's intent to return XX to the regular classroom; however, XX often refused to re-enter the regular classroom, and staff were not allowed to physically coerce her to enter the instructional setting. Id. The District also asserts that XX was removed from the regular classroom for less than 29 school days, during which time the school consulted with its autism experts, parents, and Punches to develop a plan to get XX back on track for the remainder of the school year. Id. at 13-16.

The school's witnesses universally agreed that, during the months of November, December, and January, staff regularly removed XX from the general education classroom when she displayed concerning behaviors, which was happening consistently on a daily basis. Tr. Day 2 at 420:19 to 425:7 (McCain). Although the witnesses testified they always "intended" to return XX the regular classroom, the evidence showed that, during this time, it was abundantly clear that staff did not have the skills and/or strategies to do so. Consequently, XX spent the vast majority of her time outside the regular classroom. McCain, who had the most first-hand knowledge on this issue, testified that, on her best days, XX was in the regular classroom for about 20 percent of the time. Tr. Day 2 at 409:10 to 411:21 (McCain); Tr. Day 4 at 825:6-11 (Dial). On some days, XX was not in the regular classroom for any part of the day. Id. This pattern was consistent and systematic throughout the months of November, December, and January. See Tr. Day 2 at 376:12 to 385:9, 409:10 to 411:21 (McCain).

As noted, the IEP provided that XX would participate in the general education classroom for at least 80 percent of her school day. See May 2024 IEP at 15, part 2 of P-25. Clearly, the school failed to implement the IEP, as written, during this time frame.

Upon full consideration of the record as a whole, the Hearing Officer finds that, during the months of November, December, and January, the school's actions constituted a "substantial change of placement," in that staff were consistently moving XX from the general education classroom to the special education classroom for more than 25 percent of the school day. See K.A.R. § 90-40-1(sss) ("Substantial change in placement means the movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment."). The Hearing Officer further concludes the change in placement spanned over the course of approximately 40 school days (i.e., from November 1, 2024 to January 28, 2025).⁸¹

On this record, the Hearing Officer concludes the District's actions in removing XX from the regular classroom from November 1, 2024 to January 28, 2025 constituted a material failure to implement the May 2024 IEP, resulting in substantial educational loss and denial of a FAPE to XX.

2. Failure to Inform Parents and/or Obtain Parental Consent

Petitioners assert that, by failing to inform parents and/or obtain parental consent for the change in placement, the District deprived parents of the opportunity to meaningfully participate in educational decisions regarding their daughter. Amended Complaint at 3; Petitioners' FOF at 32-34; Petitioners' Reply at 42-43. The Hearing Officer agrees with Petitioners.

Under the IDEA, the District must "ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." 20 U.S.C. § 1414(e). Further, pursuant to K.S.A. § 72-3430(b)(6), parents have the right to consent to "any substantial change in placement" (subject to exceptions under K.S.A. § 72-3433 that do not apply here).⁸² See also KSDE Special Education Handbook, Chapter 1 at 8 (parental consent is required to make a substantial change in placement, i.e., more than 25 percent of the child's school day).

As discussed, over the months of November, December, and January, school staff consistently removed XX from the regular classroom to the sped classroom to deescalate and were unable to get her to return to the regular classroom, resulting in a substantial change in placement. Certainly, after several days (or even weeks) of unsuccessful attempts to educate XX in the regular classroom, the school was required to bring her parents into the conversation and decision-making process.

⁸¹ In reaching this estimate, the Hearing Officer begins with Dial's estimation that, from November 22, 2024 to January 28, 2025, there were approximately 25 school days. See Tr. Day 7 Tr. Day 4 at 827:10 to 829:9 (Dial) (taking into account Thanksgiving, winter break, and snow days). To this number, the Hearing Officers adds 15 school days to account for the time from November 1 to November 21, 2024 (25 school days from November 22 to January 28, plus 15 school days from November 1 to 21, equals 40 school days from November 1 to January 28).

⁸² Section 72-3433 addresses changes in placement of a disabled child for disciplinary reasons. See K.S.A. § 72-3433. To the extent Petitioners assert the District should have conducted a manifestation determination review, the Hearing Officer disagrees. The record does not show that the District suspended XX for more than 10 days or otherwise changed her placement for disciplinary reasons.

During this time, the school did not inform parents of the full extent of XX's removals from the general education classroom. Most of McCain's daily emails did not mention the classroom where XX spent her day. Some of the emails state that XX spent time in the sped classroom in a way that seems to imply, or could be read to imply, that XX was still spending a substantial amount of time in the regular classroom. See, e.g., November 14-15, 2024 Email Chain, P-50 (XX spent lunchtime in the sped room); November 22, 2024 Email Chain, P-60 (XX spent much of her day in the resource room due to issues of elopement and physical aggression);⁸³

December 10, 2024 Email, P-66 (XX refused to go into the regular classroom for most of the day);

December 16, 2024 Email, P-70 ("[XX] was unable to make it in her general education setting");

December 18, 2024 Email, P-71 (same). Further, the school did not request parents' consent to change XX's placement until at or around the time of the January 28th IEP meeting. See Day 8 at 2016:2-4, 2018:3 to 2021:20, 2032:11 to 2039:18 (Richards) (discussing exhibits P-78 and P-79).

In short, parents were not provided with material information regarding a substantial change in placement that occurred over the course of three months.⁸⁴ Without full information regarding where XX was spending her school day, parents were denied a meaningful opportunity to intervene and/or voice their objection to the school's course of conduct.

This case is materially distinguishable from cases in which a school may have temporarily moved a student for only a handful of days without parental consent. See, e.g., A.B., Review Officer's Decision at 132 (removing student from general education classroom and sending him to special education classroom on three occasions was not a change to placement in his IEP); J.R.V. v. Quakertown Community Sch. Dist., 125 LRP 13111, No. 24-2308 (3d Cir. 2025) (school committed procedural violation in failing to provide a PWN to parent regarding its 4-day "trial" placement in an alternative learning environment; however, the violation did not result in a loss of educational opportunity or seriously deprive parents of their participation rights and thus was not a denial of FAPE).

On this record, the Hearing Officer concludes that, for the time period spanning from November 1, 2024 to January 28, 2025, the District failed to comply with IDEA procedural requirements to inform XX's parents about the extent of her removal from the general education classroom and/or request parents' written consent to change her placement. See 20 U.S.C. § 1414(e); K.S.A. § 72-3430(b)(6); K.A.R. § 90-40-1(sss). The Hearing Officer further finds these violations substantially denied parents the opportunity to meaningfully participate in educational decisions and caused educational loss to XX, thus resulting in denial of a FAPE.

3. Violation of LRE Requirement

Petitioners assert the change in placement violated the IDEA's requirement to educate XX in the least restrictive environment ("LRE"). See Amended Complaint at 3; Petitioners' FOF at 33-34.

⁸³ On November 22, Mom responded that: "[XX] needs to be staying in the general classroom most of the day per the IEP." November 22, 2024 Email Chain, P-60.

⁸⁴ As discussed, the Hearing Officer finds the change in placement occurred over the course of approximately 40 school days, from November 1 to January 28.

The IDEA's LRE mandate provides, in part, that:

To the maximum extent appropriate, children with disabilities [shall be] educated with children who are not disabled, and special classes ... or other removal of children with disabilities from the regular educational environment [shall occur] only when the nature of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A).

In determining whether the LRE mandate has been violated, the Tenth Circuit utilizes a two-part test that examines (1) whether education of the student in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if not, whether the school has mainstreamed the child to the maximum extent appropriate. See L.B. v. Nebo Sch. Dist., 379 F.3d 976, 976-978 (10th Cir. 2004) (adopting test set forth in Daniel R.R. v. Bd. of Educ., 874 F.2d 1036, 1038 (5th Cir. 1989)).

In determining whether the first prong has been met (i.e. whether the student can be satisfactorily educated in a regular classroom with the use of supplemental aids and services), courts consider the following non-exhaustive list of factors:

- (1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services;*
- (2) comparison of the academic benefits the child will receive in the regular classroom with those she will receive in the special education classroom;*
- (3) the child's overall educational experience in regular education, including nonacademic benefits; and*
- (4) the effect on the regular classroom of the disabled child's presence in that classroom.*

L.B., 379 F.3d 976.

Here, the evidence shows that the education of XX in the regular classroom can be achieved satisfactorily with the use of supplemental aids and services. Although the school was unable to do so on its own accord during the months of November, October, and January, the record shows that, after the school received meaningful input from parents and Panches at the January 28th IEP meeting, it was able to successfully change its strategies in ways to gradually increase the time that XX spent in the regular classroom. See, e.g., Tr. Day 6 at 1319:9-15, 1337:24 to 1338:23 (Harrison); Tr. Day 4 at 865:10 to 866:5, 877:9-20 (Dial); Tr. Day 2 at 431:25 to 433:20 (McCain). In the end, XX's formal placement under the IEP (i.e., to participate in the regular classroom for at least 80 percent of her school day) was never changed. Moreover, the record contains no evidence suggesting that XX would receive greater academic benefits or a better overall educational experience outside the regular classroom.

On these facts, the Hearing Officer concludes the school's removal of XX from the general education classroom from November 1, 2024 to January 28, 2025 constituted a substantive violation of the IDEA's LRE mandate, resulting in denial of a FAPE to XX.

F. Educational Loss to XX

As discussed above, the Hearing Officer has found a substantive denial of FAPE to XX based on substantive and procedural violations of the IDEA. While it is not possible to precisely measure an exact

amount of educational loss, the record demonstrates that these violations resulted in a significant and substantial educational loss to XX.

More specifically, the evidence showed that, from November 1, 2024 to January 28, 2025, school consistently removed XX from the regular classroom to the sped classroom to the extent that XX was spending zero to 20 percent of her school day in the regular classroom.⁸⁵ This time period spanned approximately 40 school days, during which XX's behaviors were escalated to the point that staff essentially could not control her. See Data Collection Sheets, P-128 (detailing multiple behaviors daily involving physical aggression, elopement, and self-harm).

The record shows that, during the second quarter of Kindergarten, XX received little-to-no academic instruction. See Kindergarten Report Card, P-210 (reflecting no grades for the second quarter of Kindergarten). Further, as discussed, the May 2024 IEP did not contain measurable behavior goals or provide specialized instruction designed to enable XX to advance appropriately to attain her annual goals, thus making it impossible to objectively measure her progress under the IEP.

Additionally, although the IEP goals were not written in a way that allowed for progress to be objectively measured, XX's progress report nevertheless provides some evidence of regression and/or lack of educational progress in the second and third quarters of Kindergarten. In particular, the progress report indicates that, during the second quarter of Kindergarten, XX regressed and/or made inadequate progress on four of her five IEP goals.⁸⁶ Additionally, the report indicates that, in the third quarter, XX made progress on only two of the four goals.

A summary of XX's reported progress on the first four IEP goals is set forth below:

IEP Goal	1st Quarter	2nd Quarter	3rd Quarter
#1 - Sit in group for 5-10 minutes without disruptive behavior on at least 80% of opportunities	Adequate Progress (goal met)	Inadequate Progress (unable to participate in the gen ed setting for >2 minutes)	Inadequate Progress (able to inconsistently sit with group for up to 5 minutes)
#2 - Transition off uncompleted activity at least 90% of time	Adequate Progress (able to smoothly transition about 20% of time)	Inadequate Progress (able to smoothly transition less than 10% of time)	Inadequate Progress (required adult prompt to transition 90% of time)
#3 - Imitate different sequences of actions at least 80% of time	Adequate Progress (able to imitate different sequences at least 50% of time)	Inadequate Progress (unable to demonstrate safe behavior in gen ed classroom)	Adequate Progress (able to imitate different sequences at least 80% of time)
#4 - Take turns independently at least 75% of time	Adequate Progress (able to take turns independently at least 10% of time)	Inadequate Progress (able to take turns independently on 0% time)	Adequate Progress (able to take turns independently at least 10% of time)

Progress Report, P-126.

⁸⁵ As noted, McCain testified that, on her best days, XX was in her regular classroom for about 20 percent of the time. Tr. Day 2 at 409:10 to 411:21 (McCain). On some days, XX was not in her regular classroom for any of the time. Id.

⁸⁶ As noted, the fifth goal addressed communications skills, which appear to have been handled by the school's speech pathologist. See May 13, 2025 Email chain at 1e, P-116. The progress report indicates that XX made adequate progress in the first three quarters on the fifth goal. Progress Report at 5, P-126. The record does not include information regarding XX's progress on any of the IEP goals during the fourth quarter of Kindergarten.

G. Equitable Relief

In light of the above findings that XX has been denied a FAPE, the Hearing Officer has authority to grant the relief deemed necessary, inclusive of compensatory education, to ensure that XX receives the FAPE to which she is entitled. See, e.g., Letter to Riffel (OSEP 08/22/2000).

Petitioners seek equitable relief in the form of (1) compensatory education services; (2) mandatory professional development; (3) mandatory BCBA oversight, coordination, and training; and (4) development and implementation of an appropriate IEP and BIP. Amended Complaint at 3-4.⁸⁷

In determining an appropriate award of equitable relief, the Hearing Officer looks to the individual facts of this case with an aim to fashion an appropriate award in light of the purposes of IDEA. See Burlington v. Massachusetts, 471 U.S. 359, 369 (1985); Ferren C. v. Sch. Dist. Of Philadelphia, 612 F.3d 712, 717-719 (3d Cir. 2010); Beer, Memorandum and Order at 73-74 (Doc. #42). In so doing, the Hearing Officer's goal is to provide the relief reasonably necessary to make up for the effects of the loss of educational benefit to XX resulting from the District's denial of a FAPE. See Ferren, 612 F.3d at 717-719. In other words, the Hearing Officer seeks to adopt a qualitative award that would place XX in the same position that she would have occupied but for the District's IDEA violations. See Reid v. Dist. of Columbia, 43 IDELR 32 (D.C. Cir. 2005).

As set forth below, the Hearing Officer finds that equitable relief in the form of compensatory education services and specific relief requiring IEP input and/or oversight are necessary to ensure that XX receives the FAPE to which she is entitled.

1. Compensatory Education Services

In their post-hearing brief, Petitioners request 700 hours of compensatory education, and further state they "are willing to compromise to 500 hours." Petitioners' FOE at 38. Petitioners do not articulate the basis or support for the number of hours requested. See Id. Petitioners request that the delivery of compensatory education include: (1) extended school year services ("ESY") (i.e., summer school) coordinated and overseen by a BCBA; (2) up to two hours on school days through District-provided after-school programming, such as the Boys & Girls Club; and (3) additional "ABA therapy, social skills programming, and other related services necessary to return [XX] to the educational position she would have occupied but for the [denial of FAPE]." Id. at 38-39.

⁸⁷ In their post-hearing brief, Petitioners request an order that would require the following: (1) for XX to be educated in the least restrictive environment with appropriate support and specific conditions for any removals from the regular classroom; (2) the District to continue working with TASN for a minimum amount of monthly time for the first school year following the entry of this order; (3) monitoring-compliance reporting by the District every 60 days for 12 months on a number of issues; (4) the District to review and correct any policy that functions as a blanket prohibition on outside providers working onsite at the school; (5) independent educational evaluations and/or additional assessment, as needed, to inform an appropriate IEP for XX; (6) if the District is unable to implement ordered relief with fidelity, an order providing transportation, at the District's expense, "so that [XX] may attend an appropriate public program capable of providing the required supports (e.g., USD 501 – Topeka Public Schools)" until the District demonstrates its ability to implement the ordered programs; and (7) the District to correct and provide grades on all "blank" grade reports. Petitioners' FOE at 39-40. Except as stated in this Decision, the Hearing Officer finds that these go beyond the scope of what is reasonably necessary to remedy the denial of FAPE presented in this case.

Upon full consideration of the evidence presented in this proceeding, the Hearing Officer finds that an award of compensatory education services is necessary and appropriate to ensure that XX receives the FAPE to which she is entitled. As discussed, due to the District's failure to provide a FAPE, XX sustained substantial educational loss and failed to make appropriate academic progress. In particular, from November 1, 2024 to January 28, 2025, XX was consistently removed from the general education classroom for most or all of the school day. During this time, XX received little-to-no academic instruction and also missed out on the intangible benefits that come with being educated with her peers in the general education classroom.

In determining an appropriate award of compensatory education services, the Hearing Officer looks to the substantive nature of the IDEA violations, the educational loss sustained by XX, and the equitable relief reasonably necessary to make up for that loss. As discussed, the Hearing Officer has found the District substantively denied a FAPE by, among other things, removing XX from the general education classroom from November 1, 2024 to January 28, 2025. The Hearing Officer has further found that this time period included approximately 40 school days.

In determining the appropriate number of hours for compensatory education services, the Hearing Officer aims to apply a qualitative analysis to make up for the substance of missed academic and behavioral instruction, as opposed to a strict calculation of the number of hours in the school day. Here, the Hearing Officer bases the award of compensatory education on missed educational services over 40 school days, which would encompass a total 280 school hours (based on a 7-hour school day).⁸⁸ Further, the Hearing Officer applies a reduction in the total amount of hours to account for the fact that compensatory services in the form of 1:1 academic tutoring and/or behavioral support will likely provide an opportunity for more effective instruction in a shorter amount of time than what would be reasonably expected to occur in the context of the transitions and distractions that typically occur during a normal school day. Upon consideration of these factors, the Hearing Officer finds that an award of compensatory educational services in the amount of five (5) hours per missed school day, or 200 hours,⁸⁹ is required to make up for the educational loss incurred by XX.

Accordingly, the Hearing Officer awards compensatory education services in the amount of 200 hours of academic tutoring and/or behavioral instruction or coaching that may be utilized by XX over the next 18 months⁹⁰ in any or all of the following ways:

1. One-on-one (1:1) academic tutoring in any of the core subjects (i.e., reading, writing, math, science, and social studies) by a special education teacher with at least three (3) years of experience in teaching elementary-school-aged children with autism. Upon mutual agreement by parents, the District may utilize its own teachers during after-school hours to provide some or all of this service. Upon Petitioners' discretion, parents may obtain tutoring from a qualified third-party provider, in which case the District shall be responsible to pay the provider's usual rate, up to a maximum of \$80.00 per hour. At Petitioners' request, the District shall either reimburse

⁸⁸ The daily data sheets suggest that the school day lasted from 8:30 a.m. to 3:30 p.m. See P-128A. An estimated 40 school days multiplied by 7 hours per day equals 280 hours ($40 \times 7 = 280$).

⁸⁹ An estimated 40 school days multiplied by 5 hours per day equals 200 hours ($40 \times 5 = 200$).

⁹⁰ Absent a stay entered on appeal or otherwise, the 18 months shall commence to run upon 30 days following the date of this Decision.

Petitioners or directly pay the provider(s) of Petitioners' choice. Further, the District shall make disbursements of requested payments within 30 days of receipt.

2. One-on-one (1:1) behavioral instruction and/or coaching by a BCBA (or overseen by a BCBA) of Petitioners' choosing. The District shall be responsible to pay the provider's usual rate, up to a maximum of \$80.00 per hour. At Petitioners' request, the District shall either reimburse Petitioners or directly pay the provider(s) of Petitioners' choice. Further, the District shall make disbursements of requested payments within 30 days of receipt.
3. Upon mutual agreement between the District and Petitioners, one-on-one (1:1) academic tutoring and/or behavioral instruction/coaching to be provided in ESY and/or an afterschool or other program run by the District (such as Boys and Girls Club), by providers with the above-stated qualifications. If applicable, at Petitioners' request, the District shall either reimburse Petitioners or directly pay the provider(s) of Petitioners' choice. Further, the District shall make disbursements of requested payments within 30 days of receipt.

See, e.g., A.B., Review Officer's Decision at 145; J.T. v. Lawrence Unified Sch. Dist. No. 497, Notice of Hearing Officer's Decision at 100, Case No. 25DP497-001 (01/26/2026).

2. IEP Input and/or Oversight

In light of the procedural and substantive violations discussed above, the Hearing Officer finds additional equitable measures are necessary to ensure that XX receives the FAPE to which she is entitled. In particular, as set forth below, the Hearing Officer orders that the District shall assume the costs of retaining a Special Education IEP Specialist and a BCBA⁹¹ to help ensure that XX's current IEP and/or behavioral plan are developed to adequately meet her educational needs to enable her to make appropriate progress in light of her circumstances.

a. Special Education IEP Specialist

The District shall contract with an independent Special Education IEP Specialist to help ensure that the current IEP for XX is developed to meet her educational needs (including but not limited to academic, functional, and behavioral) and to help enable her to make progress appropriate in light of her circumstances, as follows:

1. The search for the IEP Specialist shall commence within 21 days of this Decision.
2. The IEP Specialist shall have the following qualifications:
 - a. an active, state-conferred special education teaching license in good standing;
 - b. at least three (3) years of special education administrative experience; and
 - c. at least three (3) years of experience in conducting IEP meetings and drafting IEPs that meet IDEA requirements, including a statement of measurable goals, a description of how a child's progress toward meeting the annual goals will be measured, and a statement of the special education and related services that will be provided for the child to advance appropriately toward attaining the annual goals.

⁹¹ As noted, the evidence overwhelmingly shows that XX responds well to ABA principles. The record does not indicate any other instructional and/or behavioral methods that have proven to be effective with XX. This Decision does not require the District to exclusively use ABA principles with XX; however, it does require the District to consider the BCBA's recommendations in determining how to meet its obligations under the IDEA to provide a FAPE to XX.

3. The District shall act in good faith to permit parents to have full participation in the selection process for the independent Special Education IEP Specialist. Following consultation with the Parents, it is the responsibility of the District to make the final selection of the IEP Specialist.
4. The District shall contract for the IEP Specialist to perform the following duties over the course of 18 months from the date of appointment:
 - a. Within 20 school days from the date of appointment, the IEP Specialist shall:
 - i. review XX's current IEP and progress monitoring reports, and any other materials that the IEP Specialist deems necessary and/or appropriate to carry out the duties specified herein;
 - ii. determine whether additional evaluations of XX are recommended; and
 - iii. determine any recommended changes to the IEP and/or implementation of the IEP.
 - b. Within 30 school days from the date of appointment, the District shall hold an IEP meeting to address the IEP Specialist's recommendations.
 - c. The IEP Specialist shall be permitted to communicate with and request information from XX's teachers and parents, and/or observe XX in the school setting, as deemed appropriate by the IEP Specialist to carry out the duties specified herein.
 - d. The IEP Specialist shall oversee the development, amendment, and/or implementation of XX's IEP.
 - e. The IEP Specialist shall attend all IEP meetings regarding XX.
 - f. The IEP Specialist shall make recommendations to the IEP team, as the IEP Specialist deems appropriate.
 - g. The District shall hold periodic IEP review meetings as deemed appropriate and taking into consideration any recommendations by the IEP Specialist.
5. The District is responsible to ensure that the contractual agreement with the Special Education IEP Specialist satisfactorily reflects the scope of the responsibilities and obligations set forth herein.
6. The District's contract with the Special Education IEP Specialist shall be shared with parents and the IEP team for XX.
7. The District's duties for the IEP team at all times remain governed by federal and state statutory and regulatory requirements.
8. The IEP team shall consider amending the IEP and/or taking other actions to require progress monitoring and/or data collection to accurately track the amount of time that XX actually spends in the general education classroom. To the extent such information is collected by the school, it shall be fully shared with parents and the Special Education IEP Specialist. See, e.g., A.B., Review Officer's Decision at 143, aff'd, Beer, Memorandum and Order at 82-83.

b. Board-Certified Behavior Analyst (BCBA)

Additionally, the District shall contract with an independent Board-Certified Behavior Analyst (BCBA) to complete an FBA of XX and perform other duties over the course of 18 months from the date of appointment, as follows:

1. The search for the BCBA by the District shall commence within 21 days of this Decision.
2. The position shall be procured for a period of time of 18 months from the date of appointment.

3. The person appointed must have held the credential of “BCBA” for at least three (3) consecutive years and must have previous experience working in the school setting with elementary-aged students with autism for at least three (3) consecutive years. The BCBA must provide the District with a copy of his/her BCBA certificate and be in good standing with the ethical and professional standards set forth by the Behavior Analysts Certified Board.
4. The District shall act in good faith to permit parents’ full participation in the selection process for the BCBA. Following consultation with parents, it is the responsibility of the District to make the final selection of the BCBA.
5. Within 20 school days from the time of appointment, the BCBA shall conduct an FBA that includes but is not limited to the following actions:
 - a. review XX’s current IEP and BIP, and any other materials that the BCBA deems necessary and/or appropriate to carry out the duties specified herein;
 - b. provide behavior analytic services for XX throughout all school settings, as deemed appropriate by the BCBA;
 - c. conduct direct observations of XX across multiple settings in the school setting, as deemed appropriate by the BCBA; and
 - d. conduct other tests and assessments as deemed appropriate by the BCBA.
6. The District’s contract with the BCBA shall require that a written FBA report be submitted to the District and parents within 30 school days from the time of appointment, or sooner if reasonably feasible.
7. Within two (2) weeks of receiving the FBA, the District shall hold an IEP meeting to review the FBA and determine whether amendments should be made to XX’s current BIP and/or IEP. The BCBA shall participate in this process and shall provide input regarding any amendments made to the BIP and/or IEP as a result thereof.
8. The BCBA shall be permitted to communicate with and request information from XX’s teachers and parents, and/or observe XX in the school setting, as deemed appropriate by the BCBA to carry out the duties specified herein.
9. Following completion of the duties set forth in paragraphs 5, 6, and 7 (above), the BCBA will monitor the implementation of XX’s BIP and make reports and recommendations to the IEP team, including recommended amendments to the BIP and/or IEP, as deemed appropriate by the BCBA. In carrying out the duties specified in this paragraph, each school quarter, the BCBA shall spend a minimum of 10 hours in the school setting to observe XX and/or work with staff as to matters regarding XX. This time may include formal or informal staff training, as recommended by the BCBA and deemed appropriate by the District. If the BCBA believes additional time is necessary to carry out the duties specified in this paragraph, the BCBA shall make such a recommendation to the District.
10. The BCBA shall attend and participate in all IEP meetings regarding XX.
11. The District is responsible to ensure that the contractual agreement with the BCBA satisfactorily reflects the scope of the responsibilities and obligations set forth herein.
12. The District’s contract with the BCBA shall be shared with parents and the IEP team for XX.
13. The District’s duties for the IEP team at all times remain governed by federal and state statutory and regulatory requirements.

See, e.g., A.B., Review Officer’s Decision at 143-145, aff’d, Beer, Memorandum and Order at 82- 83.

V. Conclusion

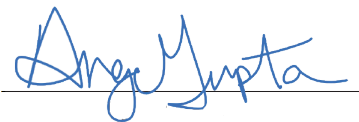
For reasons stated, the Hearing Officer finds that, as a result of substantive and procedural violations of the IDEA, Respondent failed to provide a free, appropriate public education ("FAPE") to XX on grounds that Respondent: (1) failed to develop a meaningful IEP that adequately addressed XX's individualized needs during her Kindergarten school year (2024-25); (2) failed to timely and/or effectively address XX's behavioral needs that manifested in October 2024; (3) failed to provide parents with full information regarding XX's escalating behaviors from October 28, 2024 to January 28, 2025; and (4) unilaterally effected a substantial change in placement from November 1, 2024 to January 28, 2025, in material violation of the May 2024 IEP, without parental consent, and in violation of LRE requirements.

The Hearing Officer concludes these violations resulted in significant and substantial educational loss to XX and/or denied her parents a meaningful opportunity to participate in educational decisions regarding their daughter.

The Hearing Officer awards equitable relief in the form of compensatory education services and specific remedies in the form of IEP and BIP oversight, as outlined above.

It Is So Ordered.

Dated this 23rd day of March, 2026.



Angela D. Gupta
Special Education Hearing Officer

Notice of Appeal Information

Any party may appeal this decision to the State Board of Education, pursuant to K.S.A. § 72-3418(b), by filing a written notice of appeal to:

Notice of Appeal
ATTN: Special Education and Title Services
Landon State Office Building
900 SW Jackson Street, Suite 620
Topeka, Kansas 66612-1212

The Notice of Appeal must be filed with Special Education and Title Services, designee of the Commissioner of Education, not later than 30 calendar days after the date of confirmed email receipt of this decision.⁹² Filing is complete upon receipt of the Notice of Appeal in the office of Special Education and Title Services. Emailed submissions will not be accepted for filing.

⁹² During oral argument on January 14, 2026, the parties agreed to accept service of this decision via email, with a return acknowledgment of receipt requested and confirmed by the Hearing Officer. This agreement constitutes a waiver of any right to receive a hard copy via certified mail under K.S.A. § 72-3418. Thus, the parties agreed that the time to appeal will begin upon confirmed email receipt of the decision.

Be advised that upon receipt of a Notice of Appeal by either party, Special Education and Title Services will inform both parties of a Designated State Review Officer.

Upon notification, the local education agency shall ensure the official record is transmitted in a timely manner by the Hearing Officer to the Designated State Review Officer.

Certificate of Service

I, Angela D. Gupta, do hereby certify that I have provided a true and correct copy of the above and foregoing Notice of Hearing Officer's Decision via electronic mail, with return acknowledgment of receipt requested and confirmed, to the following parties:

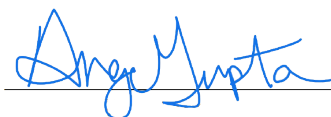
_____, Mother of XX

Bradley R. Finkeldei, Esq.
E-mail: BFinkeldei@stevensbrand.com
Attorney for Respondent

Dr. Crista Grimwood
E-Mail: cgrimwood@ksde.org
KSDE Dispute Resolution Coordinator, Special Education & Title Services

Additionally, pursuant to K.S.A. § 72-3418, within 24 hours of issuance, a copy of this Decision shall be sent by certified mail to the parent of record.

Dated this 23rd day of March, 2026.



Angela D. Gupta
Special Education Hearing Officer
Associates in Dispute Resolution, LLC
212 SW 8th Avenue, Suite 207
Topeka, Kansas 66603
(785) 357-1800