

BEFORE THE SPECIAL EDUCATION HEARING OFFICER

IN THE MATTER OF THE DUE PROCESS HEARING

FOR)
J.T.)
v.) CASE NO. 25DP497-001
LAWRENCE UNIFIED SCHOOL DISTRICT NO. 497)
)

Notice of Hearing Officer's Decision

NOW on this 26th day of January, 2026, this matter comes before the undersigned Special Education Due Process Hearing Officer for decision. For reasons stated below, the undersigned finds that Petitioners have shown that Respondent failed to provide a free, appropriate public education ("FAPE") to ■ on grounds that (1) his 6th-grade and 7th-grade IEPs were not reasonably calculated to allow him to make appropriate progress in light of his circumstances; (2) the school materially failed to implement his 7th-grade IEP; and (3) the school improperly declined to provide ESY speech services during the summer of 2024. Additionally, the undersigned finds that Respondent committed procedural violations that deprived ■ parents of the opportunity to meaningfully participate in the IEP decision-making process, thereby causing substantial harm and/or educational loss to ■. The undersigned concludes that Petitioners are entitled to equitable relief including: (1) reimbursement for expenses incurred in having ■ attend Horizon Academy for his 8th grade school year; and (2) compensatory education services.

I. Procedural Background

On October 9, 2024, Petitioners, as parents and guardians of ■ submitted their Request for Special Education Due Process Hearing ("Due Process Complaint") on Respondent, Lawrence Public Schools, USD #497 (the "District").

In their complaint, Petitioners assert four problems or claims for relief, summarized as follows:

Problem 1/Count I: Inadequate IEP in 6th Grade: In 6th grade, the IEP was not reasonably calculated to enable ■ to make appropriate academic progress, because it failed to address and/or inadequately addressed ■ deficits in the areas of executive functioning, social-emotional/behavioral, reading, math, and writing, thus depriving ■ of a FAPE. Due Process Complaint at 2-4.

Problem 2/Count II: Material Failure to Implement IEP in 7th Grade: In 7th grade, the District failed to provide special education services and modifications/accommodations required under the IEP, thus depriving ■ of a FAPE. Id. at 4-5.

Problem 3/Count III: Inadequate IEP and Amendments to IEP in 7th Grade: In 7th grade, the IEP was not reasonably calculated to enable ■ to make appropriate academic progress, because it failed to address and/or inadequately addressed ■ deficits in the areas of reading, executive functioning, social-emotional/behavioral, reading, math, and writing, thus depriving ■ of a FAPE. Id. at 6-7.

Problem 4/Count IV: Failure to Provide Speech ESY in Summer After 7th Grade: In the summer of 2024, the District deprived ■ of a FAPE by refusing to provide ESY speech services. Id. at 7-8.

Petitioners also assert generally that the District committed procedural violations that caused substantive harm to ■ and deprived ■ parents of the ability to meaningfully participate in the IEP process. Id. at 1-7.

Further, in their complaint, Petitioners seek the following relief:

1. A finding that the District substantively violated the IDEA and Kansas law and denied ■ a FAPE.
2. An order awarding Petitioners compensatory education and/or injunctive relief, including but not limited to:
 - a. All recommendations made by petitioners' expert(s);
 - b. Reimbursement for past private evaluations, therapy, tutors, and associated travel expenses incurred by petitioners;
 - c. Reimbursement for all past and future expenses associated with ■ enrollment at Horizon Academy and/or other private school at petitioners' sole discretion;
 - d. Amending ■ IEP to reflect placement at Horizon [Academy;]
 - e. A comprehensive reevaluation by a qualified outside provider[] of petitioners' selection, and at District expense, and thereafter amending ■ IEP to incorporate special education goals and services that meet ■ unique needs in the areas of speech, reading, writing, spelling, math, executive functioning, and social-emotional/behavioral, taking into consideration the new evaluative data.
3. In the alternative to prospective private placement through graduation, an order compelling the District to place \$500,000 in a trust for the benefit of ■ education, with ■ parents as trustees of the trust.
4. A finding that petitioners are prevailing parties, and that they may apply to a District Court for an award of their attorney's fees incurred in this matter.

Id. At 4. Additionally, with regard to Count IV regarding missed Speech ESY, Petitioners seek alternative relief requiring the District to pay for private speech services for six months. Id. At 8.

On October 18, 2024, Respondent submitted its Response to Due Process Complaint ("Response"), which denied Petitioners' allegations. Id. ¶¶ 1,2,4. In the Response, Respondent asserted, *inter alia*, that it "has at all times remained ready and willing to provide J.T. with a FAPE consistent with his needs as determined by his IEP team and reflected in his IEP." Id. ¶ 5.

On November 5, 2024, the undersigned was appointed to serve as hearing officer in the case.

On December 20, 2024, the undersigned held a scheduling conference and entered a Scheduling Order that, *inter alia*, allowed for certain discovery between the parties and scheduled the due process hearing to be held on June 23-27, 2025.

On June 23, 24, 25, 26, and 27, 2025, the due process hearing was held. Despite best efforts, the parties were unable to complete the presentation of evidence during that time. Therefore, an additional hearing day was held on August 12, 2025.

At the due process hearing, both parties had the opportunity to present evidence and to examine and cross-examine witnesses. Further, the parties stipulated to the admission of Joint Exhibits A1 through A94 consisting of, *inter alia*, ■ educational records. Tr. Vol. 1 at 1:3 to 13:11, 15:8 to 16:18. Additionally, with respect to emails produced in discovery, the parties stipulated to foundation. Id. at 15:8 to 16:18. During the hearing, additional exhibits were admitted into evidence, as reflected on Appendix A to this Decision.

At the due process hearing, the following witnesses testified:

- Tish Holub Taylor, Ph.D, licensed psychologist
- Marcy Willard, Ph.D., child psychologist and Petitioners' retained expert
- Therese Edgecomb, 2023-24 interim principal at West Middle School
- Allison M. Caplinger, MA, CCC-SLP, speech pathologist
- Kristen Kircher, school counselor at West Middle School
- Emily Hathorn, MA CCC-SLP, speech language pathologist at Horizon Academy
- Sage Isenmann, social studies teacher at Horizon Academy
- Faye Williams, former interrelated resource teacher at West Middle School
- ■ former student at West Middle School
- ■ mother¹
- Kirsten Hermrick, 7th grade English language arts teacher at West Middle School
- Lori Stithem, Executive Director of Special Education for the District
- Jennifer Storck, school psychologist employed by the District

Following the close of evidence, the undersigned set a briefing schedule to be completed by October 17, 2025, with oral argument scheduled for November 24, 2025. At the parties' joint request and for good cause shown, the briefing schedule was extended to be completed by

¹ The name of ■ mother is available in the hearing transcript.

November 7, 2025, with oral argument continued to December 15, 2025. Thereafter, the undersigned rescheduled the date for oral argument to January 14, 2026.

On January 14, 2026, counsel presented oral argument in a virtual hearing. In addition to the undersigned, the following persons attended the hearing: Matthew J. Rogers, Counsel for Petitioners, along with James Russo and Laurie Niec, both paralegals in his office; mother; and Gregory P. Goheen, Counsel for Respondent. Following the conclusion of oral arguments, 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 “specially designed instruction ... to meet the unique needs of a child with a disability.” 20 U.S.C. § 1401(29). “Related services” include the 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 at 116 (“If the IEP Team determines that a particular supportive service, which may include mental health supports, 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 services.”).²

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.” 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. §

² 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. State law citations set forth herein should be construed as incorporating the federal counterpart, and vice-versa, to the extent they are consistent. In Kansas, a child with a disability is also known as an “exceptional child.” K.A.R. § 91-40-1(w).

1415(f)(1)(A),(g)). At the end of the administrative process, the losing 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)).

Courts apply a two-part test to determine whether the District has complied with federal special education law: (1) whether the District complied with IDEA's procedural requirements, and (2) whether the IEP developed by those procedures is substantively adequate, such that it is "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." Endrew, 137 S.Ct. at 999.

If a procedural violation is found, the court inquires whether the violation resulted in the denial of FAPE, specifically by analyzing whether the procedural violation caused any of the following: (1) substantive harm to the student or his parents, (2) a deprivation of an IEP for the student, or (3) the loss of an educational opportunity for the student. Systema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 1313 (10th Cir. 2008). "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") under the IDEA, 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 [hearing officer] 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). The IEP must also describe 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 must be 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, however, 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).

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). Once a party meets that standard, the hearing officer or reviewing court may fairly expect school authorities "to be able to offer a cogent and responsive explanation for their decisions." Beer, Memorandum and Order at 54 (Doc. #42) (quoting Endrew F., 580 U.S. at 404).

"Specific learning disability" is a qualifying disability under the IDEA. 34 C.F.R. § 300.8; K.A.R. § 91-40-1(ooo). Kansas regulations define "Specific learning disability" as meaning "a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia." K.A.R. § 91-40-1(mmm).

"Speech or language impairment" is a qualifying disability under the IDEA. 34 C.F.R. § 300.8(a); K.A.R. 91-40-1(ooo). Kansas regulations define "Speech or language impairment" as meaning "a communication disorder, including stuttering, impaired articulation, a language impairment, or

a voice impairment, that adversely affects a child's educational performance." K.A.R. § 91-40-1(ooo).

Kansas schools must obtain written, informed parental consent prior to decreasing a student's special education service by 25 percent or more. K.S.A. § 72-3420(b)(6); K.A.R. § 91-40-1(mm). Further, schools must provide periodic progress reports demonstrating the progress the child is making toward meeting the annual IEP goals. 34 C.F.R. § 300.320(a)(3).

III. Expert Testimony

Petitioners' retained expert, Dr. Marcy Willard, testified at the due process hearing and provided an expert report. See Willard Report, Petitioners' Ex. 207. Dr. Willard is a licensed child psychologist and school psychologist, with a bachelor's degree from the University of Colorado, magna cum laude. Vol. I Tr. at 64:25 to 65:4, 65:23 to 66:2 (Willard). Dr. Willard has a master's degree from Pepperdine University in clinical psychology, and a Ph.D. in child, family, and school psychology from the University of Denver. Id. at 65:2-5.

Dr. Willard has over a decade of experience assessing students with disabilities and providing special education and related service recommendations. Id. at 74:4-8. She has experience in, among other things, special education (e.g., Individualized Education Plans; academic and behavior interventions; behavioral programs; evaluations; Free, Appropriate, Public Education; mental health; social skills), child psychology, learning disabilities, mental health, trauma, and compensatory education. Id. at 68:3 to 78:21. Dr. Willard has conducted hundreds of special education evaluations, and has provided special education recommendations and advice in relation to children with ■ diagnoses and deficits hundreds of times. Id. at 76:11 to 78:8. In her capacity as a licensed school psychologist, Dr. Willard worked in a Colorado K-8 school as a trainer and provider of special services, providing instruction to providers in her home school district and other school districts, for five years. Id. at 65:5-14.

Six years ago, Dr. Willard opened a private practice called Clear Child Psychology; over the past year, she opened a private practice under her own name, Marcy Willard, Ph.D. Id. at 65:18-22. In her private practice, Dr. Willard's primary role is to perform psychological evaluations for children with developmental disabilities, learning disabilities, autism, and ADHD. Id. at 69:10-23, 70:17 to 71:19. Dr. Willard's education, experience, and publications are more fully described in Addendum 1 to her Report, which was admitted into evidence as Petitioners' Exhibit 207.

The undersigned finds that Dr. Willard is qualified as an expert to opine on the matters addressed in her report and testimony. Dr. Willard has ample knowledge, skill, experience, training, and education consistent with Fed. R. Evid. 702. Dr. Willard's technical and specialized knowledge assisted the hearing officer in understanding the evidence and determining facts in issue. Further, Dr. Willard's testimony was based on sufficient facts and data, such as ■ educational records that Dr. Willard analyzed in formulating her opinions. Vol. I Tr. at 79:24 to 82:2, 126:15 to 127:7 (Willard); Addendum 3 to Willard Report, Petitioners' Ex. 207. Dr. Willard administered reliable, evidence-based assessments to evaluate J.T.'s academic, social,

emotional, behavioral, and mental health levels. Id. at 78:22 to 79:23. Accordingly, the undersigned finds that Dr. Willard's testimony is the product of reliable principles and methods, and that her expert opinions reflect a reliable application of the principles and methods to the facts of the case. The testimony of Dr. Willard and her expert report were therefore admitted into evidence.

Based on her comprehensive evaluation of ■ and review of his educational records, Dr. Willard formed the opinions that: (1) in 6th grade and 7th grade, the District failed to provide ■ a FAPE, in that it failed to develop an IEP that was reasonably calculated to enable ■ to make appropriate progress in light of his reading, executive functions, and mental health needs; (2) this denial of FAPE resulted in significant academic decline, social-emotional deficits, and a failure to make meaningful educational progress; and (3) ■ experienced a rapid acceleration in progress due to the specialized instruction that he received at Horizon Academy, which was individualized to address his unique needs. See Willard Report at 27-28, Petitioners' Ex. 207. Additionally, Dr. Willard identified specific problems in ■ IEPs and provided a comprehensive education plan for ■ that includes academic tutoring, executive functioning coaching, mental health support, and assistive technology, as well as suggested IEP amendments. See id. at 27-38.

For reasons discussed below with regard to specific topics addressed in this decision, the undersigned gives varying weight to the information and opinions provided by Dr. Willard.

IV. Factual Findings

At the time of the due process hearing (i.e., in the summer of 2025), ■ was 14 years old. Vol. IV Tr. at 927:1-2 (■) He had successfully completed the 8th grade at Horizon Academy for the 2024-25 school year and planned to attend 9th grade at Baldwin High School (a public school located outside the District) for the 2025-26 school year. Id. at 927:3-11, 928:4-9.

A. 5th Grade at Quail Run Elementary (2021-22 School Year)

In the 2021-22 school year, ■ attended 5th grade at Quail Run Elementary School. During the spring semester of 5th grade, in a writing assignment, ■ wrote a letter to his teacher stating that he felt suicidal and did not like his life. Vol. III Tr. at 592:3-6 (■)³

On March 8, 2022, ■ parents received an email informing them about the letter. Vol. IV Tr. at 964:22 to 966:6 (■ mother); March 2022 Hayes Email, Petitioners' Ex. 14 at T_001049.⁴ On the

³ At the due process hearing, ■ testified that, at the time he wrote the letter, he was in a "darker place" and did not like a lot of the things in his life. Vol. IV Tr. at 592:7-13 (■)

⁴ The bates numbers for documents produced by Petitioners have been modified to substitute "T" for their last name.

same day, ■ parents took ■ to the pediatrician, and he was placed on medication for his mental health. Vol. IV Tr. at 969:8-15, 1061:6 to 1062:16 (■ mother).⁵

On April 7, 2022, ■ mother sent an email requesting that the school evaluate ■ for special education. Vol. IV Tr. at 967:1-6 (■ mother); April 2022 ■ Mother's Email, Petitioners' Ex. 1, USD000032.

On April 13, 2022, the school's special education team met to consider the request. The meeting notes indicate that, after reviewing the parents' concerns along with academic information regarding ■ the team determined that it did not suspect a learning disability. April 2022 SPED Team Meeting, Joint Ex. A-4 at USD 000676.

On April 21, 2022, ■ 5th grade teacher sent his parents an email with a photograph of ■ computer screen showing that he had written the phrase "Kill me." approximately 200 times to fill the entire screen. Vol. IV Tr. at 966:7-11 (■ mother); April 2022 Hayes Email, Petitioners' Ex. 15, USD000051.

On April 26, 2022, the school sent ■ parents a PWN stating that it refused to conduct an initial evaluation of ■⁶ April 2022 PWN, Joint Ex. A-5. Under the explanation of why the action was refused, the PWN stated:

After considering [■] data the school team does not suspect a Special Education disability. Progress monitoring data indicates that he is making adequate growth.

Id. at USD000332.

As to the why the team rejected the option to evaluate ■ the PWN stated:

[T]his option was rejected as no Special Education disability is suspected by the school. [■] is responding to general education intervention supports in math and making progress. His educational needs are able to be met through general education interventions.

Id.; see also Vol. IV Tr. at 1085:23 to 1088:9 (mother).

Upon receiving notice of the school's refusal to evaluate ■ for special education services, ■ parents decided to obtain a private psychoeducational evaluation from Dr. Tish Taylor, Ph.D. Vol. IV Tr. at 976:11-18 (■ mother); Tr. Vol. I at 26-4-10, 27:19-23 (Taylor). Around that time, ■

⁵ Since March of 2022, has received clinical treatment or therapies for mental health issues related to depression and anxiety. Vol. IV Tr. at 1062:17 to 1064:14 (■ mother). Specifically, ■ received mental health care services from a licensed social worker, and medication prescribed by his pediatrician. Id. In 8th grade, ■ discontinued medication for any mental health concerns. Id. At the due process hearing, ■ testified that his suicidal thoughts had mostly subsided; he still had a therapist for that issue, but her rarely saw her. Vol. IV Tr. at 931:6-21 (■) Similarly, ■ mother testified that, at the time of the due process hearing, ■ depression and anxiety were manageable. Vol. IV Tr. at 1062:17 to 1064:14 (■ mother).

⁶ The parties have stipulated that Petitioners received all of the PWNs included in Joint Exhibits A1 through A95. Vol. VI Tr. at 1156:6-10.

mother made an appointment to begin the evaluation with Dr. Taylor on May 12, 2022. Vol. IV Tr. at 1177:16 to 1178 (■ mother).

On May 5, 2022, ■ mother sent an email to the school disagreeing with its decision to not evaluate ■ for special education services. Vol. IV Tr. at 971:11 to 973:11 (■ mother).

On May 10, 2022, the school sent ■ parents a PWN indicating that it had reversed its decision and proposed to conduct an initial evaluation for special education. May 2022 PWN, Joint Ex. A-10. The PWN indicated that the school would collect new data in the categories of social/emotional/behavioral status and academic performance. *Id.* at USD497_000129. On the same day (i.e., on May 10, 2022), ■ parents signed their consent for the school to perform the evaluation. *Id.*; see also Vol. IV Tr. at 1090:17 to 1092:23 (■ mother). ■ mother understood that the school planned to complete the evaluation at the beginning of his 6th grade year. Vol. IV Tr. at 974:18 to 975:4, 1093:11 to 1094:14 (■ mother).

Upon learning this information, ■ parents decided to proceed with Dr. Taylor's evaluation, which was already scheduled to begin two days later (i.e., on May 12, 2022). Vol. IV Tr. at 1171:16 to 1178:5 (■ mother).

B. Summer Before 6th Grade (Summer 2022)

1. Dr. Taylor's Evaluation of ■

Dr. Taylor is a licensed psychologist who has been in private practice since 2007. Vol. I Tr. at 24:15 to 25:3 (Taylor). Previously, Dr. Taylor worked as a school psychologist for approximately ten years, including seven years with the District. *Id.* at 25:1-9, 52:4-22. During the time that Dr. Taylor worked as a school psychologist, she was involved the development of numerous IEPs and initial evaluations that led to IEPs. *Id.* at 52:23 to 53:3.

As part of her evaluation of ■ on two occasions, Dr. Taylor met with ■ and administered a number of evidence-based assessments that are commonly used in her field to measure the academic progress and social/emotional behavioral health of students. Vol. I Tr. at 28:8-15 (Taylor); see 2022 Taylor Eval. Rpt. Additionally, Dr. Taylor completed a parent interview and collected teacher information. *Id.* at 28:1-4. Dr. Taylor then scored and synthesized the information, wrote a report, and met with ■ parents to review the results. *Id.* at 28:4-7; see also 2022 Taylor Eval. Rpt., Joint Ex. A-14.

To gain information regarding ■ basic reading, math, writing, and language-based skills, Dr. Taylor administered the Weschler Individual Achievement Test, Fourth Edition ("WIAT-4"), which applies a standardized measure of achievement Vol. I Tr. at 30:3-11 (Taylor); 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000007. The WIAT-4 results revealed that ■ "had weaker academic skills pretty much across the board." Vol. I Tr. at 30:12-15.

As to writing, ■ WIAT-4 results showed "significantly weaker skills overall" with regard to written language measurements of spelling and sentence writing. 2022 Taylor Eval. Rpt. at T_000007. More specifically, ■ scored at the 0.5 percentile in Written Expression (compared to his peers

nationally), and at the <0.1 percentile in Essay Composition. Vol. I Tr. at 31:1-8 (Taylor); 2022 Taylor Eval. Rpt. at T_000008.⁷ In her report, Dr. Taylor noted that ■ demonstrated “much difficulty with spelling skills, sentence construction, and writing a short essay expanding on a theme.” *Id.* Dr. Taylor further stated that ■ “did not consistently write complete sentences, inconsistently used capitalization and ending punctuation in sentences, and had difficulty writing complex sentences.” *Id.*

As to reading, the WIAT-4 results indicated, among other things, that ■ scored at the 8th percentile (1st-grade level) in Oral Discourse Comprehension; at the 5th percentile (2nd-grade level) in Reading Comprehension; at the 8th percentile (2nd-grade level) in Math Fact Fluency-Addition; and at the 5th percentile (2nd-grade level) in Sentence Composition. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000008. The majority of ■ scores on the WIAT-4 subtests were at the 3rd-grade level. 2022 Taylor Eval. Rpt. at T_000007.

Additionally, ■ scored Well Below Average on the WIAT-4 subtests for reading and math. On the overall reading index, ■ scored at the 8th percentile. Vol. I Tr. at 30:21-24 (Taylor); 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000008. On the overall math index, ■ scored at the 10th percentile. Vol. I Tr. at 30:25 to 31:2 (Taylor); 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000008.

On the Gray Oral Reading Test (“GORT-5), a standardized reading test, ■ demonstrated deficits with decoding and word recognition. Vol. I Tr. at 32:13-20 (Taylor); 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000008-09. ■ scaled score was at the 5th percentile (age 7.3) in reading accuracy, and at the 16th percentile (age 8.3) in reading fluency.⁸ 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000009. As to both reading rate and comprehension, ■ scored at the 25th percentile. His overall reading quotient standard score was at the 18th percentile. *Id.*

Regarding executive functioning skills,⁹ Dr. Taylor administered the NEPSY II, a neuropsychological measure that looks at “cognitive processes such as working memory, processing speed, simultaneous processing, and sustained attention.” Vol. I Tr. at 28:18 to 29:5 (Taylor). The results of the NEPSY II identified executive functioning deficits, which Dr. Taylor described generally as follows:

[When ■ had to sustain his attention for a short time and focus on one type of stimuli, he did well. His attention started to wane some when his working memory was taxed, so he had to remember ... a specific rule and continue to sustain his attention. When he

⁷ On the WIAT-4 subtests, a standardized score of 90-100 would fall in the average range as compared to peers nationally. 2022 Taylor Eval. Rpt. at T_000007. scored a 61 in Written Expression and a 47 in Essay Composition. Tr. Vol. I at 31:1-8 (Taylor); 2022 Taylor Eval. Rpt. at T_000008.

⁸ In the summer of 2022, was 11 years old. See Educational Records, Joint Ex. A-1.

⁹ At the due process hearing, Dr. Taylor described that the term “executive functioning skills” refers to cognitive process such as working memory, processing speed, simultaneous processing, and sustained attention. Vol. I Tr. at 28:25 to 29:5.

had to do a task that required a combination of executive functioning processes, he had more fluctuating scores and some lower scores.

Vol. I Tr. at 29:8-20 (Taylor).

More specifically, under the category of attention and executive functioning, ■ scored Well Below Expected Level in the subcategory of “Inhibition: Naming Combined.” 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000007. Additionally, ■ scored Below Expected Level in the subcategory of “Inhibition: Combined.” Id. ■ scores were Borderline in three subcategories: “Response Set Combined,” “Inhibition: Naming Total Time,” and “Inhibition: Total Errors.” Id. ■ scores in the remaining six subcategories were At or Above the Expected Level. 2022 Taylor Eval. Rpt. at T_000007.¹⁰

Dr. Taylor also gathered information from ■ and his parent(s) regarding attention-based functioning, executive functioning, and behaviors including anxiety, depression, self-esteem and peer relationships. Vol. I Tr. at 34:2-23 (Taylor); 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000010-013.¹¹ ■ parent(s) reported “highly significant concerns” with inattention, learning problems, executive functioning, anxiety, and Attention Deficit Hyperactivity Disorder, Inattentive Type (“ADHD Inattentive”); and “significant concerns” with hyperactivity/impulsivity, peer relations, depression, internalizing composite, and activities of daily living. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000010-12. ■ self-report indicated “highly significant concerns” with sense of inadequacy, and “significant concerns” with attitude toward school, atypicality, anxiety, hyperactivity, inattention/hyperactivity, self-esteem, and emotional symptoms. Id. at T_0000012-13.

Additionally, Dr. Taylor used the Vanderbilt scale to gather information from ■ 5th grade teacher about his behavioral functioning in the school setting. Vol. I Tr. at 34:2 to 37:23; 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000010-13. The teacher indicated some of the same inattentive-type concerns, though not as significantly as the parent. Vol. I Tr. at 34:20-23 (Taylor).

As a result of her evaluation, Dr. Taylor diagnosed the following:

- 315.00 Specific Learning Disorder in Reading
- 315.1 Specific Learning Disorder with impairment in Math
- 315.2 Specific Learning Disorder in Written Expression
- 314.01 Other Specified Attention Deficit Hyperactivity Disorder
- 300.02 Generalized Anxiety Disorder
- 311 Other Specified Depressive Disorder

¹⁰ The remaining subcategories were: “Auditory Attention: Total Correct,” “Auditory Attention Combined,” “Response Set: Total Correct,” “Inhibition: Switching Total Time,” “Inhibition: Switching Combined,” and “Narrative Memory Free & Cued Recall.” 2022 Taylor Eval. Rpt. At T_000007.

¹¹ More specifically, Dr. Taylor administered the Parent Conners’ 3 Rating Scale, BRIEF 2 Parent Rating Form, BASC-3 Parent Rating Scale, and BASC-3 Child Self-Report Scale. Id.

2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000013.

Dr. Taylor diagnosed ■ with generalized anxiety disorder and found clinical indicators (but not a full diagnosis) of ADHD and depression. Vol. I Tr. at 37:24 to 38:5 (Taylor). In her report, Dr. Taylor recommended individual and consistent counseling services. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000015. The report further stated, "Access to school based mental health resources would also be helpful." Id.

At the due process hearing, Dr. Taylor opined that ■ required special education in the areas of math, reading, and writing. Tr. Vol. I at 38:14 to 39:1 (Taylor). Dr. Taylor also stated that ■ learning disabilities in the areas of reading, math, and written expression could be described as dysgraphia, dyslexia, and dyscalculia. Id. at 37:24 to 38:9.

Dr. Taylor's report stated, in part, that:

[■] is demonstrating delays in all of these academic areas including with basic reading/decoding skills, text reading fluency, reading comprehension, math reasoning and math computation skills, and basic writing skills. . . . [■] is requiring additional assistance and remedial academic work to assist with academic progress. Areas that are most needed include basic reading skills, reading comprehension, math reasoning and problem solving, math computation (especially multiplication and division), writing mechanics, sentence formation, and expressing thoughts and ideas onto paper in an efficient manner.

2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000013.

Regarding academic instruction, Dr Taylor's report included, among other things, the following recommendations: (1) systematic and targeted instruction to include methods and curriculums that support an Orton Gillingham approach and a data monitoring system to review and analyze reading and spelling progress at least quarterly; and (2) instructional math strategies to include utilizing math concepts in a variety of ways and with a variety of problems to cement these concepts into long-term memory, and utilizing manipulatives, concrete examples, and sequential steps in math when a concept is difficult for ■. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000014-15.

The report further recommended interventions relating to executive functioning and learning that included, among other things: (1) teaching methods that do not overload working memory such as concept maps or graphic organizers; (2) multi-modal teaching methods (visual, auditory, and tactile); (3) direct teaching of learning strategies related to reading and writing based in cognitive instruction; (4) assistance with writing skills, including formulative sentences and organizing thoughts; (5) small group or individual instruction as available; (6) provide a copy of classroom notes so ■ is able to receive all information; (7) break down long writing tasks into smaller steps or steps that can be completed in chunks in order to gain his most effective work; (8) allow extra time, as needed, for assigned tasks; (9) allow for tests and longer reading materials (that are not measuring reading) to be read aloud so he can hear it as well as read along; (10) assistance with organization, including checking to make sure all information is

in his planner; (11) provide external reminders for time and time management; (12) check-in system or monitoring system to ensure he is consistently organizing his assignments and materials; and (13) break longer stints of homework into shorter amounts to avoid overwhelm. Id.; Vol. I Tr. at 39:15-25 (Taylor).

Regarding interventions/accommodations to address attention-based skills, Dr. Taylor's report recommended to: (1) provide external reminders for time and time management (i.e., warnings for transition times, timers, and estimating time for a task); (2) check-in or monitoring system to ensure ■ is consistently organizing his assignments and materials; and (3) break longer stints of homework into shorter amounts to avoid overwhelm. Id. at T_0000015.

At the due process hearing, Dr. Willard agreed with Dr. Taylor's assessment that ■ needed special education in reading, and in particular, to target his specific reading deficits in decoding, word reading accuracy, fluency, and reading comprehension. Vol. I Tr. at 91:24-92:19 (Willard). Dr. Willard further explained that the first building-block reading concept to teach a student with dyslexia, including J.T., should be decoding to help the student look at a symbol and make sense of it. Id. at 92:20-94:20. Dr. Willard stated that problems with decoding lead to problems with reading accuracy, because a student who cannot make sense of the symbols cannot make sense of the word. Id. In turn, a student that cannot make sense of the word (accuracy), struggles with reading fluency (i.e. the ability to make the words sound clear and fluid, or how smoothly the reader reads). Id. Dr. Willard further opined that Dr. Taylor's report showed that ■ needed special education related services to address his mental health needs, because he was experiencing depression and anxiety that were negatively affecting his ability to learn, and that he also required specialized instruction to address his executive functioning deficits. Id. at 101:3 to 107:21.

2. Private Speech-Language Services with Caplinger

Based on Dr. Taylor's recommendation, ■ parents have obtained private speech pathology services for ■ from Allison M. Caplinger, MA, CCC-SLP.¹² Vol. IV Tr. at 995:8 to 996:11 (■ mother).

In August of 2022, Caplinger performed an initial evaluation of ■ Vol. II Tr. at 9:19-25 (Caplinger). Since then, ■ has been working with a therapist at Caplinger's company, CAP Communications, LLC, which provides evaluation and therapy to children with language and literacy disorders. Id. Initially, the sessions were weekly and lasted 45 minutes per session. See, e.g., Caplinger Report at T_000050, Joint Ex. A-32; Vol. II Tr. at 71:6-15, 91:15-23 (Caplinger). At the time of the due process hearing, ■ was receiving 45 minutes of speech therapy every other week. Id. at 92:25 to 93:13. Caplinger did not know when or why the family chose to reduce his speech therapy from weekly to every other week. Id.

¹² Dr. Caplinger is speech language pathologist ("SLP") with a clinical doctorate degree from the University of Kansas. Vol. II Tr. at 9:19-25 (Caplinger).

C. 6th Grade at West Middle School (2022-23 School Year)

Jennifer Storck has been a school psychologist with the District for six years.¹³ Vol. VI Tr. at 8:5-13 (Storck). As school psychologist, Storck meets regularly with the school's general education intervention ("GEI") team to identify students who may not be responding adequately to general education interventions. Id. at 11:3 to 16:9.

During ■ 6th and 7th grade school years, Storck was a school psychologist for West Middle School. In the fall of 2022, Storck was part of the evaluation team and IEP team for ■ Vol. VI Tr. at 33:2 to 34:3 (Storck).

In ■ 6th grade year (2022-2023), Kristen Kircher began working for the District as a school counselor at West Middle School. Vol. II Tr. at 204:21 to 205:2 (Kircher).¹⁴ As school counselor, Kircher provided academic, social, and emotional support for students. Id. at 11:9-11.

In August of 2022, Storck informed Kircher that ■ was struggling with mental health challenges involving intrusive thoughts, suicidal ideation, self-harm, anxiety, and ADHD. Vol. II Tr. at 125:19 to 126:11 (Kircher). Kircher did not know the specifics of what had transpired in ■ 5th grade year with respect to his mental health challenges. Id. at 126:21 to 129:25. On August 17, 2022, ■ mother emailed Kircher a copy of Dr. Taylor's report. Vol. II Tr. at 265:2 to 266:1 (Kircher).

1. The District's 3-Tier System for Academic and Socio-Emotional Needs

The District utilizes a three-tiered system of educational support for students. Vol. VI Tr. at 11:3 to 16:9 (Storck). All students presumptively receive Tier I instruction in the general education setting. Vol. VI Tr. at 11:3 to 16:9 (Storck). Tier 1 instruction includes a program called Character Strong, which addresses social emotional learning. Id.

The District utilizes FastBridge as a school-wide screening tool to identify students who may need intervention with regard to academic and social emotional needs. Vol. VI Tr. at 11:3 to 16:9 (Storck). FastBridge assessments are given to students three times a year, with scores indicating No Risk, Some Risk, and High Risk. Id.

Regarding academic needs, the GEI team typically looks at students who are in the High Risk and Some Risk areas to give them "an extra dose" of educational intervention. Id. Those students are placed into Tier 2 for close monitoring. Id. Under Tier 2, staff will typically pull students and work with them in small groups to target their individual needs. Id.

¹³ Storck has worked for 15 years in the field of school psychology. Id. Storck has an undergraduate degree in psychology and an educational specialist degree. Id. at 6:9 to 7:10.

¹⁴ Kircher has worked as a school counselor since 2016; previously, she worked as a special educational paraprofessional. Vol. II Tr. at 113:3-6 (Kircher). Kircher has an undergraduate degree in psychology and a master's degree in school counseling. Id. at 113:9-16.

If students falling in Tier 2 continue show a need for more intervention, the GEI team applies a multi-disciplinary approach to examine factors that might be interfering with the student's progress, and then "problem-solve" for possible steps and support to provide the student. Id. If it becomes apparent that the student has a disability and is not responding appropriately, the GIE team will make a referral for a special education evaluation. Id. When a student is referred for a special education evaluation, the team will pick components and areas in which they suspect a disability, or that they suspect may be interfering with the student's learning. Id. at 20:21 to 21:2.

Storck described that 80 percent of the student population is expected to respond to Tier 1 intervention, while 15 percent may need additional supports under Tier 2, with 5 percent needing "intense and sustained supports" under special education intervention (i.e. under Tier 3). Id. at 11:3 to 16:9.

Similarly, West Middle School utilizes a three-tier system for students who indicate socioemotional needs. Vol. II Tr. at 210:15-22 (Kircher). Tier 1 is school-wide and provides general curriculum strategies to all students. Id. at 211:2-5, 212:3-10.

Tier 2 is more individualized with respect to a specific need. Id. at 211:6-7. Kircher described Tier 2 as follows:

Tier 2 is where you do have more precise plans and where there are criteria as far as data collection from the teachers, data collection and information that's been shared, and there's multiple facets of where that information is housed and how we get that information, but it's – it's really team decision-making, but also looking at the data available to us after collection.

Vol. II Tr. at 214:12-20 (Kircher).

Tier 3 involves more specialized support, such as "a specialized classroom, those sort of things, or a specialized plan, such as an IEP." Id. at 211:16-22.

2. West Middle School's Evaluation of ■

In the beginning of his 6th grade year, ■ came to the West Middle School evaluation team with concerns regarding social emotional behavior and academic needs. Vol. VI Tr. at 20:21 to 22:8 (Storck). The 5th-grade team at Quail Run Elementary School had collected some information and forwarded the open evaluation for completion at West Middle School.

The 6th-grade team finished the evaluation and prepared a report for the evaluation team meeting scheduled for October 13, 2022. Vol. VI Tr. at 33:2 to 34:3 (Storck); see October 2022 Evaluation Team Report, Joint Ex. A-22. The school's evaluation report included some existing data that the family brought from Dr. Taylor, which the team used along with information from his elementary school, observational data, and diagnostic information gathered in the evaluation. Vol. VI Tr. at 21:3-18, 31:2-15 (Storck).

The school's evaluation team report indicates the following reason(s) for the evaluation:

[■] was referred for an evaluation by his parents. Concerns revolved around mental health issues including depression and anxiety. [■] distress was reported to be closely tied to school and academic frustrations in math specifically. For the educational evaluation, the team requested new data in the areas of social-emotional and behavior and academics, specifically math.

October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000017.

In the interventions/services summary, the school's report referred to Dr. Taylor's report as follows:

Dr. Taylor's evaluation was completed over the summer. [■] was diagnosed with a Specific Learning Disorder in Reading, Math, and Written Expression, as well as Generalized Anxiety Disorder and Other Unspecified Depressive Order and Other Unspecified ADHD. Dr. Taylor wrote that [■] demonstrated delays in all areas of academics including basic reading/decoding skills, text reading fluency, reading comprehension, math reasoning, math computation, and basic writing skills. She noted that he is not showing grade level and expected growth in all areas of academic development. Attention issues are believed to also play a role in his difficulties but do not provide a comprehensive explanation for his academic weaknesses. She notes that he needs the most support in basic reading skills, reading comprehension, math reasoning/problem solving, math computation (especially multiplication and division), writing mechanics, sentence formation, and expressing his thoughts and ideas onto paper in an efficient manner.

[■] performance on the WISC-IV per Dr. Taylor's evaluation indicated fluctuations in his cognitive profile with strengths in verbal comprehension, and fluid reasoning, and weaknesses in working memory and processing speed. She also administered the NEPSY-II attention and Executive Functioning Domain. [■] showed weaknesses in inhibition.

October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000017-18.

As part of the school's evaluation, ■ completed the Behavior Assessment System for Children, Third Edition ("BASC-3"). September 2022 BASC-3 Report, Joint Ex. A-18.¹⁵ Under the category of "Internalizing Problems," ■ scores were Clinically Significant in the following areas: "Atypicality," "Social Stress," "Anxiety," "Depression," and "Sense of Inadequacy." September 2022 BASC-3 Report, Joint Ex. A-18 at USD000809. Additionally, ■ scores were Clinically Significant on the composite scores for School Problems and the Emotional Symptoms Index,

¹⁵ Based on ■ self-ratings, the report provided scale scores obtained using norms. *Id.* At USD000809. According to the BASC-3 Report, scale scores in the Clinically Significant range suggest a "high level of maladjustment," and scale scores in the At-Risk range may identify a "significant problem that may not be severe enough to require formal treatment or may identify the potential of developing a problem that needs careful monitoring." *Id.*

as well as "Attitude to School." *Id.* at USD000809-810. Under the category of "Inattention/Hyperactivity," ■ scores were At-Risk in the areas of "Attention Problems" and "Hyperactivity." *Id.* at USD000809-810. Further, his score was At Risk in the area of "Attitude to Teachers." *Id.* The Clinical Summary states that "[■] endorsed BASC-3 items that resulted in clinically significant Depression and Anxiety scale scores." *Id.* at USD000814.

Regarding emotional distress, the school's evaluation report¹⁶ stated that ■ math teacher rated higher levels of observable emotional concerns than his ELA or Social Studies teachers. October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000028. The report concluded that, although ■ demonstrated emotional distress at home and in math, the team should not consider emotional disturbance in the education environment, because there were not significant concerns regarding distress in all educational settings, but only in math. *Id.*¹⁷

As to reading, the school's evaluation report stated that ■ was given the FastBridge teacher-administered Fluency/Comprehension probe, in which he received a 6th-grade reading passage with one minute to read, and he read 111 words with 100 percent accuracy on word recognition and answered all 10 comprehension questions accurately. October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000021-022. Additionally, under summary and recommendations, the school's report stated that, in 5th grade, ■ FastBridge reading scores indicated average performance and that, in the fall of 6th grade, his reading fluency measures indicated that he was "on or right below" grade level. *Id.* at T_000017. Further, the report contained a chart showing that ■ FastBridge aReading scores from the fall of 5th grade to the fall of 6th grade ranged between the 32nd to 43rd percentile. *Id.* at T_000019.

Regarding executive functioning, the school's evaluation report indicated that, on the BRIEF-2 assessment given to ■ teacher and parents, ■ scores were "clinically significant" in the areas of emotional control and task monitoring. October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000026-028. In summary, the report stated:

there is agreement across raters and environments that there are deficits in [■] ability to effectively plan and break down tasks, to complete a task accurately, and that there are difficulties with emotional lability and explosive emotional outbursts.

Id. at T_000027. Additionally, the report stated "there was agreement across settings that Task-Monitor is an issue, which speaks to observations that [■] rushes through work, resulting in careless mistakes." *Id.* at T_000028.

¹⁶ The IEP meeting notes from the same day indicate that ■ math teacher, Mrs. Brucker, saw ■ three times a day (in advisory, math, and flex). October 2022 IEP Meeting Notes, Joint Ex. A-24 at USD497000149.

¹⁷ At the due process hearing, ■ mother disagreed with the school's findings that ■ emotional concerns were only occurring in math. Vol. IV Tr. at 983 :3-25 (■ mother). ■ mother testified that ■ also struggled with and had anxiety about reading and writing; however ■ mother agreed that math was "probably the most significant." *Id.* at 984:1-5.

As to math, the school's evaluation report stated that, over the past year, ■ FastBridge scores indicated low performance in math. Id. Specifically, on the aMath assessment in 5th grade, ■ scored in the 21st percentile (nationally) in the fall, in the 11th percentile in the winter, and in the 11th percentile in the spring. Id. at T_000018. Similarly, in the fall of 6th grade, ■ scored in the 15 percentile on the aMath assessment. Id. On the cbmMath Automaticity assessment in 5th grade, ■ scored in the 8th percentile in the fall, in the 11th percentile in the winter, and the 11th percentile in the spring. Id. at T_000019. Similarly, in the fall of 6th grade, ■ scored in the 8th percentile on the on the cbmMath Automaticity. Id.

Further, as to math, the school's report stated that ■ recent performance on the Feifer Assessment of Mathematics ("FAM") suggested that: "[■] has weaknesses on the verbal and semantics indices, which may interfere with his ability to conceptually understand math concepts and to fluently retrieve math facts." Id. at T_000028. More specifically, on the FAM, ■ scored Significantly Below Grade Level in the following areas: rapid number naming (8th percentile); multiplication fluency (7th percentile); linguistic math concepts (4th percentile); verbal index (5th percentile); perceptual estimation (2nd percentile); subtraction knowledge (8th percentile); multiplication knowledge (7th percentile); semantic index (7th percentile); FAM total index (6th percentile). Id. at T_000022.

3. ■ Placed in Tier 2 for Mental Health Support

Kircher was part of the special education ("SPED") team for ■ which would have also included other school staff such as teachers, administrators, school psychologists, and the social worker at the time. Vol. II Tr. at 123:1-11, 132:6-10 (Kircher). Kircher testified that ■ scores on the BASC Report would have been reviewed and discussed in the SPED meeting, which included school staff. Vol. II Tr. at 133:2 to 135:2 (Kircher). Kircher stated that Clinically Significant scores indicated that the "intensity and disruption" to ■ learning would be "intense." Id. at 136:1-11.

According to Kircher, the SPED team determined that ■ needed Tier 2 mental health support, as opposed to Tier 3 support, because the team knew ■ well and knew he was a strong advocate for himself. Vol. II Tr. at 121:4 to 123:6 (Kircher). Kircher said, because ■ had strong sense of self-awareness and a strong voice, the team did not think it made sense to confine ■ to a schedule of a specified number of minutes to talk with the social worker about his mental health needs. Id.

Kircher knew that ■ suicidal ideation was part of the impetus for conducting the special education evaluation for ■ along with academic concerns. Vol. II Tr. at 130:10-15 (Kircher). However, Kircher did not know the specific examples of what ■ had written in 5th grade. Vol. II Tr. at 126:21 to 128:25 (Kircher).

At the due process hearing, Kircher stated that, as the school counselor providing services to ■ it would have been important for her to know that ■ had written "Kill me" numerous times to fill his computer monitor and turned in a writing assignment stating, "I feel suicidal. I don't like my life." Id. at 129:4-10, 131:11-17.

Kircher testified that the SPED team did not have this information when it was determining whether to place ■ in Tier 2 or Tier 3. Id. at 131:18 to 132:5.

4. October 13, 2022: Evaluation Team Meeting and IEP Team Meeting

On October 13, 2022, the school held an evaluation team meeting and IEP team meeting for ■. The meetings were held at the same time, either consecutively or simultaneously. ■ mother described that all of the participants attended both meetings, which were essentially held at the same time. Vol. IV Tr. at 984:9-23, 1194:7 to 1107:9 (■ mother).

The evaluation team included: ■ parents; Patricia Cottrell, ■ 6th grade special education teacher; Jennifer Storck, school psychologist; and Debra Brucker, ■ 6th grade math teacher and advisory teacher. October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000030; Vol. IV Tr. at 1104:8 to 1106:1 (mother).

The October 2022 IEP indicates that the following people participated in the IEP meeting: Kristen Kircher, school counselor; Julie Ohse, school social worker; Alli Caplinger, ■ private speech pathologist; and Alyssa Brewer, school psychologist practicum student. October 2022 IEP, Joint Ex. A-23 at T_000032.

At the meeting, ■ was determined to be eligible in a specific learning disability in writing and math. Vol. VI Tr. at 21:18 to 22:8 (Storck). From there, information in the school's evaluation report was used to identify the areas of need in which he would need specific specially designed instruction and develop goals, modifications, and accommodations to include in the IEP. Id.

In developing goals for the IEP, Storck testified that the 6th grade special education teacher (Cottrell) provided additional measures to help write the goals. Vol. VI Tr. at 37:2-18 (Storck). Specifically, in addition to the Feifer Math Assessment (which was more diagnostic in nature and not as helpful for writing goals), Cottrell administered additional curriculum-based measures, such as individual subtests in the FastBridge system, to help develop baseline numbers to start with on the October 2022 IEP. Id.

In ■ case, school staff members came to the IEP meeting with ideas about what goal areas they wanted to propose. Vol. VI Tr. at 24:6-18 (Storck). In particular, a draft IEP was presented that included only a math goal. October 2022 IEP Meeting Notes, Joint Ex. A-24 at USD497_000150. After further discussion in the meeting, the IEP team decided that Cottrell would "gather information to possibly to add a second goal in writing." Id. The meeting notes state that the second goal "will address executive function needs as it relates to written responses and giving complete answers." Id. The notes further stated that "[■] will start going to Mrs. Cottrell during Flex [class] to work on goals." Id.

During the meeting, neither ■ mother nor Caplinger (■ private speech pathologist) suggested that speech language pathology services be included in the IEP. Vol. IV Tr. at 1123:19-22 (■ mother).

At the end of the meeting, ■ mother understood that Cottrell was going to put together a goal in writing that would also include some sort of work in executive functioning as well. Vol. IV Tr. at 988:19 to 989:4 (■ mother).

Four days later, on October 17, 2022, ■ parents signed a prior written notice (“PWN”) dated October 13, 2022, which requested parental consent for special education services and placement for ■ October 13, 2022 PWN, Joint Ex. A-25.

The description of proposed action in the PWN included special education in math and writing, as well as services to help with executive functioning, as follows:

- [■] will receive special education services under the exceptionality of Specific Learning Disability in math and writing.
- He will receive special education services in a special education setting for one period every other day during the entirety of FLEX class (resource room setting). *He will receive special education services in a general education setting for the entirety of [■] ELA and Math classes to help support math goals, executive functioning, and assistance in helping [■] learn to selfadvocate appropriately if he doesn't know how to start or complete a task.*
- Put the following accommodations/modifications in place: proximity control, study guides provided, alternate setting for math tests and district/state testing, chunking of assignments, planner check at the end of the day, fidgets, speech to text, graphic organizers, and models of acceptable work.

October 13, 2022 PWN, Joint Ex. A-25 at USD497_000152 (emphasis added). Under the explanation of why the action was proposed, the PWN stated: “[■] needs the services outlined in order to meet the proposed goals in math, writing and executive functioning.” Id.

Based on language in the PWN, ■ mother understood that ■ would be receiving special education services during the entirety of his flex class (every other day) and during the entirety of his ELA and math class to support him with math, writing, executive functioning, and learning how to self-advocate when he needed assistance. Vol. IV Tr. at 992:12 to 993:20 (■ mother). ■ mother further understood that the IEP would contain goals in math, writing, and executive functioning. Id.

At the time they signed the PWN, ■ parents did not have a copy of the finalized October 2022 IEP. Vol. IV Tr. at 1181:21 to 1182:12 (■ mother). Subsequently, ■ parents received the finalized IEP, which did not contain any goals or special education services to address executive functioning.¹⁸ Vol. IV Tr. at 989:9-11; 1118:8-13 (■ mother). ■ mother did not voice any complaints about the finalized IEP. Id. at 1120:20 to 1121:4.

5. The October 2022 IEP

The October 2022 IEP contained two goals: one in math and one in writing. October 2022 IEP, Joint Ex. A-23. The IEP did not contain a goal that addressed executive functioning. Id. Further,

¹⁸ The record does not indicate when ■ parents received the finalized October 2022 IEP.

the service delivery statement did not mention executive functioning or self-advocacy skills. October 2022 IEP, Joint Ex. A-23 at T_000041.

Regarding extended school year services (“ESY”), i.e. summer school, the October 2022 IEP provided that, based on current and available data, ESY services were not necessary. October 2022 IEP, Joint Ex. A-23 at T_000038.

The October 2022 IEP provided that special education services would be delivered to ■ in the following ways:

- 1) In-class support for math class “to aid in the learning of new math concepts and assist with independent work completion.”
- 2) In-class support for the writing portion of ELA “to support his writing goal of correctly using conventions.”
- 3) Pull-out instruction for flex class, “where he will receive targeted instruction on needed math [and writing] skills.”

October 2022 IEP, Joint Ex. A-23 at T_000064.

Additionally, the October 2022 IEP provided for the following modifications and supports: proximity control in core classes; study guides in science and social studies; alternate setting for math and all state and district assessments; chunking of assignments in ELA, science, and social studies; planner check at the end of the day to ensure all assignments are recorded; fidgets in core and essential classes; speech-to-text in all core classes; graphic organizers in all core classes; models of acceptable work in all core classes; and checklist for written responses requiring one or more sentences. October 2022 IEP at T_000039, Joint Ex. A-23.

a. Math

Regarding present levels in math, the October 2022 IEP stated as follows:

When [■] took the FastBridge aMath screener (Fall 2022), he received a score of 206 which was at the 15th percentile This score places him in the “some risk” range [with respect to his] broad math abilities. His FastBridge cbmMath¹⁹ Automaticity score was 20 which is at the 9th percentile ... and is in the “high risk” range. He answered 8 out of 44 items correctly (57%) on the General Outcome Measure. Fluency with simple computation and numbers, in general appear, to be difficult for [■] He was also given the Feifer Assessment of Mathematics for his evaluation. Fluency with numbers was one of his weakest areas. He was at the 8th percentile for rapid number naming, the 4th percentile for linguistic math concepts, 16th percentile for additional fluency, 14th percentile for subtraction fluency, 18th percentile for multiplication fluency, and 6th percentile for division fluency. ***

¹⁹ CBM stands for curriculum-based measure. Vol. III Tr. at 850:8-9 (Williams).

October 2022 IEP, Joint Ex. A-23 at T_000033.²⁰

The October 2022 IEP established the following math goal:

When given a timed 6th grade level computational automaticity CBM probe [■] will be able to improve overall computation skill at a score of 33 by the end of the IEP as measured by Curriculum Based Assessment.

October 2022 IEP, Joint Ex. A-23 at T_000033.

The October 2022 IEP provided for special education services in math to be provided through (1) in-class support for math class “to aid in the learning of new math concepts and assist with independent work completion” and (2) pull-out targeted instruction in flex class “on needed math skills.” *Id.* at 000041.

The 2022-23 progress report indicates that, in all four quarters of 6th grade, ■ met the measurable objectives for his math goal. 2022-23 Progress Report, Joint Ex. A-29 at USD000279-280.²¹

b. Writing

Regarding present levels in writing, the October 2022 IEP stated as follows:

[■] parents and tutor expressed concern with his writing skills so a writing probe was done as an extension to the current evaluation. [■] was given an Aimsweb writing probe with one minute to think about the writing prompt and three minutes to write a story about the probe. [■] wrote a total of 28 words in three minutes, which was at the 14th percentile when compared to same grade peers. [■] had 12 correct word sequences which was at the 6th percentile) when compared to same grade peers. A correct word sequence is considered to be when two adjacent words that are spelled correctly with any needed capitalization and punctuation. Of the 28 words written, 19 of them were spelled correctly which was at the 19th percentile when compared to same grade peers. Words spelled incorrectly were able to be decoded by the reader and were close to the correct spelling. The story was on topic with the writing prompt and used good word choice.

²⁰ The “present levels” section of an IEP indicates what the assessments are showing with respect to where the student is currently functioning in this area, including identifying any deficits and what skills the student has potentially mastered, and what skills the student is moving toward. Vol. III Tr. at 737:11 to 738:23 (Williams). The present levels is connected to the goal in the sense that the information in the present levels essentially lays the groundwork or foundation as to where the student is struggling, and the goal identifies what the student is to work on based on the present levels information. *Id.* In other words, the goal is meant to target the deficits identified in the present levels. *Id.*

²¹ More specifically, the progress report indicates that, on the automaticity CBM probe, ■ met the objective to score 23 with a score of 24 at the end of 2nd quarter; that he met the objective to score 26 with a score of 40 at the end of the 3rd quarter; and that he met the objective to score 29 with a score of 45 at the end of the 4th quarter. *Id.* at USD000279-280.

October 2022 IEP, Joint Ex. A-23 at T_000035.

The October 2022 IEP established the following writing goal:

When given a writing prompt with one minute to think about the prompt and three minutes to write [■] will be able to write 20 correct word sequences at a 6th-grade level by the end of the IEP as measured by Curriculum Based Assessment.

October 2022 IEP, Joint Ex. A-23 at T_000035.

The October 2022 IEP provided for special education services in writing to be provided through in-class support for the writing portion of ELA class “to support his goal of correctly using conventions.” Id. at 000041.

The 2022-23 progress report indicates that, in all four quarters of 6th grade, ■ met the measurable objectives for the writing goal. 2022-23 Progress Report, Joint Ex. A-29 at USD000281-282.²²

As reflected above, the present levels for writing referred to ■ performance on the AimsWeb writing probe. At the due process hearing, Williams explained that this probe is used primarily for special education students who have writing goals. Vol. III Tr. at 764:1 to 766:25 (Williams). Williams described that it is a relatively quick process in which the student is given a writing probe with one minute to think about the probe and three minutes to write. Id. A correct word sequence requires at least two correct words and/or correct punctuation on either side of a word. Id.

The present levels for writing did not reference Dr. Taylor’s assessment. Vol. III Tr. at 764:13-16 (Williams). As noted, Dr. Taylor’s assessment indicated, among other things, that ■ displayed “significantly weaker skills overall” in written language measurements of spelling and sentence writing skills including essay composition at the 0.1 percentile; written expression at the 0.5 percentile; and sentence composition at the 5th percentile. Taylor Eval. Rpt. at T_000007-08; see also Vol. III Tr. at 768:18 to 769:11 (Williams).

c. Mental Health/Social-Emotional

Under “Considerations” on the October 2022 IEP, the box “yes” is marked to answer whether “the student [has] a documented health condition that impacts the student’s involvement and progress in the general curriculum and general education classroom and other education-related settings?” October 2022 IEP at T_000037, Joint Ex. A-23. As further explanation, the IEP states as follows:

²² More specifically, the progress report indicates that, by the end of the 2nd quarter, ■ met the objective to write 14 correct word sequences by writing 16 correct word sequences; by the end of the 3rd quarter, he met the objective to write 16 correct word sequences by writing 20 correct word sequences; and by the end of the 4th quarter, he met the objective to write 18 correct word sequences by writing 30 correct word sequences. Id. at USD000281-282.

[■] has a diagnosis of unspecified ADHD and anxiety. There is not a health care plan in place for this; however, [■] will be allowed to see the school counselor whenever he is experiencing anxious episodes at school.

Id.

The October 2022 IEP did not provide any special education minutes or related services to address ■ mental health or social/emotional deficits.²³ Vol. II Tr. at 147:19 to 148:2, 151:21 to 152:2 (Kircher). The Vol. II Tr. at 151:21 to 152:2 (Kircher). Instead, the IEP provided that the primary vehicle to address those matters would be to allow ■ “to see the school counselor (i.e. Kircher) whenever he is experiencing anxious episodes at school.” Id. at 151:21 to 152:2.

At the due process hearing, Kircher testified that, in ■ case, because he had gone through a special education evaluation, it would have been his IEP team who decided whether Tier 2 or Tier 3 level services would be most appropriate and tailored for his individual needs.²⁴ Vol. II Tr. at 214:21 to 215:11 (Kircher). Kircher further stated that assessments were predominantly done by the school psychologist, with the social worker doing the social history, and then the information they gathered would have been presented to the IEP team to make the final determination. Id. At 215:12-19.

The undersigned notes that Kircher’s testimony could be construed to be inconsistent as to whether it was the SPED team or the IEP team that decided to place ■ in Tier 2 for mental healthsupport. ■ mother testified that no one from the school ever talked to her about the three-tier system for mental health resources. Vol. IV Tr. at 1000:2-9 (■ mother). In light of these inconsistencies, the undersigned finds that this decision was made by the SPED team, with little to no input from the IEP team.

Storck testified that the IEP team discussed that much of the concern with ■ emotional health seemed to be centered around his academics. Vol. VI Tr. at 31:25 to 32:12 (Storck). Storck stated that, in collaboration with the parents, therapist, and school social worker, the team agreed to start by targeting the academic concerns in the IEP. Id.

Kircher stated that, from her perspective, the IEP team’s discussion was that poor academic performance played a significant role in ■ mental health deficits, and the focus was on improving his academics. Vol. II Tr. at 152:2-21 (Kircher). When asked how the concerns identified in ■ BASC Report were addressed at the October 2022 IEP meeting, Kircher did not recall. Vol. II Tr. at 146:20 to 147:19 (Kircher). Kircher agreed that, even though ■ academics

²³ The record does not reflect any distinction between references to ■ mental health or social/emotional needs. This order uses the terms interchangeably.

²⁴ To the extent this testimony is inconsistent with Kircher’s statements that it was the SPED team that decided to place ■ in Tier 2, the undersigned finds that the SPED team likely made the initial determination or recommendation, which would have been subject to change based on discussion at the IEP meeting.

were a concern, he “absolutely” still needed services for some way to address his mental health deficits. *Id.* at 3-18.

Although schools sometimes provide special education minutes or related services to address a student’s mental health needs, that was not done in ■ case. Vol. II Tr. at 153:19 to 154:18 (Kircher). Kircher testified that, as stated in the IEP, she provided ■ general Tier1/Tier 2 support, but school counselors are not put into an IEPs in the “traditional sense,” that is, school counselors do not have minutes that are counted as a related service. *Id.* at 153:23 to 154:11. Although Kircher has attended some courses and classes relating to working with students facing mental health challenges, she does not have any type of certification or recognition that would allow her to provide mental health services to students. *Id.* at 113:17 to 114:24.

D. Mental Health/Emotional Support in 6th and 7th Grades at West Middle School (2022-23 and 2023-24 School Years)

Throughout 6th grade and 7th grade, ■ IEPs indicated that he had a diagnosis of unspecified ADHD and anxiety. Further, the IEPs contained that same provision allowing for ■ to see the school counselor “whenever he is experiencing anxious episodes at school.”

At the due process hearing, ■ recalled having bad or anxious thoughts that continued into 6th grade and 7th grade. Vol. IV Tr. at 592:14-21 (■) stated that the negative feelings were “pretty much consistent through all classes, and they “definitely spiked in math.” *Id.* at 595:1-6. ■ further testified that, by the time he was in 7th grade, he still experienced bad or anxious episodes, but they had “died down a lot.” *Id.* at 592:18-21.

Kircher was part the IEP team for ■ in 6th grade and 7th grade. Vol. II Tr. at 262:19 to 263:4 (Kircher). For both years, Kircher was person identified for ■ to contact if he was feeling anxious or stressed. *Id.* at 263:5-9. Kircher agreed that, as written, the IEP allowed for ■ to access the school counselor based on his own self-determination as to whether he was experiencing an “anxious episode,” and it was not conditioned on availability of the school counselor. Vol. II Tr. at 155:13 to 156:3 (Kircher). Kircher interpreted the term “anxious episode” to include times when ■ may be having thoughts of self-harm, suicidal ideation, or depression. Vol. II Tr. at 154:24 to 155:9 (Kircher).

■ testified that it helped for him to have someone to talk to when he was having bad or anxious thoughts. Vol. III Tr. at 592:22-25 (■) understood that, pursuant to his IEP, Kircher was the person designated for him to direct those conversations to at West Middle School. *Id.* at 593:1-4. During that time frame, ■ was comfortable talking with Kircher, and it helped him to talk with her about concerns or feelings he was having at school. Vol. IV Tr. at 932:1-2 (■)

■ testified that there were many times when he was experiencing an anxious episode and wanted to speak with Kircher, but she was not available to meet with him. Vol. III Tr. at 595:16-21 (■) More specifically, ■ estimated that, in 6th grade and 7th grade, he wanted to talk to Kircher about negative emotions approximately 15 to 20 times a month, but she was only

available at the precise time he wanted to talk about 10 to 15 percent of the time in 6th grade, and 10 percent of the time in 7th grade. *Id.* at 597:13 to 598:9, 599:25 to 600:5. ■ further stated that, in 7th grade, he probably needed to talk with Kircher “a little bit more,” because he experienced more conflicts that year. *Id.* at 599:25 to 600:5.

In 6th grade, ■ began sending emails to Kircher when he wanted to talk, because he found it was the best way to get her attention and get a response from her. Vol. III Tr. at 595:16 to 596:7 (■) Additionally, there were other times when ■ would walk by Kircher’s office, see that the door was closed, and leave a paper note; a lot of times, she would not respond to the note. *Id.* At 596:3 to 597:12.

■ testified that, towards the end of 6th grade, he stopped emailing Kircher because it stopped working as a way to get her attention; she either stopped responding or would respond that she was busy and could not meet. *Id.* at 600:6-17. Instead, ■ would walk down the hall as a “stress reliever” and look to see if Kircher’s door was open; if not, he would take a walk around the school and go back to class. *Id.* at 600:17-22.

■ testified that, for the majority of the times when he wanted to talk with Kircher, she was not available. Vol. IV Tr. at 933:4-12 (■) stated that, at the times he left a note on her door, Kircher “rarely” reached out to him in about 1 out of 10 times. Vol. IV Tr. at 937:22 to 938:3 (■) ■ stated that, on most of the days when he would run into Kircher in the hall and ask if they could talk, Kircher would say that she was busy and that she would get to him at some other time in the day, but she never did. Vol. IV Tr. at 933:7-15 (■)

■ estimated that, in a given week, he would try to reach out to talk with Kircher, on average, about 2-3 times. Vol. IV Tr. at 933:4-24 (■) stated that, when he sought to speak with Kircher, she was unavailable the “majority” of times. *Id.*

At the times when ■ wanted to talk and Kircher was not available, it made him feel more anxious and also sad that he could not talk to her. Vol. III Tr. at 598:10-19 (■) When asked whether he ever talked to Kircher about the fact that she was unavailable, ■ stated that he “probably” talked to her about it “once or twice.” Vol. IV Tr. at 934:25 to 935:7 (■) did not raise the issue of Kircher’s unavailability to his parents, at IEP meetings, or to anyone else at the school. Vol. IV Tr. at 935:16 to 936:1 (■)

As one of two school counselors in the building, Kircher was responsible for providing direct services to approximately 310-315 students in a given year, though not everyone needed direct support; Kircher estimated that only about 10-15 students needed more consistent support. Vol. II Tr. at 157:23 to 158:10 (Kircher).

At the due process hearing, Kircher disagreed with the assertion that she “often” was not available to meet with ■ due to other job responsibilities. Vol. II Tr. at 158:11-14 (Kircher). However, a string of emails showed numerous instances in which Kircher either did not see the email or was not available either at the time or on the day that ■ asked to talk with her. Vol. II Tr. at 158:21 to 190:18 (Kircher); Petitioners’ Exhibits 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 46, 53.

As to some of the instances when she was unavailable, Kircher testified that she interpreted ■ request as just a way for him to take a “break” and get a snack or get out of a boring class, and she would use her best judgment to determine that it may not be an immediate need and she would get to as soon as she could. Vol. II Tr. at 160:25 to 161:12, 175:20 to 176:3, 182:25 to 183:17 (Kircher).

At least some of the emails appear to communicate a clear indication that ■ was feeling stressed or anxious at the time. See, e.g., Petitioners’ Ex. 21 (“the stress of school is messing with me”); Petitioners’ Ex. 34 (“there has been a threat against me”); Petitioners’ Ex. 37 (“can I come down for a much needed break”); Petitioners’ Ex. 38 (“do you have any tips to calm me down I am really worked up about something”); Petitioners’ Ex. 40 (“I need to decompress and talk to you about something please”); Petitioners’ Ex. 46 (“I really need a brake [sic]”).

■ testified that, in his communication with Kircher, he often used the word “break” at times when he was having an anxious episode or needed to exit an area with conflicts. Vol. IV Tr. at 938:19 to 939:25 (■ Specifically, ■ stated as follows:

A lot of the time when I said break, I meant either I needed to talk or I was having an anxious episode. Just it was really, one, for me to exit the area that I was having he anxious episode in; two, if it was ... someone I was having a conflict with, to get out of the room with them so I was not in the room where it could create more conflicts.

Vol. IV Tr. at 939:18-25 (■)

■ testified that, when he would tell Kircher (orally or in an email) that he needed a “break,” he meant that he needed a stress reliever, or time to decompress or remove himself from the place where he was having an anxious episode or experiencing conflict. Vol. III Tr. at 600:23 to 601:10 (■) credibly stated that he was not just trying to get out of the coursework or get a snack. Id. at 601:11-16.

At times, Kircher would defer to ■ teacher as to whether it was a good time for him to leave class. Id. at 179:23 to 180:14, 186:20-24, 239:14 to 240:8; Petitioners’ Ex. 38. Kircher described these decisions as follows:

It’s a delicate balance sometimes, but I have to be cognizant of when a teacher – you know, this – we’re in a school. School comes first. I have to, you know, make sure that the teacher doesn’t have something that he’ll miss and have to make up or cause more stress because he missed -- because a student missed an assignment, or then they’re not getting what they needed and then having to find other times. So it was just a situation where I felt I needed the teacher to confirm and tell me.

Id. at 240:23 to 241:8. Kircher could not recall a specific time when she would have overridden a teacher’s decision and requested to meet with ■ anyway. Id. at 273:15 to 274:3.

Kircher thought she had a good relationship with ■ and believes he would have shared with her specific details if he needed to see her immediately. Id. at 183:18-24. However, Kircher

admitted that she did not know whether ■ may have been experiencing an anxious episode at those times. Vol. II Tr. at 161:13-17, 166:14-17, 176:12-16, 184:5-10 (Kircher).

At other times, Kircher was available to meet with ■. See, e.g., Vol. II Tr. at 258:10-23 (Kircher). Kircher testified that she did her best to meet with ■ when she could, and to follow up with time to find other times when she was unavailable. Id. at 258:23 to 259:1.

Kircher also testified that, when she was unavailable, there were other staff members that ■ could see for support. Vol. II Tr. at 160:19-24 (Kircher). However, Kircher also admitted that she did not know if others on the support team were available at the times when ■ needed support. Vol. II Tr. at 191:3 to 193:12, 264:20 to 265:1 (Kircher). ■ testified that no one ever told him that, if Kircher was not available, he had an option to see another counselor. Vol. IV Tr. at 937:16-21 (■)

On one occasion when she was unavailable, Kircher suggested that she could see if Officer Bishop was available to meet with ■. Petitioners' Ex. 24. In fact, Officer Bishop was available and ■ met with her that day. Vol. II Tr. at 243:13 to 244:23 (Kircher); Respondent's Ex. 1021. Officer Bishop is not a school counselor, but Kircher stated that she has a background in counseling and support. Vol. II Tr. at 168:13 to 169:2 (Kircher).²⁵ This is the only instance in which ■ met with someone else when Kircher was not available. Id. at 599:4-10.

Kircher estimated that, on average, she met with ■ at least once or twice a week. Vol. II Tr. at 217:10-14 (Kircher). She stated that, predominantly, those meetings were not set up by email, and ■ would just get permission from his classroom teacher and show up at her door unannounced. Id. at 217:15 to 218:8. Kircher did not know how many times ■ may have tried to stop by her office, and she was unavailable to meet with him. Vol. II Tr. at 269:1-11 (Kircher).

At the times when Kircher was unavailable on a particular day, she tried to provide ■ with an explanation of why she was not available and make efforts to follow up with him when she could meet with him. Id. at 221:9-12, 237:8-23.

On one occasion, ■ expressed to Kircher a plan to jump off a parking garage. Vol. II Tr. at 193:23 to 194:5 (Kircher). Kircher assessed the situation and determined ■ had had a stressful week and did not have an actual intention to die; Kircher addressed the situation by creating a safety plan document for ■ to refer to. Id. at 194:6 to 195:10. Kircher also shared the information in an email with ■ father. Id. at 233:9 to 234:20. Kircher also reported about the incident to the school psychologist. Id. at 235:4-9.

Kircher believes she had a good working relationship with ■ and provided support for the concerns or needs that he brought to her attention. Vol. II Tr. at 218:9 to 220:16 (Kircher). Kircher was not aware of ■ or his parents ever raising a concern that she was not meeting ■ needs as reflected in the IEP. Vol. II Tr. at 221:4-8 (Kircher).

²⁵ The record is unclear as to the position of Officer Bishop. Kircher did not know Officer Bishop's educational background.

In June of 2024 (i.e., the summer after 7th grade), ■ mother stated in an email to Horizon Academy that ■ was seeing a licensed clinical social worker for individual therapy, which was down to less than one time a month, as needed, and that *“his mental health is doing okay and mostly throughout the year he utilizes a school counselor with whom he has a great relationship for anything that pops up.”* Vol. IV Tr. at 1064:15 to 1066:13 (■ mother) (emphasis added).

E. Follow-Up Speech/Language Evaluation by Caplinger (Summer 2023)

In August of 2023, Caplinger performed a follow-up evaluation to monitor ■ progress after receiving a full year of speech/language intervention services. Vol. II Tr. at 13:10-19; 2023 Caplinger Report, Ex. A-32. Shortly thereafter, ■ mother provided a copy of Caplinger’s report to the school. Vol. IV Tr. at 1002:17 to 1003:2 (■ mother).

As part of the evaluation, Caplinger administered the Test of Integrated Language and Literacy Skills (“TILLS”) and compared the results to ■ scores on the initial 2022 evaluation.²⁶ In comparing the scores, Caplinger found that ■ had continued impairments in reading at the word level, as well as with fluency and spelling, with some improvement in reading comprehension and writing at the discourse and sentence level. Id. at 14:19 to 15:1.

In particular, at the word level, ■ 2023 scaled scores decreased from his 2022 scores as follows: (1) from 5 to 3 in nonword reading; (2) from 7 to 3 in nonword spelling; and (3) from 13 to 0 in written expression-word. 2023 Caplinger Report at T_000047, Joint Ex. A-32. Additionally, ■ scaled score in reading fluency remained at zero (unchanged) for both years. Id.

At the reading level, ■ 2023 scaled scores improved from his 2022 scores as follows: (1) from 10 to 13 in reading comprehension; (2) from 0 to 6 in written expression-discourse; and (3) from 8 to 12 in written expression-sentence. Id.²⁷

As to writing, ■ overall written level composite score (which reflects the collection of all of the TILLS individual subtests) decreased from a composite score of 69 in 2022, to a composite score of 59 in 2023, which indicated “Severe impairment in written modality.” 2023 Caplinger Report at T_000047, Ex. A-32.²⁸ Id.; Vol. II Tr. at 15:5-17 (Caplinger).

In explaining the results, Caplinger’s report stated four primary conclusions: (1) ■ composite score of 59 continued to suggest that ■ presents with “a severe impairment in age-appropriate written communication skills” as compared to his peers; (2) while several subtest scores in 2023 decrease in comparison to 2022, many raw scores increased, which suggested that,

²⁶ The TILLS is a norm-referenced assessment designed to identify the presence of a language and literacy disorder; describe patterns of strengths and weaknesses; and track changes. Vol. II Tr. at 14:2-14 (Caplinger).

²⁷ The TILLS scores are standardized to have a mean standard score of 10 with a standard deviation of 3. August 2023 Caplinger Report at T_000047, Ex. A-32.

²⁸ The composite scores are standardized to have a mean standard score of 100 with a standard deviation of 15. August 2023 Caplinger Report at T_000047, Ex. A-32.

“although [■] was able to answer more test stimuli correctly, *the skill gap between [■] and his peers is continuing to grow at an alarming rate;*” (3) ■ demonstrated “considerable decreases” on word-level tasks, but made “considerable gains” in sentence-level and discourse-level tasks; and (4) the evaluation tasks require high levels of attention to task and generalization of skills, which are extremely challenging for individuals with dyslexia, and even more challenging in combination with ■ previously reported “general weaknesses with sustained concentration, managing multidimensional tasks, and aspects of cognitive proficiency.” 2023 Caplinger Report at T_000047 (emphasis added), Ex. A-32.

As to ■ scores on the word-level subtests (i.e., tests that showed “considerable decreases”), Caplinger’s report contains some qualifying remarks, as follows. Regarding the decrease in nonword reading and nonword spelling, the report stated that the low scores were “inconsistent” with ■ daily performance in weekly therapy, and “it is possible that attention to task, as well as increased anxiety within testing environments may have had a negative [effect] on his performance.” Id. at T_000048.

Regarding his score of zero on reading fluency, the report stated that it was important to note ■ decoding pattern, in that “[h]e was highly accurate at decoding target words; however, his decoding patterns continue to include the addition and omission of articles, as well as excessive interjections of fillers, such as ‘uh’ throughout the passage.” Further, with regard to reading fluency, the report stated that ■ averaged 95 percent on word reading accuracy, but his score was significantly impacted by the errors due to his present age, in that “little to no errors would be expected” for an individual at his age. Id.

Finally, with regard to the decreased scores in written expression, the report stated that, although his word spelling accuracy decreased, “it is thought that [■] is able to complete more age-appropriate spelling patterns independently than this time last year.” Id.

As to scores on the sentence/discourse-level subtests (i.e. tests that showed “considerable gains”), the report stated that in reading comprehension, had a scaled score of 13, which fell in the “high average” range when compared to age-matched peers. Id. at T_000049. The report further stated that reading comprehension was “a relative strength” for ■. Id. Finally, with regard to written expression-discourse and written expression-sentence, the report stated that ■ scores showed that his “ability to provide sufficient details with age-appropriate sentence complexity has greatly improved over the last year.” Id.

At the due process hearing, Dr. Caplinger testified that, collectively, the TILLS subtests showed that ■ was “continuing to demonstrate significantly below average word-level reading and writing abilities,” and while there were areas that he was improving, “the persistent impairments [were] still quite significant.” Vol. II Tr. at 25:1-18 (Caplinger).

Regarding the comment in her report that the “skill gap” between ■ and his peers was “continuing to grow at an alarming rate,” Dr. Caplinger testified that she was trying to communicate that, although ■ had made some progress in his raw scores, he would have been expected to have grown more, so his rate of growth was not proportionate to what one

would expect based on natural development and the intervention he was receiving. Id. at 25:19 to 29:14.

Regarding ■ “considerable decreases” in word-level tasks combined with “considerable gains” in sentence-level and discourse-level tasks, Dr. Caplinger stated:

The considerable decreases are characteristic of a dyslexia diagnosis, and that despite having weekly intervention, the rate of growth is significantly slower than his peers, and the reading comprehension, written expression-discourse, and written expression-sentence are the areas that he’s improving, but that would be expected with a dyslexia diagnosis.

Id. at 29:15 to 30:9 (emphasis added)

Dr. Caplinger further testified that the 2023 TILLS assessment scores indicated that ■ needed special education in the areas of word level nonword reading, nonword spelling, reading fluency, and written expression, specifically applying his spelling ability to functional writing tasks, and his scores on the PAST test identified an area of deficit in advanced phonemic awareness skills that also warranted special education. Vol. II Tr. at 34:15 to 35:22 (Caplinger).

F. 7th Grade at West Middle School (2023-24 School Year)

In the 2023-24 school year, Therese Edgecomb was the interim principal at West Middle School. Tr. Vol. I at 266:22 to 267:1, 268:18-23 (Edgecomb).²⁹

In the same school year, Faye Williams was the interrelated resource special education teacher at West Middle School for 7th graders with high incidence disabilities. Vol. III Tr. at 736:5 to 737:10, 806:1-14 (Williams).³⁰

In January of 2024, Lori Stithem became the Director of Special Education for the District. Vol. V Tr. at 1234:6 to 1236:13 (Stithem). Prior to that, she served Assistant Director of Special Education for the District for eight years. Id.

²⁹ During the previous two years, Edgecomb served assistant principal for the school. Tr. Vol. I at 266:22 to 267:1, 268:18-23 (Edgecomb). Earlier, Edgecomb previously worked as a teacher, but not a special education teacher. Id. at 267:6-13. As interim principal, Edgecomb sat in on IEP meetings and was responsible to ensure that IEPs were being implemented. Id. at 267:14-24. In most cases, she referred special education matters to district level administrators for any questions or concerns or assistance. Id. At the time of the due process hearing, Edgecomb was employed as a principal for the Osawatomie School District. Tr. Vol. I at 266:19-21.

³⁰ Williams has undergraduate degrees in psychology and special education, with a master’s degree in reading literacy. Vol. III Tr. at 734:4-17 (Williams). She began working in the field of special education in 1997. Id. at 714:18 to 735:13. From 2017 to 2024, Williams worked as an interrelated resource special education teacher for students with high incidence disabilities at West Middle School. Vol. Id. at 733:16 to 734:3. At the time of the due process hearing, Williams was employed as an academic advisor for the University of Kansas. Id. at 733:110-15.

1. Short-Staffing of 7th Grade Special Education Team

At the due process hearing, Edgecomb testified that she did not believe the 7th grade special education team was sufficiently staffed to meet the needs of special education students in the 2023-24 school year. More specifically, Edgecomb stated that, although Stithem said they were fully staffed, Edgecomb believed they needed another teacher during the school year, in particular, when two students were added to the 7th-grade special education list. Tr. Vol. I at 272:23 to 274:25 (Edgecomb). Edgecomb recalled that, after the two students were added, special education teachers expressed concerns to her about staffing, especially when they lost a paraprofessional; Edgecomb stated the teachers were “very concerned.” Id. at 275:5-13.

During the fall semester, Williams was the case manager for all 7th grade special education students with high incidence disabilities, including ■ Vol. III Tr. at 736:5 to 737:10 (Williams). Approximately 25-29 students fell into this category, all of whom required individualized services to address their IEP goals and/or help with their homework in other classes. Id. As case manager, Williams was responsible to implement the students’ IEPs and to work with general education teachers to support the students in those classes and to ensure that the students’ accommodations were being implemented. Id. at 736:5 to 737:10. Due to the high number students in flex class, Williams made arrangements with the general education teachers so that her students could be split into two groups (i.e., Group A and Group B) to reduce the number of special education students for special education staff to work with in the resource room. Id. at 813:15 814:20. Under this schedule, on alternate days, half of the special education students would be assigned to the resource room, while the other half would go into general education classrooms. Id.

To be fully staffed, West Middle School would typically have two special education teachers at each grade level. Tr. Vol. I at 269:7-25 (Edgecomb). Thus, in a typical school year, the 7th grade would have two full-time special education teachers for the special education resource room, along with two full-time paraprofessionals or “paras,” and the special education teachers would split the caseload such that each special education teacher would be responsible for up to 15 students. Vol. III Tr. at 806:1-14 (Williams).

In the fall of 2023, however, Williams was the only interrelated resource special education teacher for 7th grade. Vol. III Tr. at 736:5 to 737:10, 806:6 to 807:24 (Williams). The other special education teacher was Allison Gates, who was still a student and not yet certified.³¹ Tr. Vol. I at 270:3 to 271:14 (Edgecomb). Thus, for the first half of the school year, Gates worked under Williams, and Williams was the only certified special education teacher for 7th grade. Id. At 270:12-25. Halfway through the school year, Gates became certified and was able to take on her own caseload. Id. at 291:3-7.

³¹ Witnesses sometimes referred to Allison Gates as Ms. Nelson or Ms. Gates-Nelson, apparently due to a name change. This order refers to her as Gates.

Throughout the school year, the 7th-grade special education team had only one paraprofessional, Jamie Henry, who remained consistent. Vol. III Tr. at 806:6 to 808:10 (Williams). Due to high staffing turnover, the second paraprofessional position was vacant for most of the year. Id.

Additionally, during the 2nd quarter, an additional student referred to herein as “AZ” was added to Williams’s caseload.³² Vol. III Tr. at 808:10 to 809:8 (Williams); Tr. Vol. I at 275:14 to 284:2 (Edgecomb). AZ had significant behavioral needs and would often elope from class, requiring special education staff to leave with the student to monitor the situation. Vol. III Tr. at 808:10 to 809:8 (Williams).

Additionally, during the third quarter of 2023-24, another 7th grade special education student began exhibiting significant behavior issues that required one-on-one paraprofessional support throughout the day. Id. at 808:20 to 809: 24.

On December 23, 2023, Williams sent an email raising staffing concerns to Edgecomb and Stithem. In particular, Williams stated that her staffing was inadequate to provide necessary services, as follows:

I am writing because I am feeling frustrated and worried. Shortly before the break, Lysette informed me that the paraprofessional we interviewed was going to CTran.... I do know the 7th grade West has not had a fully staffed team since the 2021-22 school year. *Things are not fine. As I am doing progress reports and looking at grades, I can see where these staffing gaps have negatively impacted students. This past quarter we have had to leave students with academic and milder behavior needs to provide EB/BD services to one student [i.e., AZ].* When we return in January [we] will have two periods where we legally need to have staff in four places when we only have three people to cover those places. *If there was an “Out of Compliance” warning light in our room, it would be moving from orange to red.*

I am wondering how to make our 7th grade students, and our 7th grade team a priority. I would very much like a plan for what concrete steps will be taken to address this chronic problem.

Williams Email dated 12/23/23 (02:23 a.m.), Petitioners’ Ex. 84 (emphasis added).

At the due process hearing, Williams testified that she sent the email to inform her supervisors that the special education team did not have the para support they needed, and the impact this was having on special education students. Vol. III Tr. at 826:17 to 827:5. When asked what she was trying to convey in her statement that if there was an “Out of Compliance” warning light, it would be “moving from orange to red,” Williams stated:

³² The undersigned has given the fictional initials of “AZ” to protect the identity of this student. The student’s actual initials are contained in the hearing transcript.

[I]t's not just difficult anymore. This is a serious problem. This is we are out of compliance. We are not meeting the letter of the law with regard to IEPs.

Id. at 828:3-7. Williams further testified that ■ would have been one of the students who was negatively affected by the staffing gaps (i.e., that ■ was one of the students with academic and milder behavior needs that the special education team had to leave in order to provide services to AZ). Id. at 827:6-22.

On December 27, 2023, Edgecomb responded to Williams' email, copying Stithem and others. In the email, Edgecomb stated, among other things, that AZ needed nearly 1:1 support, and they did not have adequate staff to provide it. Edgecomb Email dated 12/27/23 (11:35 a.m.), Petitioners' Ex. 84.

Stithem scheduled a meeting with Williams for January 3, 2024, to discuss the challenges they were facing in hiring a special education para to replace a para who had resigned. Vol. V Tr. at 1252:6 to 1255:24 (Stithem). At the due process hearing, Stithem testified that, at the January 3 meeting, they discussed ways to "problem solve" the vacancy, which included hiring a para sub and shifting some responsibilities to other grade level paras to offset the demands of additional supports needed by a particular 7th grade student (i.e. AZ). Id. Stithem stated that, after the meeting, she understood that Williams' concern involved the pattern of turnover they were having with para educators (i.e., where a para educator would start and then resign, and they were not able to find a replacement immediately). Vol. V Tr. at 1400:6 to 1403:20 (Stithem). Stithem further testified that she recalled Williams' biggest concern regarding the negative impact to students was about not having someone directly in the general education classroom to provide support; Stithem stated they discussed different ways, such as staffing shifts, to remedy that concern. Id. at 1403:21 to 1404:7.

On February 13, 2024, Gates forwarded to Edgecomb and Williams a draft email that Gates had prepared "to let parents know we are understaffed but working toward a solution." Gates Email dated 02/13/24 (11:35 a.m.), Petitioners' Ex. 108. The draft email stated as follows:

Good morning,

I am emailing to inform you that your student has not reliably received services in their supported classrooms due to one of our paraprofessional staff quitting. We hoped we could hire someone promptly. However, that has yet to occur. We are working on solutions to support all of our students, but if your student has not been receiving some of the minutes outlined in their IEP, please feel free to contact the school with any questions or concerns. Here is a link to your rights as a parent of a child with an IEP. I have also attached the PDF below.

Id. Williams testified that she was familiar with the draft email that Nelson had prepared, and it applied to students in both of the 7th grade special education classrooms. Vol. III Tr. at 834:11-25.³³

On February 14, 2024, Edgecomb forwarded Gate's draft email to Stithem, asking for advice. Edgecomb email dated 02/14/24 (9:57 a.m.), Petitioners' Ex. 108. On the same day, Stithem responded that it would be inappropriate to send Gate's draft email at that time. More specifically, Stithem stated, in part, as follows:

In some situations, there may be services that are being provided in a different way, since it doesn't have to be a para. If something like this would be sent, it would come from me or you as building admin, and typically we would not send this because we would find a different way to provide the services. So, short answer is it's not appropriate to send at this time.... I'd like to take a look at the para schedule and the needed supports for students based on IEPs, along with their progress so I can try to help problem solve this.

Stithem Email dated 02/14/24 (10:54 a.m.), Petitioners' Ex. 108 (emphasis added).

At the due process hearing, Stithem testified that she told Edgecomb that they would not want the email to parents at that time, because they were "obligated to problem solve" as to how to meet the services in the absence of a staff member. Vol. V Tr. at 1256:25 to 1257:22 (Stithem). Stithem further stated that the school "would want to problem solve and investigate to determine what services were not being provided and that we needed to problem solve and make sure that we were meeting those needs and providing those services." Id. at 1256:25 to 1257:22. Stithem stated that, shortly thereafter, she and Edgcomb requested a long-term sub to fill the need for an additional para, and the sub agency found someone who could start in a week or so. Id.

Stithem further testified that the fact the school was short-staffed did not automatically equate to a denial of special education services. Instead, to determine required services were not being provided, Stithem would first look at the environment in which the services was being provided. Vol. V Tr. at 1259:20 to 1260:21 (Stithem).

Stithem stated that, in this case, the staffing shortage at West Middle School involved the absence of a para educator in the general education classroom, so she would work with the special education teacher and general education teacher to determine whether the accommodations and modifications were being provided in the absence of the para educator. Id. Stithem further stated that she would look at staffing schedules to determine if they could make shifts to fill any gaps. Id. Stithem agreed that the fact that a school may be understaffed would not be an excuse for failing to implement a student's IEP. Vol. V Tr. at 1310:15-20 (Stithem).

³³ At the due process hearing, Williams stated that she thought the email was sent out to parents, but she was not positive about it. Vol. III Tr. at 834:11-25.

Stithem testified that, if a student missed receiving some services due to staff shortages, it would be up to the IEP team to make adjustments to the IEP and determine if compensatory services might be needed and, if so, what those services might be and how those services are to be provided. Vol. V Tr. at 1260:22 to 1261:23, 1262:11-18 (Stithem).

The record contains no evidence to suggest that the school undertook any efforts to determine whether adequate services had been or were being provided to 7th grade special education students, or to specifically ask that IEP teams undertake such an analysis.

Edgecomb testified that protocol required the school to notify parents when their child had not reliably received special education services in their supported classrooms. Tr. Vol. I at 294:13-18. Edgecomb did not inform parents that students were not reliably receiving services. Id. At 295:15-20. Edgecomb did not know if know if Stithem had done so. Id.

2. October 2023 IEP Meeting – Annual Review

On October 10, 2023, ■ IEP team met for the annual review of his IEP. The meeting notes indicate that the parents' top priorities concerned Caplinger's report that ■ was gaining skills but losing ground compared to his peers. October 2023 IEP Meeting Notes, Respondent's Ex. 1028 at p.1.

As ■ special education teacher, Williams would have been the person who collected information and drafted the present levels and goals to discuss at his IEP meetings. Vol. III Tr. at

745:2-12 (Williams). Williams was not involved in ■ IEP team for 6th grade. Id. at 752:2-9. To familiarize herself with a new student such as ■ Williams would have typically looked at what the IEP team was doing in the previous year. Id. at 752: to 753:9.

At the due process hearing, Williams recalled that, by the time of the October 2023 IEP meeting, she would have reviewed the assessment performed by Dr. Taylor in the summer of 2022

(i.e. the summer before ■ 6th grade year). Id. at 753:10-21.

Williams also recalled seeing Caplinger's 2023 report stating that, at least with respect to some measures, "the skill gap between [■] and his peers is continuing to grow at an alarming rate." Vol. III Tr. at 770:19 to 772:8 (Williams). Williams agreed that the result of this particular assessment suggested that perhaps the IEP in place was not working for ■. Id.

Regarding Caplinger's speech/language report, the IEP meeting notes state:

1. A composite score of 59 presents with clear impairment.

2. Subset scores fell through the year, but raw scores increased. *Skills deficit with peers grows.*
3. [Considerable] decrease in word level tasks, considerable gains in reading and written expression comprehension.
4. Needs a high level of attention and task generalization of skills which is challenging for dyslexia, ADHD, and cognitive proficiency.

October 2023 IEP Meeting Notes, Respondent's Ex. 1028 at 1 (emphasis added).

Williams testified that, if a student's deficit that widens over the period of a school year, or if a student is not making progress, the IEP team should examine the intervention they are using and determine if changes in intervention were needed, such as adding more support or changing the amount of services or how those services are delivered. Vol. III Tr. at 756:11 to 757:2 (Williams).

When asked whether a reading goal should have been added for ■ based on Caplinger's report, Williams stated that it would be a reasonable thing for the IEP team to consider, and she was not sure if she had looked at it. Vol. III Tr. at 788:12 to 789:4 (Williams). Williams further said that Caplinger's report involved one test, and she would be interested in seeing ■ other scores, such as how he did on FastBridge, and they could take some screeners to get the whole picture. Id. Williams agreed that Caplinger's report would indicate that adding a reading goal would be a good step to take. Id.

3. The October 2023 IEP

As detailed below, the October 2023 IEP provided amended goals in math and writing for ■ in 7th grade. Additionally, the IEP provided that special education services would be delivered in the following ways:

- 1) In-class support for math class, with a purpose "to aid in the learning of new math concepts and assist with independent work completion."
- 2) In-class support for the writing portion of ELA "to support his writing goal of correctly using conventions."
- 3) Pull-out instruction for special education class, i.e. flex class, "where he will receive targeted instruction on needed math and writing skills [a] minimum of 3 days every two weeks."

October 2023 IEP, Joint Ex. A-36 at T_00064.

As compared to 6th grade, the 7th-grade IEP added writing skills to the pull-out instruction for flex class (in addition to math skills), and also added a sentence stating the pull-out instruction for flex class will happen "[a] minimum of 3 days every two weeks." October 2023 IEP, Joint Ex. A-36 at T_00064; see October 2022 IEP, Joint Ex. A-23 at T_00064. At the due process hearing, Williams testified that this last sentence was added to account for the A/B schedule that she had implemented in the student success or flex class, and that a similar provision was added

to all of the IEPs of 7th grade special education students who were coming into her class. Vol. III Tr. at 806:8-13, 814:21 to 815:7 (Williams).³⁴

Further, the October 2023 IEP provided the following modifications and supports (with changes from the October 2022 IEP indicated in *italics*): proximity control in core classes; *notification of upcoming tests sent to parents with* study guide in science and social studies; alternate setting for math and all state and district assessments, *allowing student to directly to special ed. setting and bring test to him*; chunking of assignments in ELA, science, and social studies; planner check at the end of the day to ensure all assignments are recorded; fidgets in core and essential classes; speech to text in all core classes; graphic organizers *or visual cues* in all core classes; and models of acceptable work in all core classes; *bulleted work completion checklist in all core classes; allow student to type assigned tasks that are a paragraph (5 sentences or longer) in all subjects; shorten assignments in all subjects*. October 2023 IEP, Joint Ex. A-36 at T_00061-062; October 2022 IEP at T_000039, Joint Ex. A-23.³⁵

With regard to mental health, the October 2023 IEP was identical to the 6th-grade IEP, in that it allowed for ■ to see the school counselor whenever he was experiencing anxious episodes at school. *Id.* at T_000059.

Additionally, the October 2023 IEP stated that, based on current and available data, ESY services are necessary for a “[m]inimum of 30 minutes 2x/week to address writing fluency and math automaticity skill deficits. October 2023 IEP, Joint Ex. A-36 at T_000060.³⁶

³⁴ At the due process hearing, witnesses referred to “student success” and “flex” class interchangeably to describe the designated class period that special education students were assigned to Williams’s resource room. This order does the same.

³⁵ The October 2023 IEP omitted the provision for a checklist for written responses requiring one or more sentences that had been included in the October 2022 IEP.

³⁶ The record is unclear whether the determination for ESY was made at the October 2023 IEP meeting, or at some time later in the school year. At the due process hearing, both the witnesses and counsel indicated that the IEPs were “living” documents that were changed on the school’s computer system at varying points in time.

a. Math

Regarding present levels in math, the October 2023 IEP stated as follows:

When [■] took the FastBridge aMath screener (Fall 2023), he received a score ... at the 10th percentile This score places him in the “high risk” range [as to] broad math abilities. His FastBridge cbmMath Automaticity score was ... at the 20th percentile ... and is in the “some risk” range. He answered 14 out of 24 items correctly (58%) on the General Outcome Measure. Progress monitoring with the FastBridge Math Automaticity assessments show that [■] has moved from the “high risk” range to the “some risk” range. At the end of 6th grade, [■] scored 45 points on the General Outcome Measurement (GOM) math automaticity screener. This year he has scored 35 and 36. These results indicated that, while he has made progress, math fluency is still a significant concern.

October 2023 IEP, Joint Ex. A-36 at T_000055.

The October 2023 IEP established the following math goal:

When given a timed 7th grade level computational automaticity CBM probe [■] will be able to improve [his] overall computation skill at a score of 50 by the end of the IEP as measured by Curriculum Based Assessment.

October 2023 IET, Joint Ex. A-36 at T_000055.

The 7th-grade IEP essentially amended the 6th-grade IEP by increasing the math goal from a score of 33 in 6th grade, to a score of 50 in 7th grade, and changing the language to account for 7th-grade-level computation skills. Vol. III Tr. at 774:2 to 775:6 (Williams). Both goals targeted computational automaticity, i.e., how quickly and accurately the student can do the math. Id.

The October 2023 IEP provided essentially the same special education services in math as in 6th grade, that is: (1) in-class support for math class “to aid in the learning of new math concepts and assist with independent work completion;” and (2) pull-out targeted instruction in flex class “on needed math skills.” October 2023 IEP, Joint Ex. A-36 at T_000067.

As reflected above, the 7th-grade present levels stated that, in the fall of 2023, ■ scored at the 10th percentile (high risk) on the aMath screener (assessing broad math abilities).³⁷ The present levels did not include information to compare how this score compared to his performance in 6th grade. In 6th grade, ■ aMath screener score was in the 15th percentile (some risk) in the fall, which improved to the 33th percentile (some risk) in the winter, and then

³⁷ In reviewing the aMath Benchmark report, it appears that the present levels in the October 2023 may contain a typo, and the score of 206 that was in 10th percentile (High Risk) may have actually been ■ score in the spring of 6th grade. See Benchmark Report, Joint Ex. A-56 at USD497_000119. According the aMath Benchmark report, it appears that, in the fall of 7th grade, ■ also scored a 206, but that score was in the 8th percentile (also High Risk). Id.

decreased to the 10th percentile (high risk) in the spring.³⁸ See October 2022 IEP, Joint Ex. A-23 at T_000033; Benchmark Report, Joint Ex. A-56 at USD497_000119.

At the October 2023 IEP meeting, ■ parents were not presented with information regarding the downward trajectory of ■ aMath score. Vol. IV Tr. at 1001:17 to 1002:13, 1082:13 to 1083:3 (■ mother). Further, no one at the meeting suggested that ■ math goal should be revised or that additional math services should be included in the IEP. Id.

At the due process hearing, when asked whether the October 2023 IEP should have amended to provide additional goals or services to address ■ widening math deficit in 7th grade, Williams said, “[y]eah, we probably [would] want to do something different here.” Vol. III Tr. at 758:8-17 (Williams). Williams further stated that she would want to examine the services delivery page to see if any changes in services had been made in the IEPs from 6th grade to 7th grade. Id. When shown the services delivery statement in the IEP for 7th grade, Williams agreed it was very similar to 6th grade. Id. at 761:25 to 762:24.

Williams testified that she chose to use the FastBridge General Outcome Measure (“GOM”) baseline levels to set ■ math goal and measure progress, because the GOM is a progress monitoring tool that can be given every week or every other week. Vol. III Tr. at 746:11 to 745:5 (Williams). Williams agreed that the FastBridge aMath screener could, in theory, give a more holistic view of ■ math abilities. Id. However, Williams said the idea of using the screener for ■ goal and progress monitoring would be “problematic,” because the screener was a long test that was only given a couple of times a year, and it would be difficult to obtain data for the IEP process. Id.

Regarding the cbmMath Automaticity test, the 7th grade present levels included information that ■ score had improved from the 9th percentile (High Risk) in the fall of 2022, to the 20th percentile (Some Risk) in the fall of 2023. When asked whether the increase in cbmMath Automaticity scores showed that ■ had made some academic achievement in math, Williams said it is important to remember that the cbmMath Automaticity test measures a narrow skill (automaticity), whereas the aMath screener measures the whole curriculum and showed a decrease from the 15th percentile in the fall of 6th grade, to the 10th percentile (or actually 8th percentile) in the fall of 7th grade. Vol. III Tr. at 853:12 to 855:1 (Williams). Williams further stated that the tests represented a snapshot in in time that showed growth in the smaller scale of automaticity, but decline in the bigger overall skills involving the whole curriculum. Id.

The 7th-grade progress report shows that ■ did not meet the measurable objectives for his math goal in the 2nd, 3rd, and 4th quarters. May 2024 Progress Report, Joint Ex. A-75 at USD000291-292. At the end of the 2nd quarter, ■ scored 18, 18, and 10 toward his objective to score 37. Id. at USD000291.³⁹ At the end of the 3rd quarter, ■ scored 8 and 18 toward his

³⁸ As noted, in the fall of 6th grade, aMath score was in the 15th percentile (nationally)..

³⁹ The teacher’s comments for the 2nd quarter stated that ■ had been distracted by other students, and the teacher would try giving it in a different setting and also incorporate more math practice into their weekly instruction. Id.

objective to score 40. *Id.* at USD000291-292.⁴⁰ At the end of the 4th quarter, ■ scored 28 and 38 toward his objective to score 45. *Id.* at USD000292.⁴¹

In 7th grade, ■ score on the aMath screener (assessing broad math abilities) continued to drop from the 8th percentile in the fall, to the 4th percentile in the winter. Vol. III Tr. at 906:1 to 907:15 (Williams); Benchmark Report, Joint Ex. A-56 at USD497_000119. The Benchmark Report does not indicate ■ aMath score for the spring of 7th grade. See Joint Ex. A-56 at USD497_000119.

b. Writing

Regarding present levels in writing, the October 2023 IEP stated as follows:

For writing progress monitoring, [■] completed Aimsweb writing samples throughout the 6th grade and at the beginning of this year. At the end of 6th grade, [■] wrote a total of 30 correct word sequences (CWS) in three minutes, which was at the 11th percentile [■] has produced 28 (16th percentile) and 17 (5th percentile) correct word sequences on his last two assessments. A correct word sequence is considered to be when two adjacent words are written together with correct spelling and punctuation. Words spelled incorrectly were able to be decoded by the reader and were close to the correct spelling. The story was on topic with the writing prompt and used good word choice. Results of a Words Their Ways Spelling Inventory completed by [■] on August 30, 2023 shows he has mastered spelling skills with short vowels, digraphs, blends and many long vowel patterns. He has not mastered r-controlled patterns (-ar, -er), some vowel combinations (-oi, ew, etc.) and inflected endings (pping, -ing, -ed, -ies). [■] consistently uses a lower-case “i” for the pronoun “I”. He has shown improvement with his punctuation skills, and is using end punctuation more consistently. He did a nice job of using commas to correctly list ideas in his writing sample. [■] still has some difficulty with run-on sentences.

October 2023 IEP, Joint Ex. A-26 at T_000057.

The October 2023 IEP established the following writing goal:

When given a writing prompt with one minute to think about the prompt and three minutes to write [■] will be able to write 42 correct word sequences at a 7th-grade level by the end of the IEP as measured by Curriculum Based Assessment.

October 2023 IEP, Joint Ex. A-26 at T_000058.

⁴⁰ The teacher’s comments for the 3rd quarter stated that ■ was showing improvement in his general education math class but not on progress monitoring assessments, and they would be referring ■ for Extended School Year services to address his math deficits. *Id.* at USD000292.

⁴¹ The teacher’s comments for the 4th quarter stated that, although ■ scores were still below the anticipated benchmark, they showed marked improvement. *Id.* at USD000292.

The 7th-grade IEP essentially amended the 6th-grade IEP to increase the goal from 20 correct writing sequences at a 6th-grade level, to 42 correct writing sequences at a 7th-grade level. Vol. III Tr. at 775:7 to 776:5 (Williams). Both goals targeted correct writing sequences, i.e. spelling, punctuation, and automaticity. Id.

Regarding special education services for writing, similar to 6th grade, the 7th-grade IEP provided for in-class support for the writing portion of ELA class “to support his goal of correctly using conventions.” Id. at T_000064. Additionally, the 7th-grade IEP provided for pull-out targeted instruction on writing skills in flex class. Id.

The 7th grade progress report states that ■ met the measurable objectives for his writing goal in the 2nd, 3rd, and 4th quarters. May 2024 Progress Report, Joint Ex. A-75 at USD000293-294. However, ■ quarterly scores did not actually meet the target scores. In particular, at the end of the 2nd, ■ scored 17 and 24 toward the objective to write 30 correct word sequences. Id. at USD000293. At the end of the third quarter, ■ scored scores were 22 and 35 toward the objective to write 34 correct word sequences.⁴² Id. at USD000294. At the end of the 4th quarter, ■ scored 33 and 36 toward the objective to write 38 correct word sequences. The teacher’s comments for the 4th quarter stated that, although ■ missed the benchmark by two points, his overall progress indicated that he would meet his IEP goal of 42 by the end of the IEP (i.e., by October 2024). Id.

Williams was the person who administered ■ writing prompts to determine his 7th-grade baseline scores and progress monitoring. Vol. III Tr. at 779:8-11, 783:10 to 785:18 (Williams). As noted, the 7th-grade present levels indicated that, on in his last two assessments, ■ had scored 28 (16th percentile) and 17 (5th percentile). Williams chose the higher score of 28 to establish ■ writing goal and set the progress monitoring scores under the IEP. Vol. III Tr. at 779:8-11, 783:10 to 785:18 (Williams).

At the due process hearing, Williams’ testimony revealed that her scoring on the writing prompts was subjective and that, at least at some times, she gave ■ credit for word sequences that were not correct. Vol. III Tr. at 779:8 to 787:24 (Williams). More specifically, Williams’ testimony showed that she made errors that significantly inflated the score of 28 (16th percentile) referenced in the present levels, in that Williams gave credit for word sequences as “correct” when the word sequences actually contained misspellings and mistakes in capitalization. Id. at 779:12 to 787:24; September 2023 Writing Prompts, Joint Ex. A-35 at USD000315-316. For example, in the first line of the six-line writing prompt, Williams improperly gave six points of credit for phrases that should not have received credit because they contained a misspelling and incorrect capitalization of words in the middle of the sentence. Id.

⁴² For the 3rd quarter, it appears the score of 35 met the target score of 34; however, the second score of 22 was significantly lower. The record does establish whether one or both scores should be considered when determining whether the target score was met.

Williams testified that she would sometimes make allowances if she knew the student and thought it was a matter of the student's handwriting instead an intentional error by the student; however, Williams did not remember if that was the case for ■ Id. The record contains no evidence to suggest that it would have been appropriate to give subjective credit to score ■ writing prompts under the circumstances of his IEP.

Williams' testimony casts significant doubt on whether the scoring of ■ writing prompts was objective or consistent and, thus, whether the scores on his writing prompts can be reliably used to determine whether ■ made progress in writing during 7th grade. When shown a writing from April of 2024, Williams agreed that it appeared to be "very similar" to ■ work in September 2023, and there did not seem to be much progress between the prompts. Id. at 902:24 to 904:20; September 2023 Writing Prompts, Joint Ex. A-35; April 2024 Writing Prompt, Joint Ex. A-64.

4. Parents Raise Concerns About the Implementation of IEP (December 2023 and January 2024)

In December of 2023, ■ parents discovered that ■ had a high number of missing assignments in his general education classes. Vol. IV Tr. at 1005:3-12; 1146:3 to 1151:6 (■ mother). ■ parents then began asking ■ about whether he was receiving the accommodations provided in his IEP and learned that the answer was "no." Vol. IV Tr. at 1006:3-7 (■ mother).

In early January, Williams worked with ■ mother to try to get some credit or forgiveness for some of ■ unfinished or missing assignments. Id. at 1151:7-18, 1152:14-20. On January 2, 2024, Williams sent an email asking ■ social studies teacher to excuse three-to-four of his missing assignments, stating that she thought it would be appropriate to excuse the assignments since the special education team was only able to give him "limited support." January 2, 2024 Email to Andrew, Petitioners' Ex. 91, USD497_000403. On the same date, Williams sent an email asking for ■ to be excused on three-to-four missing Spanish assignments, stating: "I felt like there were times when the special ed. Team was not able to give him the support he needed." January 2, 2024 Email to Sarah, Petitioners' Ex. 92, USD497_000405. Also, Williams sent an email asking ■ to be excused from a quiz grade, stating: "[■] should come out for quizzes. I am sorry I didn't set that up with you." January 2, 2024 Email to Chad, Petitioners' Ex. 92, USD497_000406.⁴³

On January 21, 2024, ■ mother sent an email to the school asking for an IEP meeting to be held as soon as possible. January 21, 2024 Email, Petitioners' Ex. 97 at T_000660. In the email, ■ mother expressed concerns regarding whether the program modifications listed in the IEP were being followed (i.e. proximity control, notification of upcoming tests, chunking of assignments, planner checks, other speech to text, graphic organizer/visual cues, other models

⁴³ Williams testified that coming out for quizzes was an accommodation in ■ IEP that was not happening. Vol. III Tr. at 825:2-9 (Williams).

of acceptable work, bulleted work completion checklist, typing assignments, and shortened assignments). Id.

Williams forwarded the email to Gates, who stated that she did not realize that ■ had shortened assignments, and she would begin doing that immediately. January 21, 2024 Email Chain, Petitioners' Ex. 96 at USD497_000276.

Williams also scheduled an IEP meeting for January 25, 2024. In advance of the meeting, Williams prepared an agenda that listed the concerns that ■ mother had raised about his accommodations, along with information that Williams had collected from teachers with regard to what was happening in his different classes. Vol. IV Tr. at 1008:17-24, 1153:3 to 1154:11 (■ mother); Vol. III Tr. at 830:1 to 833:24 (Williams). Regarding the information gathered from teachers, a few teachers reported the ways in which they were implementing the IEP; a couple of teachers responded that they had not been doing things like bulleted lists or shortened assignments; and some teachers did not respond to the request for information. Vol. III Tr. at 830:1 to 833:24 (Williams); see 1-25-2024 Agenda, Joint Ex. A-42.

■ mother understood from Williams that, if the meeting agenda document did not list it, the accommodation was not happening. Vol. IV Tr. at 1008:17-24, 1153:3 to 1154:11 (■ mother).

5. January 2024 – IEP Meeting and Amendments to IEP

At the January 25, 2024 meeting, the IEP team decided to amend language in the math goal to include supplemental math instruction, and to also add a new reading goal.⁴⁴ See January 2024 IEP Amendment, Joint Ex. A-40, at USD497_000158-163. The writing goal remained unchanged. Id. at USD497-000160-161.

Regarding the delivery of special education services, the January 2024 amendments added in-class support during social studies to support reading and writing. Id. at USD497_000168-169. Further, the amended IEP provided that ■ "reading and writing goals would be addressed during the ESY session." Id. at USD497_000165.

a. Math

The January 2024 amendments changed the language of the math goal to include specific supplemental math instruction, such as IXL, for 20 minutes, three times a week, as follows:

When given supplemental math instruction (e.g. such as IXL or other programs) for 20 minutes, 3x/week, [■] will demonstrate an improvement in his computational math skills

⁴⁴ The undersigned notes some confusion in the record as to whether these amendments happened as a result of the January 2024 IEP meeting or the March 2024 IEP meeting. Based on the meeting notes from the January 25, 2024 meeting, the undersigned finds the amendments likely happened in January of 2024. See January 2024 IEP Meeting Notes at 3-5 (discussing, among other things, math IXL and reading comprehension goal), Respondent's Ex. 1028. Regardless, the timing of the amendments does not materially affect the undersigned's analysis or conclusions herein.

by increasing his scores on math automaticity assessments at grade level to a score of 50 by the end of the IEP as measured by Curriculum Based Assessment.

January 2024 Amended IEP, Joint Ex. A-40, at USD497_000158 (emphasis added). The present levels and target scores for the math goal and measurable objectives remained the same as that stated in the October 2023 IEP. See *id.* at USD497_000158-159; October 2023 IEP, Joint Ex. A-35, at T_000055-56.

b. Reading

Regarding present levels for reading, the January 2024 amendments stated:

[■] is currently enrolled in a general ed. Language Arts class with Special Ed. Support. He has a current grade of C but has failed two five-point reading quizzes. [■] scores on the FastBridge Reading Assessment have fluctuated from a high of 536 (low risk range – fall of 7th grade) to 475 (high risk – winter of 7th grade). Scores in 6th grade ranged from 515 (some risk – fall of 6th grade) to 531 (low risk – spring of 6th grade). On the WIAT-4 (testing completed with [■] in a private clinic in May and June 2022, [■] showed delays in reading decoding and comprehension. The subtest score for reading comprehension was at the 5th percentile with a grade equivalency of 2.3. On this assessment he had difficulty attaining and understanding information from passages that he read to himself. Observations of [■] in a school setting show that when asked to read in school and then report on what he has read [he] is able to report on general ideas (i.e. characters, setting, main events) presented in the reading, but is often not able to report on more nuanced details/ideas (i.e. what would motivate a character to carry out an action, etc.) without discussion with the teacher or paraprofessional and prompting to reread and consider particular passages.

January 2024 Amended IEP, Joint Ex. A-40, at USD497_000162.

The January 2024 amendments established the following reading goal:

When given instruction to learn and implement reading comprehension strategies, [■] will be able to demonstrate an increase in his reading comprehension by increasing his score on curriculum-based reading comprehension assessments at the 7th grade level to 88% Accuracy by the end of the IEP as measured by Curriculum Based Assessment.

January 2024 IEP Amendment, Joint Ex. A-40 at USD497_000162.

The January 2024 Amended IEP provided for special education services in reading to be provided through: (1) in-class support in ELA and social studies; and (2) pull-out targeted instruction in flex class. *Id.* at USD497_000168-169.

Regarding measurable objectives, the amended IEP provided that ■ would increase his reading comprehension scores to 79% Accuracy by the end of the 3rd quarter; 85% Accuracy by the end of the 4th quarter; and 88% Accuracy by the end of the IEP (i.e., by October of 2024). *Id.* at USD497_000163.

The 7th-grade progress report indicates that, ■ met the reading goals through the end of 7th grade. However, the report stated that, at the end of the 3rd quarter, ■ results were “mixed” in that he scored 35% Accuracy on a computer-based reading assessment, but had 100% Accuracy in a 1:1 testing situation where he read from a paper copy and responded to questions asked verbally.⁴⁵ May 2024 Progress Report, Joint Ex. A-75 at USD000295. At the end of the 4th quarter, the progress report stated that ■ scored 90% and 100% Accuracy, thus meeting his goal of 85% Accuracy. Id. at USD000296.

The Benchmark Report for aReading shows that ■ scores dropped significantly in the winter and spring of 7th grade. More specifically, in winter and spring of 6th grade, as well as fall of 7th grade, ■ scored consistently in the 50th percentile range (nationally); however, his score dropped to the 2nd percentile in the winter of 7th grade, and to the 1st percentile in the spring of 7th grade. Vol. III Tr. at 904:21 to 905:15 (Williams); Benchmark Report, Joint Ex. A-56 at USD497_000118.

6. Parents Raise Concerns Regarding ■ Handwriting (January and February of 2024)

In January of 2024, ■ parents raised concerns about ■ handwriting.⁴⁶

Around January or February of 2024, Kircher reached out to Storck regarding a request by ■ parents for an occupational therapy evaluation. Vol. VI Tr. at 44: 14 to 45:8 (Storck). Storck determined that an occupational therapy evaluation was not appropriate. Id. After speaking with ■ mother, the school scheduled an IEP meeting in March to address her concerns. Id.

In February of 2024, Stithem received another email from ■ parents raising concerns. Vol. V Tr. at 1264:21 to 1264:19 (Stithem). After speaking with Storck and Edgecomb, Stithem agreed to attend the March IEP Meeting. Id. at 1265:3-10.

7. Implementation of 7th-Grade IEP

a. Pull-Out Targeted Instruction in Flex Class

As noted, the October 2023 IEP provided for pull-out instruction for flex class, “where [■] will receive targeted instruction on needed math and writing skills [a] minimum of 3 days every two weeks.” October 2023 IEP, Joint Ex. A-36 at T_00064. In January 2024, this provision was amended to also include targeted instruction on reading skills during flex class. January 2024 IEP Amendment, Joint Ex. A-40, USD497_000172.

■ understood that flex class was supposed to be the time for him to receive “pull-out” special education instruction for his specific areas of need (i.e., math, writing, and reading). Vol. IV Tr.

⁴⁵ The record does not reflect whether giving the test “in-person” instead of administering a computer-based reading assessment could affect the reliability of the progress monitoring reports. Logically, it seems that a computer-based assessment would be more objective and less susceptible to the possibility of in-person prompting.

⁴⁶ The record is unclear as to when or how ■ parents raised the writing concerns. The notes from the January 25 IEP meeting indicate that ■ parents would reach out to the school psychologist with regard to their request for an OT referral. January 2024 IEP Meeting Notes at 5, Respondent's Ex. 1028.

at 939:12 to 941:11; 948:5 to 949:1 (■) testified that, in flex class, he did not receive targeted instruction on those skills; instead, his time in flex class was spent working on homework for all of his classes, and also working on social/emotional skills that he felt he did not need.⁴⁷ Vol. IV Tr. at 941:12 to 942:16; 949:2-10 (■) agreed that some of the homework included reading, writing, and math; however, ■ stated the homework time was self-paced, in that he was working on things by himself, with no instruction or lesson. *Id.* at 941:12 to 942:16, 949:12-20. ■ further described that, on the days his group was assigned to a general education class, they would work on whatever the general education class was doing; “whether it was just sitting there and be quiet, or reading, ... [they] really didn’t do much.” *Id.* at 614:11-19.

■ testified that, on the days when his group stayed in the resource room, they would work on homework to complete missing assignments and things they needed to do to keep their grades up. *Id.* at 617:17 to 618:10. If something arose in the context of a general education assignment that he was working on, special education staff would work with ■ on specific writing skills like punctuation, spelling, capitalization, and vocabulary; however, the special education staff did not work with him on reading strategies or phonemic skills during flex class. *Id.* at 618:11 to 619:12. Similarly, ■ testified that, in flex class, he did not work on reading comprehension strategies and was not given separate reading assignments. Vol. III Tr. at 603:9-21 (■) After the reading goal was added in January of 2024, ■ did not recognize any changes in the work or instruction that he received from the special education teachers in flex class. Vol. III Tr. at 619:23 to 620:15 (■)

Williams testified that, given the resource room staffing situation, it was “absolutely” difficult to provide targeted instruction on math and writing to the number of students that she had in her flex class. Vol. III Tr. at 816:14 to 817:2 (Williams). Further, Williams corroborated ■ account that the students’ time in flex class was primarily spent working on homework. More specifically, Williams stated as follows:

Without having another paraprofessional there, and also the paraprofessional we did have, again, was out with a student who had behavioral needs and so it was just the two of us. And truthfully until we got a paraprofessional that last quarter, it was very difficult to implement any sort of pull-out services with fidelity and so ... we focused largely on helping students get homework done[.]

Vol. III Tr. at 816:17-25 (Williams).⁴⁸

When asked how a special education teacher would implement ■ math goal, Williams stated that, “in a perfect world,” when she had time in the special education classroom, she would

⁴⁷ ■ stated that, in flex class, they spent one day a week working on a social-emotional curriculum, which he described as activities focused on how to be nice to one other. *Id.* at 615:2-24. In ■ opinion, he (and many of the students) did not need the social-emotional curriculum and instead needed the time to focus on academic work. *Id.*

⁴⁸ Williams understood the term “fidelity” to mean that one is doing it “in a consistent manner.” *Id.* at 803:15-22.

work with ■ on this particular goal and skill; however, in the 2023-24 school year, it was difficult for Williams to do that due to the high number of students. Vol. III Tr. at 751:7-23 (Williams). Williams stated that “a lot of the time was focused on just doing the homework that was being done in the math classroom.” Id.

Williams also testified that, at the time the new reading goal was written in January of 2024, her staff had added another paraprofessional, which she had hoped would allow them to implement the reading goal with fidelity; unfortunately, the paraprofessional did not stay and it was not until the fourth quarter that they found a substitute paraprofessional who stayed for a solid six-to-seven weeks. Id. at 818:2-23.

Williams further testified that, if she had had appropriate staffing to provide ■ services with fidelity, she believed they could have potentially helped ■ progress more on the writing goal and worked on skills like spelling; Williams also believed that ■ could have potentially scored higher on his math objectives if her staff could have provided special education services to him consistently throughout the year. Id. at 899:8 to 900:14.

b. Supplemental IXL Instruction in Math

In January 2024, ■ math goal was amended to reflect that he would receive supplemental math instruction in IXL or other programs for 20 minutes, three times a week.

■ testified that, after the math goal was amended, for about two to three weeks, ■ and some other students worked on the IXL math computerized program in a separate room during flex class; however, the teachers discontinued the program because the other students did not like it. Vol. IV Tr. at 953:9 to 957:14 (■⁴⁹) ■ further testified that, when the IXL program was discontinued, it was not replaced with another program. Id. at 962:1-13. Thus, ■ did not receive the supplemental math instruction provided by the January 2024 amendment.

c. In-Class Support – ELA

The October 2023 IEP provided that ■ would receive in-class support for writing in ELA class. In January 2024, reading was added to the ELA in-class support.

During the 2023-24 school year, ■ ELA teacher was Kirsten Hermreck.⁵⁰ Vol. III Tr. at 601:23-25, 606:16-21 (■) In addition to herself, Hermreck had a student teacher, Michelle Young, and

⁴⁹ ■ also stated that, although he also did not like the IXL program, he did not complain and was okay with working on the program because he wanted to get caught up with his peers. Id.

⁵⁰ In her ELA class, Hermreck does not work on helping a special education student with specific goals contained in the student’s IEP. Instead, Hermreck’s focus would be on the program modifications and supports contained in the IEP. Vol. IV Tr. at 1200:3-7 (Hermreck). Hermreck believes that the students would work on their specific IEP goals during their special education minutes in flex class. Specifically, with respect to ■ IEP goal in the area of ELA and literacy, Hemrick testified that the work in her class “wouldn’t necessarily target this specific goal. That would be something that would more happen in [■] special education minutes that were happening during Student Success.” Id. at 1198:9-20. Hermreck testified that she “probably” would have been aware of ■ present levels of achievement and IEP goal in a “very general sense.” Id. at 1199:2-15.

a paraprofessional, Jamie Henry, with her in the classroom. Vol. IV Tr. at 1194:8-20 (Hermreck). At times, they may have had a second paraprofessional, making four adults in the classroom.⁵¹ Id.

■ estimated that the ELA class had approximately 30 students, with about five to six of the students requiring special education. Vol. III Tr. at 606:15 to 610:12 (■) One of those students was AZ, who had extreme behavioral issues that required the para's full attention most of the time, and the teacher's attention up to 35 percent of the time. Id. ■ testified that, when he needed help in ELA class, the teacher or para was available to help him about 35-40 percent of the time. Id. At 611:15-20.

Williams testified that, due to the attention required by AZ, it would have been difficult for the paraprofessional in ELA to implement the in-class writing support required under ■ IEP with fidelity. Vol. III Tr. at 817:3-19 (Williams). More specifically, Williams stated that, although the ELA teacher (i.e., Hermreck) is an excellent teacher and was able to do a lot, "special ed services were not implemented in compliance with the IEP in that room." Id. at 817:21 to 818:1.

After the reading goal was added in January of 2024, ■ did not recognize any changes occurring in the work or instruction that he was receiving in his ELA class. Vol. III Tr. at 619:23 to 620:15 (■) More specifically, ■ testified as follows. He was not given reading assignments that were different than everyone else; occasionally, he was given different writing assignments. Id. at 603:1-8. He did not work on decoding, sounding out words, breaking words apart into syllables, or visualizing such as creating mental images of the text to help him comprehend what he was reading. Id. at 602:8-19. Occasionally, there was a focus on specific vocabulary of the text they were reading and breaking off the harder words to make sure he had an understanding of that vocabulary. Vol. III Tr. at 619:23 to 620:15 (■) Id. at 602:20-25.

■ testified that, in ELA class, the teacher or para worked with him on reading and writing about 35 to 40 percent of the time. Vol. IV Tr. at 942:17 to 943:17, 950:24 to 951:14 (■)

d. In-Class Support – Math

The October 2023 IEP provided for in-class support in math.

■ testified that, in math class, the para provided him with chunking of assignments and shortened assignments, as provided in his IEP. Vol. IV Tr. at 945:13-20 (■)

e. In-Class Support – Social Studies

In January 2024, the IEP was amended to include in-class support in social studies for both reading and writing. Following the amendment, ■ switched from Ms. Rabiola's social studies class to Ms. Loo's social studies class, where Williams was the special education teacher in the classroom. Vol. III Tr. at 620:16 to 621:4 (■)

⁵¹ The record does not reflect when the second para was added to ELA class or the length of time that para remained with the class. Further, the record does indicate the roles of these individuals with respect to special education students with high incidence disabilities like ■

■ testified that, in Ms. Loo's classroom, he received in-class special education support services about 20-25 percent of the time (i.e., when Williams not tied up with AZ and was available to work with ■. Vol. IV Tr. at 946:1-15, 951:15 to 952:12 (■)

Williams testified that she sometimes worked with ■ in the social studies classroom; however, AZ was in the same class and required about 75-80 percent of her attention. *Id.* at 621:5 to 622:5. Williams stated that, due to the attention required by AZ, she not able to implement ■ push-in support for reading and writing in social studies class with fidelity. Vol. III Tr. at 819:21 to 821:5 (Williams).

f. Program Modifications and Supports

The 7th-grade IEP provided for various program modifications and supports in ■ general education core classes, including: proximity control; notification of upcoming tests with study guides; alternate placement for testing; chunking of assignments; planner check at the end of the day; speech-to-text; graphic organizers or visual clues; other models of acceptable work; bulleted work completion checklists; typed assignments with five or more sentences; and shortened assignments. See, e.g., October 2023 IEP, Joint Ex. A-36 at T_00061-62.

At the due process hearing, ■ testified that he did not receive chunking of assignments or study guides before tests in Spanish class or in social studies with Ms. Rabiola, math. Vol. III Tr. at 624:6-19 (■) further testified that his planner was virtual and was filled out for him, except for the last period, when Ms. Gates would give information on a sticky note for him to type into his planner on her computer. *Id.* at 625:1-17. ■ said he did not have access to the planner and it was useless to him. *Id.* at 625:18 to 626:6. Regarding speech-to-text, ■ said it was shown to him once, but he did not know how to use it, and it was never recommended or suggested that he could use it again. *Id.* at 626:6-16.

Also, at the due process hearing, ■ ELA teacher, Ms. Hermreck, testified as to the support and modifications that he received in her classroom. Hermreck stated that she was familiar with ■ as a student and knew that he was on an IEP. At the beginning of each school year, Hermreck would have typically familiarized herself with the IEPs of all of her students. Vol. IV Tr. at 1195:22 to 1197:19 (Hermreck). Also, when preparing her lesson plans, Hermreck typically took into account accommodations and modifications that needed to be made for students with IEPs. *Id.* at 1194:3-7, 1196:19 to 1197:5.

Hermreck testified that she understood that the program modifications and supports needed to be incorporated into her classroom every day and that, in ■ case, the modifications and supports were, in fact, incorporated into the classroom for ■ on a regular basis by herself or the other adults working with her. *Id.* at 1200:18 to 1215:4, 1225:12-17.

In response to Williams' email of January 21, 2024, Hermreck responded that she was providing the following in her ELA class: She did not give tests in ELA, but on major assignments, she notified all parents about the project and the assignment guidelines; Large assignments were chunked for all students, and Ms. Henry assisted to breakdown parts if a particular piece was overwhelming for ■ the interactive student notebook ("ISN") for all

students serves as a graphic organizer, and daily slides the class serve as a visual clue for directions, etc.; for large assignments, all students are given models of acceptable work and provided a rubric so they know the grading criteria; the ISN is where students take notes and write short assignments (i.e., less than five sentences); “Mrs. Henry checks in with [■] throughout class and if a task has become [too] big/difficult, [she] will modify the amount that [■] must complete on the spot. Or she may scribe for him instead of having him write.” January 25, 2024 Email, Respondent’s Ex. 1042 at USD497_000477; Vol. IV Tr. at 1215:5 to 1225:4 (Hermreck).

8. March 2024 – IEP Meeting and Amendments to IEP

On March 22, 2024, the IEP team held a meeting, which Stithem attended. Stithem understood the parents’ primary concerns were related to “inconsistencies in the implementation of accommodations and what was being provided during the pull-out special education time with Ms. Williams.” Vol. V Tr. at 1266:13-20 (Stithem). Storck described that, in addition to wanting to better understand the school’s recommendation to not do an OT evaluation, ■ parents were concerned that ■ continued to be behind his peers in math and writing, and they also raised concerns about the way that his instruction was being delivered during Student Success/Flex class. Vol. VI Tr. at 45:15 to 46:18 (Storck).

At the meeting, ■ shared that when he was pulled out for Student Success, they were either doing homework or progress monitoring, or moving to different rooms for A/B rotations. March 2024 IEP Concerns Meeting notes, Joint Ex. A-61 at USD497_000204.

At the meeting, school staff discussed that ■ was not receiving special education services due to staffing shortages. More specifically, at the meeting, Williams stated that, due to staffing shortages that year, she had not been able to provide ■ the services that he should have been receiving under his IEP. Vol. IV Tr. at 1009:1-8, 1010:1-5 (■ mother).⁵²

a. Math

To address the family’s concerns that ■ needed something more or different in math, the IEP team decided to add additional math support for ■ Vol. VI Tr. at 57:1-13 (Storck).

Specifically, the IEP was amended to add a math individual goals class in place of an elective class, with the following language added to the services delivery statement:

Beginning on March 25, 2024:

[■] will receive an additional class period that will focus on his math goal and developing his math skills. This will occur daily when the class period meets and for the entirety of the class period (which is 5 days per week in the current schedule).

⁵² At the due process hearing, mother first thought that Williams made the statement in the January 2024 IEP meeting. *Id.* However, after looking at the minutes from both meetings, she stated that it could have been the March 2024 meeting, because she recalled that Lori Stithem was at the meeting. *Id.* at 1009:1-8, 1013:11-21.

March 2024 IEP Amendment, Joint Ex. A-60 at USD497_000188; Vol. V Tr. at 1267:3-11 (Stithem).

The additional math course was a “pull-out” form of math with specially designed instruction to target the student’s individual needs in a special education setting. Vol. V Tr. at 1372:20 to 1373:19 (Stithem); Vol. VI Tr. at 57:1-13 (Storck). The IEP team agreed to provide this service “temporarily to finish off the year,” to help give ■ “an extra dose of math support to help him with his understanding.” Vol. VI Tr. at 47:5 to 48:9 (Storck).

b. Occupational Therapy and/or Speech/Language Evaluation

At the meeting, the IEP team also discussed the idea of occupational therapy services (“OT”). Vol. V Tr. at 1369:11 to 1370:14 (Stithem). However, after hearing the observations of the school’s occupational therapist, who attended the meeting, the team decided to not move forward with an OT evaluation. Id.

In discussing concerns regarding ■ writing, the IEP team agreed that it could be “related to a language expression difficulty that was interfering with ... written expression.” Vol. VI Tr. at 47:1-5 (Storck). Sometimes, to teach reading and writing to a student who has dyslexia and dysgraphia (like ■ one needs to address matters regarding language processing at the same time. Vol. VI Tr. at 65:19 to 66:15 (Storck). Accordingly, the team decided to move forward with a speech language evaluation of ■ with his parent’s consent. Id.; Vol. V Tr. at 1267:3-16, 1371:1-24 (Stithem); Vol. IV Tr. at 1016:17 to 1017:2 (■ mother).

9. Speech Pathology Evaluation at West Middle School (Spring of 2024)

Following the March 2024 IEP meeting, the school’s speech pathologist, Ms. Burton, performed assessments designed to determine how the function of language or speech might potentially relate to and/or overlay with ■ reading and writing abilities. Vol. VI Tr. at 65:8-18 (Storck). In her testing, Burton found two areas that were low. Vol. VI Tr. at 65:13 to 66:26 (Storck). More specifically, these concerns focused on the way ■ expressed himself through his writing and the deeper level of his ability to convey his ideas through writing. Id.

The evaluation team report described that the Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5) was administered to gather more information about ■ language function. May 2024 Evaluation Team Report, Joint Ex. A-72 at USD497_000216-219.

In the report, Burton summarized the testing results as follows:

[■] lowest subtest scores were in Sentence Assembly and Semantic Relationships. In Sentence Assembly, [■] was given phrases and words that could make different sentences and asked to use the words and phrases to make two grammatically correct sentences. Sometimes, [■] could come up with one way the words and phrases fit together, but not another way. He struggled with both active declarative sentences ... and interrogatives In the Semantic Relationships subtest, [■] was read a comparative statement and asked to complete the statement with two of four options that were

displayed on the screen. He struggled the most with comparative, sequential, and temporal relationships between the works Both of these subtests require knowledge of word and object relationships and knowledge of words and clauses that modify or provide extra detail to a statement.

His Language Content Index was his lowest index. It consisted of the Word Classes, Understanding Spoken Paragraphs, and Sentence Assembly subtests which all fell slightly below average, with Sentence Assembly being the lowest subtest score, bringing his total score down. Language Content is a measure of vocabulary and word knowledge. While [■] is able to verbally convey his ideas and answer questions reasonably well, when he is asked pointed questions about his word knowledge, he struggles. This struggle may affect reading and writing as he may have difficulty understanding and using sentences with complex clauses or complex semantic features.

May 2024 Evaluation Team Report, Joint Ex. A-72 at USD497_000219.

In Sentence Assembly, ■ scored in the 1st percentile, meaning that 99 percent of students were performing at a higher level. Vol. VI Tr. at 67:19 to 68:7 (Storck). In Semantic Relationships, ■ scored in the 5th percentile, indicating that intervention was appropriate. Id. at 68:8-13. Burton recommended adding speech as a related service to ■ IEP. Id. at 51:17 to 54:21 (Storck).

10. May 2024 IEP meeting

a. Speech Services to Begin in 8th Grade

On May 20, 2024, the IEP team met to review the speech language evaluation report. At the meeting, Barton proposed adding speech language services for a duration of 20 minutes with a frequency of two times per week. Vol. V Tr. at 1378:3 to 1379:13 (Stithem). The IEP team agreed with the recommendation and determined that ■ was eligible to receive speech language as a related service under his IEP. Vol. V Tr. at 1268:13-19, 1330:22 to 1331:6 (Stithem); Vol. VI Tr. at 51:17 to 54:21 (Storck).⁵³

The IEP team did not amend the IEP to add speech services to begin in 7th grade because it was so close to the end of the school year. Vol. VI Tr. at 82:13 to 83:7 (Storck). ■ mother understood that the school planned to begin speech services with the start of the next school year. Vol. IV Tr. at 1167:6-14 (■ mother).

⁵³ At the due process hearing, Stithem described that a “related” service refers to “any services that a student may need to benefit from the specific education services that they receive.” Vol. V Tr. at 1397:14-18 (Stithem). Stithem believed that one of ■ existing goals was modified to include both receptive language (i.e., how a student will receive information and understand it) and expressive language (i.e., the student’s ability to articulate what they are intending in an accurate way). Id. at 1331:7-25. However, the record does not contain any information in this regard.

b. Parents Request Speech Services to Begin in ESY

At the May 20, meeting, ■ mother asked if the school could start speech services for ■ over the summer to help him catch up. Vol. IV Tr. at 1018:4 to 1019:8 (■ mother). At the due process hearing, ■ mother recalled that she had just learned the results of the speech evaluation report indicating that, in one of the categories, ■ was in the 1st percentile, which she perceived to be a big deficit. Id.

At the meeting, school staff discussed whether to add speech services for ESY and determined there was not sufficient regression data. Vol. IV Tr. at 1016:17 to 1017:2 (■ mother). The notes from the meeting state as follows:

Parent asks about ESY for speech. The team does not have data for speech to recommend ESY. The friend/speech pathologist asks if [■] could qualify for ESY for language based on the nature and severity of his disability. The team [discussed] that there would still need to be regression data without recoupment, which the team does not have.

May 20, IEP meeting notes, Joint Ex. A-71 at T_000158.⁵⁴

At the due process hearing, Williams recalled that the team declined to offer ESY in speech, because there was no data to show regression or other criteria required for ESY. Vol. III Tr. at 909:2 to 911:20 (Williams).

Similarly, Storck testified that the IEP team discussed that it did not have regression data to support the recommendation. Vol. VI Tr. 83:15 to 84:7 (Storck). More specifically, Storck stated that, at the time of the May 20, 2024 meeting, ■ was making progress at the time on his writing goal and progressing adequately on his reading goal as well, “so we didn’t have any data to suggest that he needed ESY.” Vol. VI Tr. 83:15-23 (Storck). In other words, Storck stated that the team determined that ■ did not qualify for ESY in speech “because he was making progress per his reading and writing goal. And speech was supporting the reading and writing goal.” Vol. VI Tr. 87:22 to 88:1 (Storck).

In fact, ■ was determined to be eligible for ESY in reading and writing due to concerns of regression.⁵⁵ See May 21, 2024 PWN, Joint Ex. A-73 at USD0000284. Thus, Storck’s statements that ■ was making adequate progress and had not shown regression on his reading or writing goals were incorrect. At the due process hearing, Storck testified that she understood that the deficits identified in ■ speech evaluation overlaid with and affected his reading and writing abilities. Vol. VI Tr. at 69:4 to 70:17 (Storck). Storck testified that, at the time of the May 2024 IEP meeting, she understood that ■ had been found eligible for ESY in math, and maybe writing; Storck stated that she later knew that ■ was determined to be eligible for ESY in

⁵⁴ Although Joint Ex. A-71 is marked as “draft,” it appears that no changes were made to the final document. See Vol. V Tr. at 1377:3 to 1378:2 (Stithem) (not aware of any changes).

⁵⁵ The record is unclear as to when ■ was determined to be eligible for ESY in reading and writing, and whether this decision was known or discussed at the May 20, 2024 meeting.

reading and writing, but she did not know when those subjects were added. Vol. VI Tr. at 71:14 to 73:18 (Storck).

■ mother testified that, at the May 20, 2024 meeting, school staff discussed the criteria for ESY, but no definitive decision was made, and she was told that she would need to talk with Stithem, who was not at the meeting. Id. at 1018:4 to 1019:14, 1026:15-18. ■ mother further stated that, at the meeting, school staff did not discuss or consider all of the ESY factors listed in the KSDE Handbook. Vol. IV Tr. at 1028:7 to 1029:3 (■ mother). After the meeting, ■ mother went home and looked at the Handbook and realized that some of the factors had not been considered. Vol. IV Tr. at 1018:4 to 1019:8 (■ mother).

On May 21, 2024, the school sent a PWN asking for parental consent to provide ESY services addressing math, reading, and writing. Under the explanation of why the services were proposed, the PWN stated:

[■] qualifies for ESY services in reading, writing and math based on progress monitoring data, district assessments and the nature and severity of disability impact on critical skills that *indicate significant regression beyond of [sic] recoupment is likely to occur without the provision of ESY services.*

May 21, 2024 PWN, Joint Ex. A-73 at USD0000284 (emphasis added).

On May 21, 2024, mother emailed Stithem (and others) requesting that speech services begin in ESY. May 2024 Email Chain, Petitioners' Ex. 136 at USD497_001021. In the email, ■ mother stated, among other things, that:

1. Given [■] extremely low scores (1st percentile in 1 case) on his speech assessment we are requesting that his speech services begin during summer school. Is that something that is possible? The West staff were not able to give us an answer on this.

3. Given that language, speech and reading are all connected we would like to request that [■] also receives ELA services and not just Math during ESY.... We see this as a huge opportunity for [■] to play catch up and *want to make up for all the lost time (including the time this year when despite what was said in his IEP those services did not happen)* and he desperately wants to catch up with his peers in all areas.

May 2024 Email Chain, Petitioners' Ex. 136 at USD497_001021 (emphasis added).

Over the next several weeks, ■ mother and Stithem exchanged several emails on the subject, with Stithem conferring behind-the-scenes with Storck. See Storck Draft Email, Petitioners' Ex. 138; June 2024 Email Chain, Petitioners' Ex. 143; Respondent's Ex. 1070; Vol. VI Tr. at 89:24 to 91:19 (Storck).

Regarding the school's response to paragraph 1 of ■ mother's May 21 email (i.e., asking whether ESY speech services could be provided in light of ■ extremely low scores on the

speech assessment, including scores in the 1st percentile in one area), Storck proposed the following language to Stithem:

---we discussed at the meeting that [■] is not eligible for speech services through ESY since we have no regression data *and the skills he is missing are not considered "critical skills."* I do not believe that we provide special education services [in the summer] outside of ESY.

Storck Draft Email, Petitioners' Ex. 138 at USD497_001040 (emphasis added); Vol. VI Tr. at 89:24 to 91:19 (Storck).

In her email response to ■ mother, Stithem omitted Storck's proposed language regarding "critical skills" and stated as follows:

---we discussed at the meeting that [is not eligible for speech services through ESY *since we do not have data to show regression of critical skills in this area.*

Storck Draft Email, Petitioners' Ex. 138 at USD497_001020 (emphasis added); Vol. VI Tr. at 89:24 to 91:19 (Storck).

Regarding paragraph 3 of ■ mother's email (i.e., requesting that ELA services be added to ESY to make up for lost services that did not happen in 7th grade), Storck proposed the following language:

----he hasn't shown regression in the area of reading, and we don't have data to support this.

-----*the "missed services" you are talking about could be discussed in terms of compensatory services, and providing that during ESY does make sense. I will talk with [Stithem] about this.*

Storck Draft Email, Petitioners' Ex. 138 at USD497_001040 (emphasis added).

In her email response to ■ mother, Stithem deleted Storck's proposed language suggesting the potential of discussing ESY as compensatory services for "missed services." Id. at USD497_001039. Thus, Stithem's response to ■ mother did not mention compensatory services and stated only that, since ■ had not shown regression in the area of reading, they did not have data to support adding ELA services during ESY. Id. at USD497_001039; see also Vol. IV Tr. at 1350:4 to 1351:10, 1353:4-9 (■ mother); May 2024 Email Chain, Petitioners' Ex. 136 at USD497_001020-102121.

On May 24, 2024, ■ mother sent a follow up email discussing the criteria for ESY under the Kansas Special Education Process Handbook. Id. at USD497_001019-1020. In the email, ■ mother asserted that, under the Handbook criteria, regression was not the only test, and she believed ■ would qualify for other reasons such as the degree of impairment and data provided by their private speech language pathologist showing that ■ continued to fall further behind his peers. Id. at USD497_001020; see also Vol. IV Tr. at 1019:21 to 1023:18 (■ mother). In the emails, ■ mother continued to discuss the criteria for ESY under the Kansas Special Education Process Handbook and asserted that, under the Handbook criteria, regression was

not the only test. Storck Draft Email, Petitioners' Ex. 138 at USD497_001020; Respondent's Ex. 1070 at T_000657. ■ mother believed ■ would qualify for other reasons, such as the degree of impairment and data provided by their private speech language pathologist showing that ■ continued to fall further behind his peers. *Id.*; Vol. IV Tr. at 1019:21 to 1023:18 (■ mother).

In her responses, Stithem essentially repeated the message that the IEP team had determined there was insufficient regression data to support ESY for speech. *See, e.g.*, Storck Draft Email, Petitioners' Ex. 138 at USD497_001020, USD497_001039.

On June 8, 2024, Stithem stated that, among other things, she would be happy to meet that week to discuss ■ parents' concerns. Respondent's Ex. 1070 at T_000658.

On June 9, 2024, ■ mother replied that, among other things, the parents could be available for an IEP meeting that week, if they needed to have one. *Id.* at T_000655-656.

At the due process hearing, Stithem testified that she understood that, based on the data available at the May 22 meeting, the IEP team decided that ESY services for speech language services were not needed. Vol. V Tr. at 1279:6-22 (Stithem). Stithem stated that she wanted to hear the parents' concerns, but she did not have the authority or power to undo or go back on the decision of the IEP team. *Id.* at 1279:6 to 1280:14, 1294:3-19.

Stithem further testified that she believed the team decided to decline ESY speech services for expressive and receptive language, despite the fact that team discussed that speech services could support the reading comprehension goal and add an element of vocabulary, and that speech services could support the writing goal and work on expressive language. Vol. V Tr. at 1332:5-11, 19-23; 1332:24 to 1333:16 (Stithem); see also May 20, IEP meeting notes, Joint Ex. A-71 at T_000157.

Stithem was not at the May 20 IEP meeting and did not have first-hand knowledge of what was discussed or what the team decided at the meeting. Vol. V Tr. at 1333:17-23 (Stithem). On cross-examination, Stithem agreed that the IEP team was not the only body or entity that could determine whether a particular student is entitled to compensatory services. Vol. V Tr. at 1346:5-14 (Stithem).

In the summer of 2024, ■ attended ESY and received educational services for math, reading, and writing. Vol. IV Tr. at 1166:25 to 1167:5 (■ mother). Speech pathology services were not offered to ■ during ESY.

c. Proposed IEP Changes for 8th Grade

On May 24, 2024, a PWN was sent asking for parental consent to material changes in services and a substantive change placement to occur in 8th grade year, as follows:

- 1) Starting his 8th grade year, [■] will receive speech services in a special education setting 2 times per week for 25 minutes (consent required).
- 2) Starting his 8th grade year, [■] will receive a resource room daily for the entirety of a class period in a special education setting to target his reading, writing, and math goals.

This is an increase in service time as he was previously receiving resource room time on a rotating schedule of every other day (consent required).⁵⁶

- 3) The reading and writing goals will be modified to include an indicator to support receptive and expressive language skills (consent not required).
- 4) Starting his 8th grade year, [■] will no longer receive a period in an individual goals math class, which was time outside of the general education setting. Rather, the service will change to special education support in the general education setting to target math skills. This will occur during the building's student success class and/or the "flex class."

May 24, 2024 PWN, Joint Ex. A-77 at T_000169-170; see also Vol. V Tr. at 1381:4 to 1389:8 (Stithem).

Because the parents' signed consent was required for some of the proposed changes, the District's practice or policy would be to not actually amend the IEP to include the proposed changes until after it received the parents' signed consent to do so. Vol. V Tr. at 1342:8-22 (Stithem); Vol. VI Tr. at 54:22 to 55:13, 81:15-23 (Storck). Over the summer of 2024, the school and ■ parents exchanged emails to clarify, amend, and/or separate information on the PWN. In the end, ■ parents ended up withdrawing ■ from the District and did not sign a PWN for the proposed changes. Vol. V Tr. at 1344:13-16 (Stithem).

d. Changes Made to IEP Document by West Middle School Staff

Sometime after the May 2024 IEP meeting and before the beginning of 8th grade year, Burton added the CELF-5 information from her speech evaluation to the present levels under the reading comprehension and writing goals on ■ IEP. Vol. VI Tr. at 69:4 to 70:17 (Storck).⁵⁷ In addition to the new CELF-5 information, the following sentence was added to both the reading and writing present levels sections:

[■] struggle with vocabulary and word knowledge at the phrase/clause level may affect reading and writing as [■] may have difficulty understanding and using sentences with complex clauses or complex semantic features.

March 2024 Amended IEP, Joint Ex A-60 at USD497_000179 and USD 497_000181.

Additionally, the service delivery statement was amended to include the school's proposed changes for 8th grade. *Id.* at USD497_000188.

The staff's updates to the IEP for 8th grade were made on the school's computer system and actually appear on the IEP document dated March 22, 2024 (i.e., Joint Ex A-60 at

⁵⁶ Regarding the proposed changes to daily time in the resource room, Stithem described that this referred to "what was provided during the flex time for [■] seventh grade year, [where] he was getting those services, I think [in 7th grade] it was two days one week and then one day the next week." Vol. V Tr. at 1388:18 to 1389:7 (Stithem).

⁵⁷ Storck did not recall when Burton added the information to the IEP; Storck believed Burton sent notification that the information was added in the next school year (i.e., ■ in 8th grade year), but Storck did not specifically recall. *Id.*

USD497_000179 and USD 497_000181). See Vol. V Tr. at 1355:1 to 1362:9 (Stithem). Thus, Joint Ex. A-60 is not accurate in time as to exactly what appeared on the March 22, 2024 IEP Amendment, as it also contains revisions made to the document by school staff over the summer of 2024. It appears that staff altered the document to include the 8th-grade updates out of concern of wanting to send accurate information to Horizon Academy about what services were recommended for ■ in 8th grade. Vol. V Tr. at 1355:1 to 1362:9 (Stithem).

G. Parents Decide to Place at Horizon Academy (Summer of 2024)

1. ■ Family Learns About Horizon Academy

Over the summer of 2024, ■ mother learned about Horizon Academy. The family looked at its website and requested a tour, at which Horizon Academy performed some assessments to determine if ■ was a good fit. Vol. IV Tr. at 1034:1 to 1037:9 (■ mother). At the time, ■ parents were exploring possible options, such as the idea of having ■ attend public school for half of the day and come home for private tutoring for part of the day. Id.

When ■ and his parents visited Horizon Academy, they felt very comfortable there. Id. They also recognized that it was place where ■ would still have peers, whereas he would be alone for half the day if they chose to give him private tutoring at home. Id. The family was also drawn to the structure and specialization of the school in working with kids with dyslexia and using the Orton-Gillingham approach for literacy and a similar multi-sensory approach to math. Id. The family also learned that Horizon Academy focused on executive functioning skills and reinforced the skills throughout the building by all of the teachers. Id.

As part of the onboarding process, Horizon Academy administered the Wide Range Achievement Test to get a quick snapshot of ■ abilities in word reading, spelling, and math computation. Vol. III Tr. at 678:17 to 680:21 (Isenmann); 2024 WRAT-5, Ex. A-81. ■ standardized scores were: 13th percentile in word reading; 2nd percentile in spelling; and 2nd percentile in math computation. 2024 WRAT-5, Ex. A-81.⁵⁸

At the due process hearing, Dr. Willard testified that ■ scores on the Horizon Academy pretest showed that he had not substantially improved in the areas of word reading, spelling, and math, and that he continued to need support in all three areas. Vol. I at Tr. 206:2 to 208:13. Specifically, Dr. Willard opined that ■ required reading intervention using a method like Orton-Gillingham to address “his dyslexia including accuracy, fluency, and decoding intervention,” as well as spelling instruction on how to spell phonetically and learning sight words, and math “in several areas, especially around computation.” Id.

⁵⁸ The middle score on the WRAT-5 would be in the 50th percentile, with an average score ranging between the 25th and 75th percentiles. Vol. III Tr. at 678:17 to 680:21 (Isenmann).

2. Notice of Intent to Attend Horizon Academy

On August 1, 2024, ■ mother sent the District notice of her intent to unilaterally place ■ at Horizon Academy. August 2024 Notice of Intent, Joint Ex. A-84, T_000186-188. In the letter, ■ mother asserted (among other things) that, at the District, ■ had failed to make adequate progress on his IEP goals; staff had been unwilling to provide evidence-based interventions to address his needs, including ESY for speech/language services; and the District had inadequate staffing to provide special education services required for ■ to receive a FAPE. *Id.* ■ mother further asserted that she and her husband were eligible for reimbursement of the private school expense, including roundtrip transportation costs from Lawrence, Kansas, to the school's location in Roeland Park, Kansas. *Id.*; see also Vol. IV Tr. at 1032:2-22 (■ mother).

On August 8, 2024, the District responded with a letter stating, "The district has provided FAPE to [■] and remains ready, willing, and able to do so." August 8, 2024 Letter, Joint Ex. A-85, USD000119. The letter further stated, "Our district is not agreeing to pay for a private placement. However, we would like to offer to resolve this matter through reconvening the IEP team [at a number of proposed dates and times]. *Id.* ■ mother declined the District's offer to hold an IEP meeting. Vol. IV Tr. at 1169:15-18 (■ mother).

Stithem was involved in preparing the District's response. (Joint Ex. A-85). Vol. V Tr. at 1298:3 to 1300:15 (Stithem). In preparing the response, Stithem reviewed ■ educational records to determine if adequate progress was being made on the goals identified in his IEP. *Id.*

At the due process hearing, Stithem testified that her review of ■ records revealed the following:

Through his sixth grade year he made adequate progress on [both his] math and writing goals at that time; in seventh grade [he] was making adequate progress for reading and writing. And for math there were ... quarters of inadequate progress, which is why the IEP team met in January as well as March to address the inadequate progress and determine what needed to happen in order to allow [■] to continue to make progress and access the general education curriculum.

Vol. V Tr. at 1303:21 to 1304:11 (Stithem). Stithem further testified that the District was in a position to provide the educational services to support the goals, objectives, and modifications and accommodations reflected in the IEP. *Id.* at 1304:12-16.

In response to the District's August 8 letter, ■ mother declined the District's offer to hold an IEP meeting and stated that she was withdrawing ■ from the District and enrolling him at Horizon Academy. Vol. IV Tr. at 1170:16-21 (■ mother).

On August 20, 2024, the new principal of West Middle School, Kady Carson, emailed a letter to ■ parents that stated as follows:

We understand that [■] will be attending school at Horizon Academy. We are sending you this letter to notify you that our school district stands ready, willing, and able to provide your student with a Free and Appropriate Public Education (FAPE). Special

education services are available should you choose to enroll your student in our district. If you would like to discuss services for your student, please contact me so that an IEP meeting can be scheduled.

August 8, 2024 Letter, Respondent's Ex. 1079 at USD_000761; Vol. IV Tr. at 1169:15-18 (■ mother). Stithem testified that the August 20, 2024 reflects information that the District would send out in any situation in which a student with an IEP dis-enrolled from the District. Vol. V Tr. at 1306:15 to 1307:22 (Stithem).

H. 8th Grade at Horizon Academy (2024-25 School Year)

1. Facts About Horizon Academy

Horizon Academy is an independent school that caters to students in Kindergarten through 8th grade with learning disabilities. Vol. III Tr. at 638:2-15, 662:22-24 (Hathhorn). Specifically, Horizon Academy focuses on students who have dyslexia (difficulty with reading), and dysgraphia (difficulty with writing), and dyscalculia (difficulty with math). Vol. III Tr. at 638:2-15, 662:22-24 (Hathhorn). Additionally, many of the students at Horizon have ADHD or anxiety. Vol. III Tr. at 638:2-15, 662:22-24 (Hathhorn).

In the 2024-25 school year, approximately 120 students attended Horizon Academy, with a total of 13 students in 8th grade. Vol. III Tr. at 711:22 to 712:8 (Isenmann).

Horizon Academy caters its curriculum and teaching using small class sizes to support its students. Vol. III Tr. at 638:2-15, 662:22-24 (Hathhorn). Horizon Academy does not provide special education services using an IEP document; instead, the school's whole system is designed to be like a special education resource room or "pullout" room providing accommodations to the students. Vol. III Tr. at 712:9 to 713:14 (Isenmann).

Horizon Academy integrates aspects of the Orton-Gillingham approach "throughout the lessons and throughout the whole school day." Vol. III Tr. at 639:2-8 (Hathhorn). Orton-Gillingham is an approach to teaching reading skills, decoding skills, and spelling skills to students with dyslexia by focusing on the letter/sound correspondence to be able to look at letters and decipher what sounds they make, look at patterns in spelling and syllable division, and look at the morphology of a piece of a word, such as knowing that a word with "un" at the beginning means "not." Vol III Tr. at 667:3-24 (Isenmann). Some aspects of Orton-Gillingham instruction include that it is sequential, multisensory, structured, individualized, prescriptive, and diagnostic. Vol. III Tr. at 639:2-8 (Hathhorn).

All new staff at Horizon Academy go through Orton-Gillingham training through the Orton-Gillingham Academy. Vol. III Tr. at 638:16-24 (Hathhorn); Vol III Tr. at 667:3-12 (Isenmann). The introductory course is 60 hours, which is followed by a practicum experience in giving lessons to kids with dyslexia. Vol. III Tr. at 638:16-24 (Hathhorn).

2. Individual Learning Plan (“ILP”) and Progress Monitoring at Horizon Academy

Horizon Academy utilizes an individual learning plan (“ILP”) for its students. Vol. III Tr. at 681:15 to 685:11 (Isenmann). The ILP is a streamlined document to track the student’s learning disabilities and accommodations, as well as the student’s goals and progress in various core areas of instruction. Vol. III Tr. at 681:15 to 685:11, 705:7-9 (Isenmann). The ILP also contains a section on social-emotional learning or executive functioning, and an area for teachers’ comments. Vol. III Tr. at 681:15 to 685:11 (Isenmann).

a. Decoding and Encoding

■ ILP for the 2024-25 school year shows that, for decoding and encoding, ■ goal was “to independently perform Level III TLC objectives while increasing automaticity of Level I and Level II concepts.”⁵⁹ Vol. III Tr. at 691:6 to 699:10 (Isenmann); 2024-25 ILP, Petitioners’ Ex. 235 at T_001036. The ILP indicates that, on the decoding and encoding goal, ■ quarterly progress fluctuated between MS (moderate support) and AI (approaching independence) as follows: MS in first quarter; AI in the second quarter; MS in the third quarter, and AI in the fourth quarter. 2024-25 ILP, Petitioners’ Ex. 235 at T_001036.⁶⁰

The next pages of the ILP show the specific categories of skills for Level III decoding and encoding, and ■ concept knowledge for each category. Vol. III Tr. at 691:6 to 699:10 (Isenmann); 2024-25 ILP, Petitioners’ Ex. 235 at T_001036-38.⁶¹ The LLP indicates that ■ concept knowledge improved in the 2024-25 school year across the objectives for many categories, including phonograms and sound patterns, syllable division patterns, and morphology. Id. At T_001037-38. In other categories, such as syllable types, concepts and spelling rules, his concept knowledge improved with respect to some objectives and stayed the same as to others. Id.

⁵⁹ The highest level of decoding would be Level IV, which would involve the ability to decode the most complex concepts. Vol. III Tr. at 691:6 to 694:24 (Isenmann).

⁶⁰ The level of performance on the ILP is measured from lowest to highest ability according to the following key:

NYI – Not Yet Introduced
D – Dependent
SS – Significant Support
MS – Moderate Support
AI – Approaching Independence
I – Independent

2024-25 ILP, Petitioners’ Ex. 235 at T_001036.

⁶¹ The concept knowledge for each category is measured from lowest to highest ability according to the following key:

NYI – Not Yet Introduced
NI – Newly Introduced
NCR – Needs Continued Reinforcement
AI – Approaching Independence
KCR – Known, Cycling through Cumulative Review
2024-25 ILP, Petitioners’ Ex. 235 at T_001037.

b. Written Expression

As to written expression, the ILP had two goals. The first goal provided that: “[■] will independently perform Level II Written Expression objectives while increasing automaticity of Level I concepts.” 2024-25 ILP, Petitioners’ Ex. 235 at T_001039. The ILP indicates that, as to this goal, ■ quarterly progress increased from MS (moderate support) in the first and second quarters to AI (approaching independence) in the third and fourth quarters. Id.

The second written expression goal provided that: “[■] will independently perform Level III Written Expression objectives while increasing automaticity of Level I and Level II concepts.” Id. As to this goal, the ILP indicates that ■ quarterly progress steadily increased from NYI (not yet introduced) in the first quarter to AI (approaching independence) in the fourth quarter. Id. The subsequent pages of the ILP show that ■ made consistent improvements across the board in skill categories for written expression. Id. at T_001040-41.

c. Math Calculation and Reasoning Goal

As to math calculation and reasoning, the ILP provided the following goal: “[■] will independently perform Level V Math objectives while increasing automaticity of Level I-IV concepts.” 2024-25 ILP, Petitioners’ Ex. 235 at T_001042. As to this goal, the ILP indicates that ■ quarterly progress increased from SS (significant support) in the first and second quarters to MS (moderate support) in the third and fourth quarters. Id.

d. Executive Functioning

Regarding executive functioning, the ILP indicates that, overall, skills remained at the WD (well-developed) level during the 2024-25 school year.⁶² Vol. III Tr. at 722:13 to 725:16 (Isenmann); 2024-25 ILP, Petitioners’ Ex. 235 at T_001045.

Under one executive functioning category described as the “ability to ask for help, set small goals, and create a plan,” the ILP indicates that ■ skills improved from IN (inconsistent) in the first and second quarters to WD (well developed) in the third and fourth quarters. Id.

In the category described as “[u]sed daily planner (as instructed) and other tools to complete and prioritize both home-to-school and school-to-home tasks,” the ILP indicates that ■ skills remained unchanged at the IN (inconsistent) level. Id.

⁶² For executive functioning skills, the ILP provides the following measurement key:

UA – Unable

UN – Underdeveloped

IN – Inconsistent

WD – Well Developed

AV – Advanced

NI – Not Yet Introduced

2024-25 ILP, Petitioners’ Ex. 235 at T_001045.

3. ■ Experience at Horizon Academy

As noted, during the 2024-25 school year, ■ successfully completed 8th grade at Horizon Academy. Based on witness testimony, as described below, it appears that his experience and progress there was extremely positive.

a. Teacher Sage Isenmann's Observations

Sage Isenmann has worked as a teacher for Horizon Academy for 13 years. Vol. III Tr. at 666:9 to 667:2 (Isenmann).⁶³ During the 2024-25 school year, Isenmann taught social studies and was also ■ homeroom teacher. Vol. III Tr. at 666:9 to 667:2 (Isenmann).

In addition to social studies, Isenmann has taught other subjects at Horizon Academy, including an Orton-Gillingham decoding class. Vol. III Tr. at 669:2-5 (Isenmann). In the Orton-Gillingham decoding class, the teacher uses different data to break down a student's ability to decode based upon different syllable types. Vol. III Tr. at 669:6 to 672:4 (Isenmann). The students are broken into small classes, with the instruction of each class tailored to address the individual student's "gaps" with respect to different levels of the curriculum. Id. The class involves a lot of practicing and review of spelling and various skills to help the students solidify their foundational skills. Id.

■ was in an Orton-Gillingham decoding class at Horizon Academy that was taught by another teacher (i.e., not Isenmann). Vol. III Tr. at 672:5-9 (Isenmann).

Although Isenmann did not teach ■ Orton-Gillingham decoding class, as ■ social studies and homeroom teacher, Isenmann noticed that ■ made gains across the board in his reading ability and also in his confidence to speak up in class and volunteer to read aloud. Vol. III Tr. at 672:5-9, 674:11-24 (Isenmann). Isenmann also observed that ■ progressed in his academic abilities generally and in particular with respect to his abilities to "persevere through adversity in math" and "increase the complexity of his writing." Id. at 706:8-21.

b. Teacher Emily Hathhorn's Observations

In June of 2023, Emily Hathhorn began working for Horizon Academy as a speech language pathologist.⁶⁴ Vol. III Tr. at 656:22 to 657:5 (Hathhorn). In 2024, Hathhorn became a reading interventionist working one-on-one with students, and she was also trained to take over the responsibilities of a departing curriculum coach for ELA. Id. at 657:10-18.⁶⁵

In the 2024-25 school year, Hathhorn taught one ELA class, which was ■ class.⁶⁶ Vol. III Tr. at 639:9-19, 657:25 to 658:15 (Hathhorn). Additionally, Hathhorn taught two written expression classes and provided support in other written expression classes. Id.

⁶³ Prior to working at Horizon Academy, Isenmann taught English in public schools for six school years. Id. at 675:1-14. Isenmann has undergraduate and graduate degrees in English, and he received his master's in teaching through the Kansas City, Kansas schools' Fellowship program. Id. Isenmann was previously certified in the State of Missouri to teach special education, but he no longer maintains that certificate. Id. at 725:17-11. Isenmann currently maintains a Kansas teacher's certificate. Id. at 675:15 to 676:3.

⁶⁴ Hathhorn has undergraduate and graduate degrees in communication disorders. Vol. III Tr. at 637:13-23, 656:12-13 (Hathhorn). Hathhorn does not have a Kansas teaching license. Id.

⁶⁵ At the time of the due process hearing, Hathhorn's official job title was "Instructional Coach Trainee." Id. at 657:19-24.

⁶⁶ Prior to the 2024-24 school year, Hathhorn had not taught an English class. Vol. III Tr. at 658:13-15 (Hathhorn).

Hathhorn's ELA class had seven students, all of whom had a dyslexia diagnosis. Vol. III Tr. at 660:18 to 661:5 (Hathhorn). Five of the students were in 7th grade and two of the students, including ■ were in 8th grade. Id. at 661:10-22. Hathhorn focused her instruction on written expression,⁶⁷ and another teacher taught Orton-Gillingham reading and spelling to the students. Vol. III Tr. at 639:9-19 (Hathhorn).

Hathhorn observed that ■ had some typical patterns of a child with dyslexia like spelling errors along with errors in capitalization, punctuation, and grammar. Id. at 640:2-18. Hathhorn spent a lot of time helping ■ learn these conventions to help improve the clarity of his writing. Id. Hathhorn observed that, throughout the year, ■ became more independent and needed fewer prompts to recall the strategies and skills they were working on, including working with different types of transition words and conjunctions and how to use the grammatical elements to write increasingly complex and cohesive sentences. Id. at 642:19 to 17. Overall, Hathhorn observed growth and independence in ■ writing strategies throughout the school year. Id. at 653:12-18.

Hathhorn believes that ■ executive functioning skills were supported by some of the school-wide procedures that Horizon has in place, such as using a planner to write down what students did at the end of the class period, using a binder to organize their papers, and having an executive functioning bell that rings five minutes before the class ends to provide structure and teacher support to the transition time between classes. Vol. III Tr. at 653:19-654:19 (Hathhorn).

Hathhorn did not observe that ■ had any outward social or emotional challenges while he was at Horizon Academy. Id. at 663:3-18.

c. ■ Observations

■ testified that, at Horizon Academy, the teachers worked with him on reading comprehension strategies like vocabulary decoding, phonemic skills like inflection endings (e.g., adding an "s" to the word "cat" makes "cats"), and understanding digraphs and trigraphs (i.e., understanding how two or three letters combine to make a sound). Vol. III Tr. at 604:14 to 606:7, 630:5-14 (■⁶⁸ ■ believes that learning reading comprehension and phonetic skills at Horizon Academy has improved his reading and writing "exponentially." Vol. III Tr. at 606:8-14, 630:15-18 (■ Specifically, ■ described that the work has helped him to better understand the text in reading and writing. Id.

■ described that the classes at Horizon Academy were a lot simpler for him to understand than when he was at West Middle School, and that everything that had been in his IEP was

⁶⁷ Hathhorn described written expression as the ability to communicate your thoughts clearly using conventions of standard English so that others can understand what you are trying to convey. Id. at 639:9 to 640:1.

⁶⁸ ■ testified that he did not work on these strategies at West Middle School. Id.

pretty much done automatically at Horizon Academy for every student. Vol. III Tr. at 628:1-18 (■)

■ specifically described a course at Horizon Academy on executive functioning skills, which has helped him to greatly improve on his planning and organization skills and ability to initiate a task. Vol. III Tr. at 628:23 to 630:5 (■) Specifically, ■ testified that he believes the executive functioning training has helped him in a variety of ways, as follows:

It's definitely helped me with about everything that you can really think of. So whether it's starting the thing, whether it's finishing it, whether it's continuing to find motivation to do it, whether it's ... asking for help, ... [things that I did not have the skills to do before], I do now.

Id. at 633:20 to 634:9.

Overall, ■ described his experience at Horizon Academy as follows:

[Horizon Academy] was good, I mean as good as you can be at a school. It was definitely ... a lot more challenging than West Middle School was, but it was a lot more rewarding. . . . [M]y essay and paragraph and ... sentence [completion] in writing has just grown so much more [since I was at West.] My reading, I can read fluently and actually understand what I [am] reading. If I'm given an assignment, I know how to take notes now versus [West] never taught me how to take notes. I mean I can spell words that are, you know, [at a] way better level than . . . I used to be able to do. Whether it's just sounding it out or just memorizing it, I've memorized it and know how to spell it now.

Vol. III Tr. at 627:7-25 (

d. Mother's Observations

■ mother testified that, based on her familiarity with ■ academic goals and progress in reading, writing, and math, she believes that ■ made "huge strides" in a positive direction at Horizon Academy. Vol. IV Tr. at 1038:13 to 1043:7 (■ mother). ■ mother stated that she believed Horizon Academy was a proper placement for ■ because Horizon Academy "could meet his needs ... with fidelity [and the] models that they used are the evidence-based models that are recommended for a child of his diagnosis, and he excelled there." Vol. IV Tr. at 1057:23 to 1058:5 (■ mother).

Overall, ■ mother described that ■ 8th grade year was positive, as follows:

He's a happy kid. He came off is meds and did fine [H]is backpack was not a trash can. He used his binder. Like if you asked him for something he could find it, which was very different. He never didn't want to be at school. He doesn't love the drive 50 minutes each way but he – he absolutely wanted to be there. I wasn't getting panic texts in the middle of the day like Mom, you have to come pick me up. He's just a calmer kid now.

Vol. IV Tr. at 1038:1-12 (■ mother).⁶⁹

I. Dr. Willard's Assessments (Spring 2025)

In March of 2025, Dr. Willard performed various assessments to determine ■ current functioning levels in academics, mental health, and executive functions to see if they had changed since the time he left the District. Vol. I Tr. at 151:23 to 152:6 (Willard). In particular, Dr. Willard administered a battery of standardized assessments and attempted to compare the results with any previous baseline data that was available. *Id.* at 152:7 to 153:14; see also Willard Report at 6-27, Petitioners' Ex. 207.

To evaluate ■ cognitive abilities and problem-solving processes, Dr. Willard administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) and compared the results to the WISC-IV assessment that Dr. Taylor had administered in the summer of 2022. See Willard Report at 6-7, Petitioners' Ex. 207. Dr. Willard found that the results demonstrated "a significant and clinical meaningful improvement in [■] cognitive abilities, particularly in working memory." *Id.* at 9. Additionally, Dr. Willard found "some improvement" in processing speed. *Id.*

At the due process hearing, Dr. Willard described the WISC-V results as follows:

My conclusion was that [■] working memory showed an impressive increase. He increased in all areas, including processing speed, working memory, and the overall cognitive proficiency, which is a very strong sign that his executive functions had improved. The very special and unique improvement here that is commendable is this increase in his working memory because [■] used strategies. So he made up a plan in his mind about how to answer those – those items, and he would say them aloud to himself and then repeat them back. And in previous –in that previous assessment, he scored very low on that. In this assessment, he scored very high on that. And then all together, all of his cognitive proficiency together in one index shows that he has improved a lot.

Vol. I Tr. at 156:1-18 (Willard).

Additionally, Dr. Willard administered the WIAT-4 to assess ■ academic achievements in reading, math, and written expression and compared the results to the same assessment that Dr. Taylor had administered in the summer of 2022. See Willard Report at 9-13, Petitioners' Ex. 207. In summarizing the results, Dr. Willard found the results demonstrated that ■ had demonstrated "significant improvements in several key areas, including: (1) his total achievement increased from the 2nd to the 6th percentile, although it still remained in the Very Low Range; (2) his reading comprehension showed substantial improvement, increasing from the 5th percentile to 39th percentile, reaching the Average range; (3) his performance in

⁶⁹ During the time that ■ was enrolled at Horizon Academy, ■ parents did not request special education services from either the District or the Shawnee Mission School District, where Horizon Academy is located. Vol. IV Tr. at 1071:6-20 (■ mother).

essay composition demonstrated a “dramatic improvement,” moving from below the 0.1st percentile to the 8th percentile; (4) his math problem skills moved from the 13th percentile to the 19th percentile, reaching the Low Average range and suggesting “a slight but positive change in [■] mathematical reasoning and problem-solving skills; (5) his reading composite score improved from the 8th percentile to the 22nd percentile, reaching the Low Average range; and (6) his written expression composite score improved from the 0.5th percentile to the 7th percentile. Id. In her report, Dr. Willard stated these scores showed an overall trend of “significant positive changes” in several academic abilities. Id. at 12 (emphasis in original).

The WIAT-4 assessment by Dr. Willard also showed that ■ continued to have scores in low ranges that had not improved, and even decreased in some cases. In word reading, his score remained unchanged at the 19th percentile (Low Average). Willard Report at 11, Petitioners’ Ex. 207. In spelling, ■ scored at the 4th percentile (Very Low), dropping 4 percentage points from his score at the 8th percentile on Dr. Taylor’s assessment. Id. Similarly, in numerical operations, ■ scored at the 4th percentile (Very Low), dropping 8 percentage points from his score at the 12th percentile on Dr. Taylor’s assessment. Id. On mathematics overall, ■ scored at the 8th percentile (Very Low), dropping 2 percentage points from his score at the 10th percentile on Dr. Taylor’s assessment. Id. In her report, Dr. Willard stated these scores indicated that ■ had not made progress in these areas and needed continued support to make adequate progress at school. Id. at 12.

To further measure academic achievement, Dr. Willard also administered the WRAT5 test and compared the results to the same assessment administered by Horizon Academy in the summer of 2024. Dr. Willard’s results showed that ■ scored in the Average range for sentence comprehension and reading composite, in the Low Average range for word reading, and in the Very Low range for spelling and math computation. Id. at 13. In analyzing the skills gap between these results, Dr. Willard found that the significant difference between his scores on word reading versus reading comprehension is common in children with dyslexic profiles, and that the pattern “will likely always be the case for [■] where he has an easier time with comprehension, relative to basic word reading skills.” Id. at 14. Dr. Willard further noted that ■ had used strong reading comprehension skills to compensate for other challenges, ultimately scoring in the average range on the reading composite. Id. Dr. Willard opined that ■ would need continued support and accommodations to build his overall reading skills as he approaches high school and college. Id.

To evaluate ■ attention and executive functioning skills, Dr. Willard administered the Conners 4th Edition (Conners 4) and compared the results to the “roughly equivalent” Conners 3 assessment that Dr. Taylor had administered in the summer of 2022. Id. at 16-18. Dr. Willard found the results showed “remarkable improvements” including: (1) ■ executive functioning score showed a “substantial improvement” by 33 points, moving from the “significantly elevated” range in 2022 to the Average range in 2025; (2) ■ inattention score improved by 28 points, also moving from “significantly elevated” to Average; and (3) ■ learning problems/schoolwork improved by 40 points, also moving from “significantly elevated” to

Average. Id. at 18. Dr. Willard found that these results showed that “the targeted support and focus on executive functions at [Horizon Academy] are having a positive and measurable impact.” Id. at 18-19.

To evaluate mental health, Dr. Willard administered the BASC-3 and compared the results with the same assessment administered by Dr. Taylor in the summer of 2022. Id. at 20-23. In evaluating the results, Dr. Willard found that ■ showed “substantial improvements” in his mental health, including: (1) his Internalizing Problems score improved by 14 points from the “slightly elevated” range to the Average range, suggesting a “substantial reduction” in ■ anxiety and depressive symptoms; and (2) his Depressed Mood score improved by 13 points, also moving from “slightly elevated to Average. Id. at 21-22.

Dr. Willard further found that ■ self-report indicated “several areas suggestive of clinically significant, yet mild anxiety, including notable concerns in the areas of somatization, test anxiety, functional impairment, and ADHD considerations. Id. at 22-24. Dr. Willard further noted that ■ ADHD appeared to be in “partial remission.” Id. at 25. Dr. Willard concluded that, overall, ■ mental health “has improved significantly, but he still experiences mild anxiety and ADHD symptoms that require ongoing support and monitoring.” Id.

Dr. Willard made the following diagnostic impressions:

F81.0 Specific Learning Disorder with impairment in reading accuracy, rate, and fluency, severe; with mild challenges in reading comprehension. Also known as Dyslexia.

F81.81. Specific Learning Disorder with impairment in written expression, severe; with challenges in accuracy, grammar, punctuation, and clarity of written expression. Also known as Dysgraphia.

F81.2. Specific Learning Disorder with impairment in mathematics, severe; with challenges in number sense, math facts, accurate and fluent calculation, and accurate math reasoning. Also known as Dyscalculia.

F41.9. Unspecified Anxiety Disorder; mild; with symptoms of social anxiety, somatization, self-esteem problems, and text anxiety.

F90.9. Unspecified Attention-Deficit Hyperactivity Disorder; mild; in partial remission; with mild symptoms of inattention, tendency to blurt out in class and to leave seat in classroom; with executive functioning challenges that cause mild impairments in academic functioning.

Id. at 26 (emphasis in original). Dr. Willard further noted that ■ had a history of depression and was no longer meeting the criteria for a diagnosis. Id.

V. Legal Analysis

In the Due Process Complaint, Petitioners assert four Problems or claims for relief, alleging that the District violated its obligations under the IDEA because: (1) in 6th grade, the IEP failed to address and/or inadequately addressed ■ deficits in the areas of reading, executive

functioning, social-emotional/behavioral, writing, and math; (2) in 7th grade, the IEP failed to address and/or inadequately addressed ■ deficits in the areas of reading, executive functioning, social-emotional/behavioral, writing, and math; (3) in 7th grade, school staff materially failed to implement the special education services provided under his IEP; and (4) in the summer following 7th grade, the District improperly refused to provide ESY speech services to ■. Petitioners assert these violations resulted in the denial of a FAPE to ■. Further, Petitioners allege that the District committed procedural violations and denied ■ parents a meaningful opportunity to participate in the decision-making process with regard to providing ■ a FAPE. Petitioners seek the following relief: (1) reimbursement of costs incurred to unilaterally place ■ at Horizon Academy for his 8th grade year; (2) reimbursement of costs incurred to obtain a private evaluation, speech services, and mental health therapy for ■ and (3) compensatory education services.

Respondent asserts that, at all times, the school provided ■ with a FAPE, in that his IEPs were reasonably calculated to enable him to make appropriate progress in the general education curriculum in light of his circumstances and that ■ in fact, made academic progress. Respondent further contends that, because it was providing a FAPE at the time of ■ unilateral placement at Horizon Academy, Petitioners are not entitled to reimbursement of the costs incurred to send ■ there. Respondent also asserts that Petitioners are not entitled to reimbursement because (1) Horizon Academy was not an appropriate placement because it removed ■ from the least restrictive environment; and (2) Petitioners acted unreasonably by not bringing their concerns to the IEP team to discuss and address. Respondent further contends that any claim for prospective relief is rendered moot by the fact that ■ is now enrolled in another public school district.

As the party seeking relief, Petitioners bear the burden of proving their claims. Schaffer v. Weast, 546 U.S. 49, 61 (2005). In determining whether ■ received a FAPE, the undersigned bases the decision herein on substantive grounds. See C.F.R. 34 § 300.513(a)(1); K.S.A. § 72-3416(g)(1). As to alleged procedural violations, the undersigned may find a denial of FAPE only upon finding that: (1) the procedural violation did, in fact, occur, and (2) the violation: (a) impeded ■ right to receive a FAPE; (b) significantly impeded his parents' opportunity to participate in the decision-making process; or (c) caused a deprivation of educational benefit to ■ 34 C.F.R. § 300.513(a)(2); K.S.A. § 72-3416(g)(2).

A. 6th Grade - Adequacy of IEP (2022-23 School Year)

Petitioners assert the 6th-grade IEP (i.e., the October 2022 IEP) violated the IDEA, because it failed to address and/or inadequately addressed ■ deficits in reading, executive functioning, social-emotional behavioral, math, and writing, thus depriving ■ of a FAPE.

1. Reading

Petitioners assert the 6th-grade IEP did not adequately address the reading deficits identified in Dr. Taylor's summer 2022 evaluation. As discussed, the October 2022 IEP did not contain a reading goal and did not provide special education or related services to address reading.

In the summer of 2022, Dr. Taylor's evaluation showed that, on the WIAT-4, ■ scored at the 5th percentile (2nd grade level) in reading comprehension, with an overall reading index score at the 8th percentile. Tr. Vol. I at 30:21-24; 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000008.

Further, on the GORT-5, ■ demonstrated deficits with decoding and word recognition, scoring at the 5th percentile (age equivalent of 7.3) in reading accuracy, and at the 16th percentile (age equivalent of 8.3) in reading fluency.⁷⁰ Tr. Vol. I at 32:13-20; 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000008-09. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000009. In her report, Dr. Taylor diagnosed ■ with a Specific Learning Disorder in Reading. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000013. The report further stated that ■ needed special education in reading, and that his most needed areas of reading included "basic reading skills [and] reading comprehension." Id.

In the fall of 2022, the school completed its own evaluation of ■. As to reading, the school's evaluation report stated that: (1) ■ scored well on a one-minute, teacher-administered reading probe; (2) his FastBridge reading scores showed average performance in 5th grade; and (3) in the fall of 6th grade, his reading fluency was "on or right below grade level." Id. At T_000017. The school's evaluation report referenced the fact that Dr. Taylor had diagnosed a specific reading disorder, as well as Dr. Taylor's determination that ■ needed the most support in basic reading skills and reading comprehension; however, the school's report did not specifically reference or discuss ■ reading scores on the WIAT-4 and GORT-5 tests administered by Dr. Taylor. See October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000017-18.

As discussed, Petitioners' expert witness, Dr. Willard, agreed with Dr. Taylor's assessment that ■ needed special education in reading and, in particular, to target his specific reading deficits in decoding, word reading accuracy, fluency, and reading comprehension. Vol. I Tr. at 91:24-92:19. Dr. Willard further testified that the one-minute reading passage used by the school is not nearly as effective or as statistically reliable as the WIAT-4 or GORT-5 test to accurately determine a student's special education needs. Vol. I Tr. at 95:24-97:5. Dr. Willard further stated the reading probe is not a standardized assessment and does not have the same level of rigor in terms of the training requirements for the people administering those tests. Id.

In examining the adequacy of the October 2022 IEP based on the data that was available to the school at the time, the undersigned finds it was not unreasonable for the school to not include a reading goal in the IEP. In reaching this conclusion, the undersigned notes that, in addition to ■ positive performance on the teacher-administered reading probe, the school's evaluation

⁷⁰ At the time of Dr. Taylor's evaluation, ■ was 11 years old and preparing to enter the 6th grade.

report cited the school's FastBridge data, which indicated that ■ had demonstrated average performance in reading in 5th grade, and that his reading fluency in the fall of 6th grade was "on or right below" grade level. It appears that neither Dr. Taylor nor Dr. Willard considered this FastBridge data in forming their opinions. Further, Dr. Taylor and Dr. Willard were not familiar with ■ performance in the school setting. While it may have been preferable or more "ideal" for the school to include a reading goal in the IEP, that is not applicable standard. See Andrew E., 137 S.Ct. at 999. Here, in light of the school's evaluation data showing that ■ recent reading scores were average or close to grade level, the preponderance of the evidence does not show that the October 2022 IEP was not reasonably calculated to enable ■ to make appropriate progress.

Further, to the extent Petitioners assert a procedural violation on grounds that the District failed to adequately consider data from Dr. Taylor's evaluation, the undersigned disagrees. As discussed, the school's evaluation report specifically referenced Dr. Taylor's evaluation, including the fact that she had diagnosed ■ with a specific learning disorder in reading and found demonstrated delays in basic reading skills, including reading fluency and reading comprehension. Although the school's report did not specifically refer to the WIAT-4 and GORT-5 test scores, the undersigned finds that, as a whole, the record indicates the school appropriately considered Dr. Taylor's test results, but nevertheless determined that special education services in reading were not necessary based on the school's evaluation data.

On this record, Petitioners have not shown a substantive or procedural violation of the IDEA, or a denial of FAPE, based on the school's failure to include a reading goal in the 6th-grade IEP.

2. Executive Functioning

Petitioners assert the 6th-grade IEP failed to adequately address ■ deficits in executive functioning. As discussed, the October 2022 IEP did not provide a goal or special education services to address executive functioning; however, it did contain some modifications and supports related to area of executive functioning.

The results of Dr. Taylor's summer 2022 evaluation showed that, on the NEPSY II (a neuropsychological measure of cognitive processes), ■ scored below expected levels in some categories of attention and executive functioning. See 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_000006-007. In her report, Dr. Taylor made a number of recommendations relating to executive functioning, including: (1) teaching methods that do not overload working memory such as concept maps or graphic organizers; (2) multi-modal teaching methods (visual, auditory, and tactile); (3) direct teaching of learning strategies related to reading and writing based in cognitive instruction; (4) assistance with writing skills, including formulative sentences and organizing thoughts; (5) small group or individual instruction as available; (6) provide a copy of classroom notes so ■ is able to receive all information; (7) break down long writing tasks into smaller steps or steps that can be completed in chunks in order to gain his most effective work; (8) allow extra time, as needed, for assigned tasks; (9) allow for tests and longer reading materials (that are not measuring reading) to be read aloud so he can hear it as well as

read along; (10) assistance with organization, including checking to make sure all information is in his planner; (11) provide external reminders for time and time management; (12) provide a check-in system or monitoring system to ensure he is consistently organizing his assignments and materials; and (13) break longer stints of homework into shorter amounts to avoid overwhelm. *Id.* at T_0000014-15; Vol. I Tr. at 39:15-25 (Taylor).

The school's evaluation report found there was "agreement across raters and environments" that ■ had deficits in the ability to effectively plan and break down tasks, complete a task accurately, and monitor tasks. October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000027-028.

At the due process hearing, Dr. Willard opined that the data available to the IEP team showed that ■ required special education and related services to address executive functioning, because "[t]he level of executive functioning deficit was severe, and it was impacting his learning." Vol. I Tr. at 106:7 to 107:13 (Willard). More specifically, Dr. Willard testified that the District should have included an IEP goal in executive functioning and provided direct instruction with regard to organizational skills, such as helping ■ with his planner and providing checklists. *Id.* In her testimony, Dr. Willard acknowledged that some of the accommodations provided in the IEP were intended to address executive functions. *Id.* at 120:4 to 121:9, 233:15-24.⁷¹ However, Dr. Willard stated those measures were insufficient to address ■ executive functioning deficits primarily because: (1) general education teachers have difficulty implementing the accommodations due to other commitments; and (2) the accommodations were not specialized instruction provided by a special education provider. *Id.*

In reviewing the adequacy of the October 2022 IEP, the undersigned notes that at least some of the accommodations provided in the IEP appear to overlap with the recommendations made by Dr. Taylor, such as providing study guides, chunking of assignments, planner check at the end of the day, and graphic organizers. However, the record contains no evidence to explain how or why the IEP team may have found these accommodations to be sufficient to meet ■ executive functioning deficits. Moreover, the accommodations do not appear to address or provide ways for ■ to improve or learn strategies to overcome the deficits identified in the school's evaluation report, namely his ability to effectively plan and break down tasks, complete a task accurately, and monitor tasks.

The notes from the IEP meeting on October 13, 2022, indicated that the team planned to add a second goal in writing that would also include work in executive functioning. See October 2022 IEP Meeting Notes, Joint Ex. A-24 at USD497_000150. Further, on October 13, 2022, the school sent a PWN describing proposed action that included providing special education services to help with executive functioning, which ■ parents signed on October 17, 2022. October 13, 2022 PWN, Joint Ex. A-25 at USD497_000152. For reasons unexplained in the record, the final

⁷¹ The undersigned notes that Dr. Willard's testimony addressed the accommodations provided in the October 2023 IEP, which appear similar to those provided in the October 2022 IEP.

IEP did not include a goal or special education services to address ■ deficits in executive functioning.

In light of the school's determination that ■ had deficits in the ability to effectively plan and break down tasks, complete a task accurately, and monitor tasks, along with the absence of evidence explaining why the IEP did not include special education services to address those deficits,⁷² the undersigned finds the failure to include special education services to address ■ deficits in executive functioning resulted in a substantive violation of the IDEA, in that the 6th-grade IEP was not reasonably calculated to enable ■ to make appropriate academic progress in light of his individual circumstances, thus resulting in denial of a FAPE.⁷³

3. Social-Emotional/Behavioral

Petitioners assert the 6th-grade IEP did not adequately address ■ mental health needs. As discussed, the October 2022 IEP stated that ■ had a "documented health condition [i.e., a diagnosis of unspecified ADHD and anxiety] that impacts the student's involvement and progress in the general curriculum and general education classroom and other education-related settings." October 2022 IEP at T_000037, Joint Ex. A-23. The IEP did not provide special education minutes or related services to address ■ mental health deficits; however, it provided that ■ would be allowed to see the school counselor (i.e., Kircher) whenever he was experiencing anxious episodes at school.

In the summer of 2022, Dr. Taylor diagnosed ■ with generalized anxiety disorder and found clinical indicators (but not a full diagnosis) of ADHD and depression.⁷⁴ Vol. I Tr. at 37:24 to 38:5 (Taylor). In her report, Dr. Taylor recommended individual counseling services and stated, "Access to school based mental health resources would also be helpful." 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000015.

In the school's evaluation report, the team noted that ■ mental distress "was reported to be closely tied to school and academic frustrations in math specifically." October 2022 Evaluation Team Report, Joint Ex. A-22 at T_000017. As part of the evaluation, the school administered the BASC-3 to ■ and his parents, and some of ■ teachers, including Mrs. Bruckner, his 6th grade math and advisory teacher. Both Mrs. Brucker and ■ parents indicated that ■ exhibited

⁷² As the Supreme Court stated in *Endrew*, "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." 137 S.Ct. at 1002.

⁷³ To the extent Petitioners assert a procedural violation based on the school's failure to provide notice of discontinuing special education and/or related services regarding executive functions after obtaining a signed PWN to do so, Petitioners cite no authority supporting that a per se procedural violation occurs under such circumstances. Thus, the undersigned finds no procedural violation on this ground.

⁷⁴ As discussed, ■ suicidal ideation in 5th grade (i.e., the spring of 2002) was an impetus that caused his parents to request a special education evaluation.

“clinically significant” concerns regarding anxiety, depression, and somatization (which the report collectively referred to as “internalizing problems”). *Id.* at T_000023-025.⁷⁵

Specifically, regarding Mrs. Brucker’s responses, the school’s evaluation report stated as follows:

Items endorsed by Mrs. Brucker suggest that, in math, [■] has significant difficulties with Emotional Control. He is reported to “Almost Always” be easily upset, be easily stressed, and to worry. He is “often” reported to be sad, irritable, fearful, nervous, to have panic attacks, to appear tense, to be easily distracted from classwork, to do strange things, to have trouble keeping up with class, to have difficulty with math, and to complain of physical problems.

Id. at T_000024.

At the due process hearing, Dr. Willard opined that the school should have addressed ■ mental health through related services, such as minutes with the school psychologist or social worker, to address his anxiety and self-esteem problems, as evidenced by his diagnosis of generalized anxiety disorder and other unspecified depressive disorder, as well as his suicidality. Vol. I Tr. at 102:23 to 103:23 (Willard); see also Willard Report, Petitioners’ Ex. 207 at 28. Dr. Willard further testified that merely providing access to see the school counselor was not adequate to address ■ mental health deficits, primarily because: (1) school counselors are school-wide providers and are therefore frequently unavailable, whereas a school psychologist or a social worker would have minutes set aside in an IEP to provide direct instruction in the specific areas that J.T. was having problems, like anxiety; and (2) school psychologists and social workers are trained to provide mental health services in IEPs, whereas school counselors are not. Vol. I Tr. at 123:8-124:9 (Willard).

Upon careful consideration of the information available to the school at the time the October 2022 IEP was drafted, the undersigned finds it was not unreasonable to address ■ mental health needs by allowing him to see the school counselor when he was experiencing an anxious episode, as it appears this provision was reasonably calculated to assist ■ to cope with his anxiety at school to help enable him to make appropriate progress in light of his circumstances. In reaching this conclusion, the undersigned notes that Dr. Taylor’s report stated that providing access to mental health services at school would be “helpful,” and Dr. Willard did not have firsthand information regarding ■ mental health needs at school in the fall of 2022.

Further, to the extent Petitioners assert that ■ parents were not given complete information and/or were not allowed to participate in the decision to provide Tier-2 mental health services

⁷⁵ The school’s evaluation report also stated that ■ self-ratings indicated several areas as “clinically significant, including internalizing problems; however, the report also stated that the self-ratings “should be interpreted with caution as the F-Index is elevated suggesting an overly negative response style.” *Id.* at T_000025. Accordingly, the undersigned gives less weight to these scores.

instead of Tier-3 mental services, the undersigned finds that any procedural irregularities in this regard did not result in denial of a FAPE. In reaching this conclusion, the undersigned reiterates that the provision to allow ■ to see the school counselor when he was experiencing anxious episodes at school appears to have been reasonably calculated to address ■ emotional/mental health needs. Further, the record does not establish that ■ or his parents experienced substantive harm as a result thereof. See Systema, 538 F.3d at 1313.

Additionally, to the extent Petitioners assert that the October 2022 IEP was inadequate or failed to confer a FAPE due to the unavailability of Ms. Kircher, the undersigned disagrees. Petitioners assert that Dr. Willard's concern about the unavailability of a school counselor proved to be true, because the evidence showed that Kircher was frequently not available when ■ was having an anxious episode and needed to talk with her. The undersigned agrees that the evidence showed that Kircher often was not available at the time when wanted to speak with her. However, the record is unclear regarding the number of times this occurred, or the number of times when Kircher may have been available to speak with ■ within a reasonable time thereafter. The undersigned acknowledges that ■ testified honestly that, to his recollection, Kircher was unavailable the vast majority of the times when he wanted to speak with her. Although the IEP language was written in terms of allowing ■ to see the school counselor "whenever" he was experiencing an anxious episode, the undersigned finds that a reasonable interpretation requires a practical approach that acknowledges the school counselor would not always be available to meet at the precise time that ■ wanted to speak with her. In other words, the provision must be read with a consideration of what was reasonable under the circumstances. Here, at no time did ■ or his parents raise any concerns about the availability of Kircher to speak with him. Further, ■ testified that he was comfortable talking with Ms. Kircher, and he found it helpful to talk with her about concerns or negative feelings that he was experiencing at school. Additionally, the undersigned notes that, in June 2024, ■ mother stated in an email to Horizon Academy that ■ was doing okay with his mental health and, during the school year, he mostly utilized "a school counselor with whom he has a great relationship for anything that pops up." Vol. IV Tr. at 1064:15 to 1066:13 (■ mother).

On this record, the undersigned finds that the 6th-grade IEP adequately addressed ■ mental health needs, in that the provision allowing ■ to see the school counselor for his anxious episodes appears to have been reasonably calculated to allow him to make appropriate progress at school. Further, the evidence does not show that any failure to implement this provision materially affected ■ academic progress or otherwise resulted in the deprivation of a FAPE.

4. Writing

Petitioners assert the 6th-grade IEP failed to adequately address ■ writing deficits, because it did not address specific skills such as spelling, sentence writing, and formulation of paragraphs.

As discussed, the October 2022 IEP established the following writing goal:

When given a writing prompt with one minute to think about the prompt and three minutes to write [■] will be able to write 20 correct word sequences at a 6th-grade level by the end of the IEP as measured by Curriculum Based Assessment.

October 2022 IEP, Joint Ex. A-23 at T_000035.

Under present levels for writing, the IEP discussed ■ performance on an Aimsweb writing probe, in which he was given one minute to think about the prompt, and three minutes to write a story about the probe. October 2022 IEP, Joint Ex. A-23 at T_000035. On the probe, ■ wrote a total of 28 words (at the 14th percentile) with 12 correct-word sequences (at the 6th percentile). Id. A correct-word sequence was defined to occur when two adjacent words were spelled correctly with any needed capitalization and punctuation. Id. The present-levels information did not refer to Dr. Taylor's report or contain any information regarding ■ scores on her assessments.

At the due process hearing, Dr. Taylor reviewed the writing goal and stated it failed to address the numerous writing deficits identified in her assessment and, in particular, did not specifically address spelling skills, sentence writing skills, and the formulation of paragraphs. Vol. I Tr. 44:21-10 (Taylor). As noted, with regard to her summer 2022 evaluation, Dr. Taylor's report stated that, among other things, ■ had "much difficulty" with spelling skills, sentence construction, inconsistent use of capitalization and punctuation, writing a short essay expanding on a theme, and writing complex sentences. 2022 Taylor Eval. Rpt. at T_000008. The report further stated that, on the WIAT-4, ■ scored at the 0.5 percentile in written expression, and at the <0.1 percentile in essay composition. Id.

Upon careful consideration of the evidence as a whole, the undersigned finds the 6th-grade writing goal appears to have been reasonably calculated to allow ■ to make appropriate academic progress. At the due process hearing, Williams explained that the Aimsweb writing probe is a relatively quick process that is primarily used in special education. Vol. III Tr. at 764:1 to 766:25 (Williams). While the present-levels information did not specifically reference Dr. Taylor's assessments, the IEP goal to improve ■ ability to write more correct-word sequences on the writing prompt would seemingly encompass many or most of the deficits that Dr. Taylor identified, including spelling, grammar, and sentence-writing skills, as well as foundational skills necessary to formulate paragraphs and complex sentences.

On this record, Petitioners have not shown a substantive IDEA violation and/or the denial of a FAPE based on the 6th-grade writing goal. Further, to the extent Petitioners assert a procedural violation based on the school's failure to include ■ writing scores from Dr. Taylor's assessment, the undersigned finds that any violation in this regard is insufficient to rise to a deprivation of FAPE, in that the record does not establish any substantive harm or educational loss to ■ as a result thereof.

5. Math

Petitioners assert the 6th-grade IEP failed to adequately address ■ math deficits, because it did not specifically target ■ unique needs in problem-solving and broader computational skills.

As discussed, the October 2022 IEP established the following math goal:

When given a timed 6th grade level computational automaticity CBM probe [■] will be able to improve overall computation skill at a score of 33 by the end of the IEP as measured by Curriculum Based Assessment.

October 2022 IEP, Joint Ex. A-23 at T_000033.

Under present levels for math, the IEP stated that, in the fall of 2022, ■ scored at the at the 9th percentile (high risk) on the cbmMath Automaticity (measuring automaticity), and at the 15th percentile (some risk) on the aMath screener (measuring broad math abilities). October 2022

IEP, Joint Ex. A-23 at T_000033. Additionally, the present levels referenced ■ scores on the Feifer Assessment of Mathematics. The present levels stated that, in general, fluency with simple computation and numbers appeared to be difficult for ■ and that fluency with numbers was “one of his weakest areas.” *Id.* The present-levels information for math did not refer to Dr. Taylor’s report or contain any information regarding ■ scores on her assessments.

At the due process hearing, Dr. Taylor reviewed the math goal and stated it addressed only math fluency, and did not address the broader math computation or problem-solving skills that she would have recommended. Vol. I Tr. 43:15 to 45:18 (Taylor). As noted, with regard to her summer 2022 evaluation, Dr. Taylor’s report stated, among other things, that ■ was demonstrating delays in the areas of math reasoning and math computation (especially multiplication and division), and that he required additional assistance to work on these skills. 2022 Taylor Eval. Rpt., Joint Ex. A-14 at T_0000013. The report further stated that, on the WIAT-4, ■ scored at the 8th percentile (2nd-grade level) in Math Fact Fluency-Addition, and at 10th percentile on the overall math index. *Id.* at T_000008.

Upon careful consideration of the evidence as a whole, the undersigned finds the 6th-grade math goal appears to have been reasonably calculated to allow ■ to make appropriate academic progress. In reaching this result, the undersigned notes that, although the present-levels information did not specifically reference Dr. Taylor’s assessments, the IEP goal to improve his score on the automaticity CBM probe would directly encompass his math computation skills. Although a more robust goal addressing specific math skills may have been more “ideal,” the evidence does not establish that the 6th-grade math goal was not reasonably calculated to enable ■ to make appropriate progress.

To the extent Petitioners assert it would have been more effective to measure the math goal based on the aMath screener, because it is a more extensive or holistic screening tool than the cbmMath Automaticity probe, the undersigned notes that, at the due process hearing, Williams testified that using aMath screener for ■ goal and progress monitoring would have been “problematic,” because the aMath screener was a long test that was only given a couple of times a year, and it would have been difficult to obtain data for the IEP process. Vol. III Tr. at 746:11 to 745:5 (Williams). Further, the undersigned notes that, in 6th grade, ■ scored significantly lower on the cbmMath Automaticity probe (9th percentile, indicating “high risk”)

than the aMath screener (15th percentile, indicating “some risk”), which further supports the school’s decision to focus the IEP goal on the cbmMath Automaticity probe.

On this record, Petitioners have not shown a substantive IDEA violation and/or the denial of a FAPE based on the 6th-grade math goal. Further, to the extent Petitioners assert a procedural violation based on the school’s failure to include ■ math scores from Dr. Taylor’s assessment, the undersigned finds that any violation in this regard is insufficient to rise to a deprivation of FAPE, in that the record does not establish any substantive harm or educational loss to ■ as a result thereof.

B. 7th Grade – Adequacy of IEP (2023-24 School Year)

Petitioners assert the 7th-grade IEP (i.e., the October 2023 IEP and amendments thereto) failed to address and/or inadequately addressed ■ deficits in reading, executive functioning, social-emotional behavior, math, and writing, thus depriving ■ of a FAPE.

1. Reading

Petitioners assert the 7th-grade IEP failed to address and/or adequately addressed ■ reading deficits. As discussed, the October 2023 IEP did not contain a reading goal. In January 2024 (i.e., halfway through 7th-grade), the IEP was amended to add a reading comprehension goal.

a. October 2023 IEP (no reading goal)

As discussed, the October 2023 IEP did not contain a reading goal. Petitioners assert that, based on data available from Dr. Taylor’s 2022 evaluation and Caplinger’s 2023 report, the school should have taken steps to address ■ reading deficits in the October 2023 IEP. With respect to data from Dr. Taylor’s 2022 evaluation, the undersigned finds nothing new to change the analysis from the 6th-grade 2022 IEP.

As to new information provided by Caplinger, the data in her report did not clearly show that additional intervention in reading was necessary. To the contrary, while some of ■ scores on the TILLS had decreased, Caplinger’s report indicated that, at the reading level, ■ scores had improved in reading comprehension, written expression-discourse, and written expression-sentence. 2023 Caplinger Report at T_000047-049, Joint Ex. A-32. Further, the report stated that, in reading comprehension, ■ score was in the “high average” range and indicated a “relative strength” for him. Id.

At the due process hearing, Dr. Willard testified that declining TILLS scores on Caplinger’s report showed that ■ reading was getting worse, and that a decoding goal would have addressed nonword reading and helped to improve his ability to read fluently and fluidly, which had not improved. Vol. I Tr.129:13 to 131:20. Dr. Willard further testified that information in Caplinger’s report showed that special education goals and services “would immediately need to focus on reading in terms of decoding, accuracy, and fluency.” Id. at 133:2-11.

In examining the adequacy of the October 2023 IEP based on the data that was available to the school at the time, the undersigned finds it was not unreasonable for the school to not include a reading goal in the IEP. In reaching this conclusion, the undersigned notes that Dr. Willard's testimony did not address the statements in Caplinger's report indicating, among other things, that: (1) ■ reading comprehension scores were above average; (2) the low scores on nonword reading and nonword spelling were inconsistent with his performance in weekly therapy; (3) he was "highly accurate" at decoding words; and (4) although he scored 95% in reading fluency, his TILLS score of zero was significantly impacted because the small number of errors that he made would not be expected at his age. On this record, Petitioners have not shown that, based on the data available at the time, it was unreasonable for school officials to not include a reading goal in the October 2023 IEP.

b. January 2024 Amended IEP (new reading goal)

In January 2024, the 7th-grade IEP was amended to include a new reading goal. Petitioners assert the new goal did not adequately target ■ unique needs and deficits in reading.

As discussed, the new reading goal stated as follows:

When given instruction to learn and implement reading comprehension strategies, [■] will be able to demonstrate an increase in his reading comprehension by increasing his score on curriculum-based reading comprehension assessments at the 7th grade level to 88% Accuracy by the end of the IEP as measured by Curriculum Based Assessment.

January 2024 IEP Amendment, Joint Ex. A-40 at USD497_000162.

Under present levels for reading, the amended IEP stated that, among other things, ■ had a current grade of C in his general education ELA class, but had recently failed two 5-point reading quizzes. January 2024 Amended IEP, Joint Ex. A-40, at USD497_000162. Further, the present levels stated that, in 7th grade, ■ scores on the FastBridge Reading Assessment had "fluctuated" from 536 (low risk) in the fall, to 475 (high risk) in the winter; whereas, in 6th grade, his scores ranged from 515 (some risk) in the fall, to 531 (low risk) in the spring. The present levels information also referenced that Dr. Taylor's summer 2022 assessments (i.e., before 6th grade) showed delays in reading decoding and comprehension, with a reading comprehension score at the 5th percentile (2nd grade equivalency). Further, the present levels stated that classroom observations of ■ indicated that, although he was able to report on general ideas, he often was not able to report on more nuanced details without discussion with the teacher and prompting to reread and consider particular passages. Id.

At the due process hearing, Dr. Willard testified that ■ is a dyslexic student "who has disabilities and impairments across all areas of reading." Vol. I Tr. at 141:11 to 142:2 (Willard). Dr. Willard opined that the new reading comprehension goal was inadequate because it did not address foundational concepts (i.e., "building blocks") necessary for J.T. to learn to read, such as reading decoding, accuracy, fluency. Id. In other words, Dr. Willard stated that the amended IEP should have provided specific goals to address ■ decoding, accuracy, and fluency deficits. Id.

Upon careful consideration of the evidence as a whole, the undersigned finds the new reading goal appears to have been reasonably calculated to allow ■ to make appropriate academic progress. In reaching this result, the undersigned notes that, in order to meet the goal of increasing his overall reading comprehension score, ■ would necessarily need to improve his foundational skills in reading. Although a more robust goal breaking down specific reading skills may have been more ideal, the record does not demonstrate that the new reading goal was not reasonably calculated to enable ■ to make appropriate progress.

To the extent Petitioners argue that the fact that the present levels for the new reading goal referenced Dr. Taylor's 2022 assessment shows that the reading goal should have been added earlier, the undersigned disagrees. As discussed, the present levels also contained information suggesting that ■ reading performance in 7th grade had recently declined, thus providing a reasonable basis to add the new reading goal at that time.

On this record, Petitioners have not shown a substantive IDEA violation and/or the denial of a FAPE based on the failure to include a reading goal in the October 2023 IEP or the new reading goal that was added in January 2024.

2. Executive Functioning

Petitioners assert the 7th-grade IEP failed to adequately address ■ deficits in executive functioning. As in 6th grade, the 7th-grade IEP did not provide a goal or special education services to address executive functioning; however, it did contain some modifications and supports related to area of executive functioning.

The record contains no additional information regarding ■ executive functioning needs in the 7th grade. Accordingly, for substantially the same reasons stated with regard to 6th grade, the undersigned finds the school's failure to include special education services to address ■ deficits in executive functioning resulted in a substantive violation of the IDEA, in that the 7th-grade IEP was not reasonably calculated to enable ■ to make appropriate academic progress in light of his individual circumstances, thus resulting in denial of a FAPE.

3. Social-Emotional/Behavioral

Petitioners assert the 7th-grade IEP failed to adequately address ■ mental health needs. As in 6th grade, the 7th-grade IEP allowed for ■ to see the school counselor (i.e., Kircher) whenever he was experiencing anxious episodes at school.

The record provides no materially different information regarding ■ mental health needs in 7th grade. Accordingly, for substantially the same reasons stated with regard to 6th grade, the undersigned finds that the 7th-grade IEP adequately addressed ■ mental health needs, in that the provision allowing ■ to see the school counselor for his anxious episodes appears to have been reasonably calculated to allow him to make appropriate progress at school. Further, the evidence does not show that any failure to implement this provision materially affected ■ academic progress or otherwise resulted in the deprivation of a FAPE.

4. Writing

Petitioners assert the 7th-grade IEP did not adequately address ■ writing deficits. As discussed, the 7th-grade IEP provided essentially the same writing goal as in 6th grade, except the goal score was increased and adjusted to account for 7th-grade-level word sequences.

Although 7th-grade writing goal was similar to 6th grade, the record contains additional information regarding 7th grade, in particular, how the writing goal was established and monitored in 7th grade. More specifically, the evidence established that, in 7th grade, ■ special education teacher, Williams, was responsible for determining the baseline score and progress monitoring on the writing prompt. At the due process hearing, Williams testified that her scoring on the writing prompts was subjective; further, her testimony revealed that the scoring on the baseline writing prompt contained numerous errors that significantly inflated the baseline score that was used to create the writing goal. Vol. III Tr. at 779:8 to 787:24 (Williams). This testimony also cast substantial doubt on the reliability of her scoring on the writing prompts used to measure ■ progress throughout the year, which was further reinforced by Williams's testimony that there did not seem to be much progress between ■ writing prompt in the fall of 2023, as compared to a writing prompt in the spring of 2024. *Id.* at 902:24 to 904:20; September 2023 Writing Prompts,

Joint Ex. A-35; April 2024 Writing Prompt, Joint Ex. A-64.

Upon careful consideration of the evidence as a whole, the undersigned finds that, due to significant inaccuracies in the baseline scoring used to establish the writing goal, as well as unreliability in the scoring used to monitor ■ progress towards the goal, the 7th-grade IEP was not reasonably calculated to allow ■ to make appropriate progress in writing, thus resulting in the denial of a FAPE.⁷⁶ Further, the undersigned finds that the school's failure to provide objectively accurate scoring in the present levels and progress monitoring reports resulted in the denial of a FAPE, in that it violated the school's obligation to provide accurate information to ■ parents, thus depriving them of having a meaningful opportunity to participate in the decision-making process and resulting in substantial harm and/or loss of educational benefit to ■.

5. Math

Petitioners assert the 7th-grade IEP did not adequately address ■ math deficits, because it did not take into account or address ■ downward trajectory in his FastBridge math scores. As discussed, the 7th-grade IEP provided essentially the same math goal as in 6th grade, except the goal score was increased and adjusted to account for 7th-grade-level computation skills. Both goals targeted computational automaticity (i.e., how quickly and accurately the student can do the math).

⁷⁶ In reaching this result, the undersigned notes that it appears that the 6th-grade IEP also used similar writing prompts that would potentially allow for subjective scoring; however, the record contains no information to indicate that the 6th-grade writing prompts were not accurately scored.

Regarding math present levels, the 7th-grade IEP stated that, in the fall of 7th grade, ■ score on the aMath screener (measuring broad math skills) was at the 10th percentile (high risk), and his score on the cbmAutomaticity assessment (measuring automaticity) was at the 20th percentile (some risk). October 2023 IEP, Joint Ex. A-36 at T_000055. As to the cbmAutomaticity assessment, the present levels indicated that ■ 7th-grade score showed improvement from his 6th-grade scores, which was in the “high risk” range. Id. As to aMath screener, however, the present levels did not provide information regarding ■ 6th-grade scores. See id. In fact, in the fall of 6th grade, on the aMath screener, ■ had scored at the 15th percentile, which was at the “some risk” range. See October 2022 IEP, Joint Ex. A-23 at T_000033. Thus, the 7th-grade present levels did not provide information indicating that, as compared to 6th grade, ■ score on the aMath screener had decreased by 5 percentage points, moving from the “some risk” range to the “high risk” range. Further, at the October 2023 IEP meeting, the IEP team was not presented with this information. Vol. IV Tr. at 1001:17 to 1002:13 (■ mother).

At the due process hearing, Williams testified that, in light of the widening math deficit from 6th grade to 7th grade, the IEP team would “probably” want to do something different; however, the services delivery remained substantially the same in 7th grade. Vol. III Tr. at 758:8-17, 761:25 to 762:24 (Williams). Further, the record indicates the IEP team did not consider this information in determining ■ math goal(s) or delivery of special education services in math for 7th grade. See Vol. IV Tr. at 1001:17 to 1002:13, 1082:13 to 1083:3 (■ mother) (no one at the October 2023 meeting suggested that ■ math goal should be revised or that additional math services should be included in the IEP).

Upon careful consideration of the evidence as a whole, the undersigned finds that, because the IEP team did not consider and/or failed to account for the downward trajectory in ■ broad math skills (as indicated by the decline in his aMath screener scores from 6th grade to 7th grade), the 7th-grade IEP was not reasonably calculated to allow ■ to make appropriate progress in math.⁷⁷ Further, the undersigned finds that the school’s failure to provide information regarding the downward trajectory in ■ aMath screener scores denied ■ parents of the opportunity to meaningfully participate in the decision-making process and caused substantial harm and/or loss of educational benefit to ■.

The undersigned notes that, in January 2024, the 7th-grade math goal was amended to include language stating that ■ would be “given supplemental math instruction (e.g. such as IXL or other programs) for 20 minutes, 3x/week.” January 2024 Amended IEP, Joint Ex. A-40, at

⁷⁷ In reaching this result, the undersigned notes the absence of any explanation in the record as to why the 7th-grade math goal focusing automaticity remained appropriate under the circumstances. The undersigned further notes that, in the fall of 6th grade, when ■ scored relatively worse on the cbmMath Automaticity test (at the 9th percentile, in the “high risk” range) as compared to the aMath screener (at the 15th percentile, at the “some risk” range), the 6th grade IEP team focused the math goal on automaticity. However, in the fall of 7th grade, when ■ scored worse on the aMath screener (at the 10th percentile, in the “high risk” range) and relatively better on the cbmMath Automaticity test (at the 20th percentile, in the “some risk” range), the 7th grade IEP team continued to focus the math goal on automaticity and did not consider whether different or broader measures were necessary to address his downward trajectory in overall math skills, as reflected on the aMath screener.

USD497_000158 (emphasis added). However, nothing was changed with respect to the underlying math goal, and the record contains no information regarding what skills would be addressed in the supplemental math instruction. Further, the evidence showed that, after a few weeks, the IXL math program was discontinued and not replaced with another program.⁷⁸

Additionally, in March 2024, the IEP was amended to add an additional math class period to “focus on [■] math goal and developing math skills.” March 2024 IEP Amendment, Joint Ex. A-60 at USD497_000188. At the due process hearing, the testimony showed that the additional math class was a “pull-out” form of specially designed math instruction to target the student’s individual needs in a special education setting. Vol. V Tr. at 1372:20 to 1373:19 (Stithem); Vol. VI Tr. at 57:1-13 (Storck). The additional math support was added “temporarily to finish off the year,” to address the family’s concern that ■ need something more or different in math. Vol. VI Tr. at 47:5 to 48:9, 57:1-13 (Storck). Again, ■ math goal focusing on automaticity remained unchanged, and the record contains no information suggesting that the additional math class would somehow focus differently on the downward trajectory of ■ broader math skills.

In sum, on this record, the undersigned finds the 7th-grade IEP was not reasonably calculated to enable ■ to make appropriate progress in math, thus resulting in denial of a FAPE. Further, the undersigned finds the school’s failure to provide information regarding the downward trajectory in ■ aMath screener scores resulted in denial of a FAPE, in that it deprived ■ parents of an opportunity to participate meaningfully in the IEP process and caused substantial harm and/or educational loss to ■.

C. 7th Grade – Failure to Implement IEP

Petitioners assert that, in 7th grade, the District materially failed to implement ■ IEP. As set forth below, the record shows the special education services provided under the 7th-grade IEP were substantially not implemented with regard to: (1) pull-out, targeted instruction in math, writing, and reading during flex class; and (2) in-class support for writing and reading during ELA class and social studies class.

1. Pull-Out, Targeted Instruction in Math, Writing, and Reading During Flex Class

As discussed, the 7th-grade IEP initially provided that, during flex class, ■ would receive “targeted instruction on needed math and writing skills [a] minimum of 3 days every two weeks.” October 2023 IEP, Joint Ex. A-36 at T_00064. In January 2024, the IEP was amended to also include targeted instruction on reading skills during flex class. January 2024 IEP Amendment, Joint Ex. A-40, USD497_000172.

At the due process hearing, both ■ and Williams testified that, throughout 7th grade, the pull-out targeted instruction in flex class essentially did not happen. More specifically, ■ testified

⁷⁸ To the extent Petitioners assert a procedural violation based on the school’s failure to provide written notice and/or obtain parental consent to discontinue the IXL program, the undersigned declines to find such a violation, as the record does not show the change resulted in a decrease in special education services by 25 percent or more. See K.S.A. § 72-3420(b)(6); K.A.R. § 91-40-1(mm).

that, in flex class, he spent most of his time working independently on homework; ■ stated that special education staff would sometimes help him with things that came up in his general education assignments; however, the special education staff did not provide any type of specialized instruction to target his math, writing, or reading skills. Vol. IV Tr. at 603:9-21, 618:11 to 619:12, 949:12-20 (■).

Williams' testimony corroborated ■ account. More specifically, Williams testified that, due primarily to low paralegal staffing and the high-demand needs of another special education student (i.e., AZ), it was "absolutely" difficult for her staff to implement any sort of pull-out, targeted instruction with fidelity. Vol. III Tr. at 816:17-25 (Williams). Williams agreed with ■ that, in flex class, the special education staff focused largely on helping students complete homework for their general education classes. *Id.* at 751:7-23. Williams further stated that, at the time when ■ reading goal was added in January of 2024, she had a new para on her staff, which she had hoped would enable them to implement the new goal with fidelity – however, the new para did not stay, and they did not find another para until the fourth quarter, when they had someone fill the position for a solid six-to-seven weeks. *Id.* at 818:2-23. Williams also testified that she believed that, if her staff could have provided his special education services consistently throughout the year, ■ could have performed better in writing and math. *Id.* at 899:8 to 900:14.

On this record, the undersigned finds that, in 7th grade, the District materially failed to implement substantial parts of ■ IEP, in that it failed to provide pull-out, targeted instruction in math, writing, or reading during flex class, resulting in denial of a FAPE to ■.

2. In-Class Support for Writing and Reading in ELA Class and Social Studies Class

As discussed, the 7th-grade IEP initially provided that ■ would receive in-class support for writing during ELA class. In January 2024, the IEP was amended to add in-class support for reading during ELA class, and in-class support for writing and reading during social studies class.⁷⁹

With regard to in-class support for writing and reading, ■ testified that, during ELA class, due to the high demands of another student (i.e., AZ), the teacher or para was available to help ■ only about 35 percent of the time. Vol. III Tr. at 606:15 to 610:12, 611:15-20 (■ Williams agreed that, due to the attention required by AZ, it would have been difficult for the paraprofessional in the ELA class to implement ■ in-class support with fidelity. Vol. III Tr. at 817:3-19 (Williams). Additionally, Williams testified that, due to the attention required by AZ, she was unable to implement ■ in-class support for reading and writing during social studies class with fidelity. Vol. III Tr. at 819:21 to 821:5 (Williams).

⁷⁹ The 7th-grade IEP also provided that ■ would receive in-class support for math during math class; however, the record contains little-to-no information as to whether this service was provided. Thus, to the extent Petitioners assert an IDEA violation based on the failure to provide in-class math support, the undersigned finds the record is insufficient to support a violation on this ground.

On this record, the undersigned finds that, in 7th grade, the District materially failed to implement significant parts of ■ IEP, in that it staff did not provide consistent and effective in-class support for writing and reading during his ELA and social studies classes, resulting in denial of a FAPE to ■.

Additionally, the undersigned finds that that the District's failure to provide written notice and/or obtain parental consent to discontinuation the special education services provided under the 7th-grade IEP constitutes a procedural violation that caused substantial harm and/or educational loss to JP, thus resulting in the denial of a FAPE. See K.S.A. § 72-3420(b)(6); K.A.R. § 91-40-1(mm).

D. 7th Grade – ESY Speech Services (Summer 2024)

Petitioners assert that, in the summer of 2024, the District improperly refused to provide ESY speech services to ■. As discussed, at the IEP meeting on May 20, 2024, the IEP team determined that ■ was eligible to receive speech language as a related service, and planned to begin the service at the beginning of 8th grade (i.e., in August 2024). ■ mother requested that speech services begin during ESY in the summer of 2024, but the school refused on grounds that there was insufficient data to support regression in the area of speech.

In determining that ■ was eligible to receive speech services, the IEP team understood that ■ speech language deficits overlaid with and directly impacted his ability to read and write. Vol. VI Tr. at 69:4 to 70:17 (Storck). More specifically, the IEP team relied on the results of ■ recent speech language evaluation, which indicated, among other things, that ■ had scored at the 1st percentile in Sentence Assembly and at the 5th percentile in Semantic Relationships, both of which required “knowledge of word and object relationships and knowledge of words and clauses that modify or provide extra detail to a statement.” May 2024 Evaluation Team Report, Joint Ex. A-72 at USD497_000219.

At the May 20 meeting and in subsequent communications with Stithem, ■ mother asked if the school could begin speech during ESY in the summer of 2024. In doing so, ■ mother pointed out that language, speech, and reading were “all connected,” and suggested that provided ESY services would help ■ to “catch up” on IEP services that had not been provided in 7th grade. May 2024 Email Chain, Petitioners’ Ex. 136 at USD497_001021.

The school declined to provide ESY speech services based on its stated reason that it had insufficient data to show regression in the area of speech. In making this decision, the school apparently looked only at the narrow issue of whether it had regression data in speech,⁸⁰ and declined or refused to consider the fact that ■ had demonstrated sufficient regression in reading and writing to warrant ESY, and ■ speech deficits were directly tied to, and negatively

⁸⁰ It appears this was the first time the school evaluated ■ speech. The record does not indicate whether the previous assessments performed by Caplinger and/or Dr. Taylor could have been used to determine possible regression in the area of speech.

impacted, his ability to read and write. In other words, the school did not consider whether this information showed predictive data indicating that regression was likely. Further, the school did not determine whether ■ significant degree of impairment in speech, standing alone, would warrant ESY services.

As stated in the KSDE Special Education Handbook, the need for ESY for a child with disabilities must be decided individually, and “eligibility does not require that a child first experience regression when predictive data indicate that regression is likely.” KSDE Special Education Handbook at 107. Further, in considering ESY eligibility, the IEP team must consider a number of factors, including the “degree of impairment.” *Id.*

Here, the record establishes that: (1) ■ demonstrated sufficient regression in reading and writing to warrant ESY in the summer of 2024; (2) ■ scores on the speech language assessment showed a significant degree of speech impairment; and (3) ■ speech deficits were directly tied to, and negatively impacted, his ability to read and write. Under these circumstances, the undersigned finds the school's data clearly indicated that speech services were required to support ■ documented regression in reading in writing. Accordingly, the undersigned concludes the District's refusal to provide speech ESY services during the summer of 2024 resulted in denial of a FAPE.

E. Equitable Relief

Petitioners seek equitable relief in the form of (1) reimbursement of the costs associated with sending ■ to Horizon Academy for his 8th grade year; (2) reimbursement of costs incurred to obtain a private evaluation, speech services, and mental health therapy for ■ and (3) compensatory education services. For reasons stated below, the undersigned concludes that Petitioners are entitled to reimbursement in the total amount of \$41,484.12 for reasonable costs incurred in placing at ■ Horizon Academy for his 8th grade school year. Additionally, the undersigned awards compensatory education in the form of (1) reimbursement to Petitioners in the amount of \$3,717.00 for speech services obtained from Caplinger from August of 2023 through July of 2024; and (2) academic tutoring.

1. Reimbursement of Costs to Attend Horizon Academy for 8th Grade

Petitioners seek reimbursement for the costs of having attend ■ Horizon Academy for his 8th grade school year.

Generally, a school district is not required to pay for the cost of a private school if it has made a FAPE available to the child. *Beer, Memorandum and Order* at 70-71 (Doc. #42) (citing 20 U.S.C. 1412(a)(10)(C)(i)). However, a court or hearing officer may require a school district to reimburse the parents for the cost of private school enrollment upon a finding that that the district did not make a FAPE available to the child in a timely manner prior to the private school enrollment. *Id.* at 71. More specifically, the IDEA authorizes reimbursement of the costs of private school placement where: (1) the school district failed to provide a FAPE, and (2) the private school placement was appropriate to meet the needs of the child. *Id.* (citing *Forest*

Grove Sch. Dist. v. T.A., 557 U.S. 230, 247 (2009)); 20 U.S.C. § 1412(a)(10)(C)(ii); KSDE Special Education Process Handbook, Chapter 14, p. 214; K.A.R. 91-40-41(a)(1); 34 C.F.R. 300.148. The appropriateness of the private school placement turns on whether “the education provided by the private school [was] reasonably calculated to enable the child to receive educational benefits.” Beer, Memorandum and Order at 71 (Doc. #42) (quoting Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7, 11 (1993)).

As discussed, the undersigned has found the District failed to provide a FAPE to ■ during his 7th grade school year, including the summer following 7th grade. Thus, the relevant inquiry turns on whether Petitioners’ unilateral placement of ■ at Horizon Academy for 8th grade was appropriate to meet his educational needs. Here, the evidence overwhelmingly shows that the education provided to ■ at Horizon Academy was reasonably calculated to meet his educational needs and that he, in fact, received substantial educational benefit there. As discussed, Horizon Academy caters its curriculum and teaching using small class sizes to focus on students who have dyslexia and dysgraphia. The school’s system is designed to be like a special education resource room that integrates aspects of the Orton-Gillingham approach to teaching reading skills to students with dyslexia throughout the lessons and school day.

At Horizon Academy, ■ was given specific, measurable goals to track his progress in a number of academic areas including reading decoding and encoding, written expression, math calculation and reasoning, and executive functioning. This information was recorded a quarterly basis using an individual learning plan (“ILP”), which showed that ■ demonstrated marked improvement in many areas, including: phonograms and sound patterns; syllable division patterns; morphology; written expression; math calculation and reasoning; and the ability to ask for help, set small goals, and create a plan. See 2024-25 ILP, Petitioners’ Ex. 235.

At the due process hearing, ■ teachers from Horizon Academy testified that, during his time there, they noticed that ■ made gains across the board in his reading and writing abilities. Additionally, ■ testified that the reading comprehension phonetic skills that he learned at Horizon Academy have “exponentially” improved his reading and writing skills. Vol. III Tr. at 606:8-14, 630:15-18 (■ further stated that, at Horizon Academy, he learned executive functioning skills that have greatly improved his planning and organizations skills, as well as his ability to initiate a task. Id. at 628:23 to 630:5.

On this record, the undersigned finds the instruction provided to ■ at Horizon Academy was reasonably calculated to meet his educational needs. Accordingly, the undersigned concludes that ■ placement at Horizon Academy was appropriate. Further, the undersigned finds that ■ indeed, received substantial education benefit during his 8th grade year at Horizon Academy.

Respondent asserts that placement at Horizon Academy was inappropriate, because it resulted in pulling ■ out of the least restrictive environment of the general education classroom and placing him in a small educational setting consisting of only special education students without an IEP. While these are certainly factors to consider, the undersigned finds them not dispositive here. As recognized by the Second Circuit in C.I. v. Scarsdale Union Free

Sch. Dist., 744 F.3d 826 (2d Cir. 2014), the IDEA's LRE requirement was aimed at preventing schools from segregating disabled students from the general student body, but not necessarily to restrict parents' options when a public school fails to comply with FAPE requirements. Id. at 836-37. When a child is denied a FAPE, parents are often forced to turn to specialized schools that educate disabled children. Id.; see also Knable v. Bexley City Sch. Dist., 238 F.3d 755, 770 (6th. Cir. 2001) ("We would vitiate the right of parental placement ... were we to find that such private school placements automatically violated the IDEA's mainstreaming requirement."). Here, the undersigned finds ■ placement at Horizon Academy was not unduly restrictive under the circumstances.

Respondent also points out that a court or hearing officer may deny or reduce any reimbursement for private school placement upon a finding that:

1. At the most recent IEP meeting that the parents attended before making the private school placement, the parents did not inform the IEP team that the parents were rejecting the services or placements proposed by the public school to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense; or, in the alternative
At least 10 business days, including any holidays that occur on a business day, before removal of the child from public school, the parents did not give written notification to the public school that they were rejecting the services or placements proposed by the public school to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
2. Before the parents' removal of the child from public school, the public school provided Prior Written Notice to the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or
3. The actions of the parents in removing the child from public school were unreasonable.

KSDE Special Education Process Handbook, Chapter 14, pp. 214-215 (emphasis added); K.A.R. 91-40-41(b).

Here, the undersigned finds that none of the factors warrant the denial or reduction of reimbursement for private school placement in this case. In reaching this result, the undersigned notes that Petitioners provided written notification more than 10 business days before removing ■ from the District. Further, the undersigned finds that Petitioners' actions under the circumstances were reasonable. To the extent the District asserts that Petitioners acted unreasonably in not accepting the District's offer to reconvene an IEP meeting in August of 2024 (or to otherwise meet with the District during that timeframe), the undersigned disagrees. By this point in time, it was apparent that the parties fundamentally disagreed on the issue of whether the District had been meeting its obligations to provide a FAPE to ■. In particular, the undersigned observes that the District's communications continued to reiterate that it had provided a FAPE, and the District had taken no steps to acknowledge and/or

evaluate any possible effects caused by the failure to implement his special education services during his 7th grade year.

Based on the foregoing analysis, the undersigned finds that Petitioners are entitled to reimbursement for the following expenses incurred as a result of placing ■ at Horizon Academy for 8th grade:

- (1) \$29,250 for tuition expenses paid to Horizon Academy, Vol. IV Tr. at 1048:1 to 1049:5 (■ mother); Petitioners' Ex. 203 at T_001010-1011, T_000948-949;
- (2) \$326.22 for school uniforms required to attend Horizon Academy, Vol. IV Tr. at 1057:1-8 (■ mother); Petitioners' Ex. 201 at T_000899-905;⁸¹ and
- (3) \$11,907.90 in mileage reimbursement for roundtrips made from ■ home in Lawrence to Horizon Academy based on the federal (IRS) mileage reimbursement, Vol. IV Tr. at 1054:8 to 1055:4 (■ mother).⁸² See, e.g., Elizabeth B. v. El Paso Cty. Sch. Dist. 11, Case No. 19-1299, 841 Fed. Appx. 40, 42 (10th Cir. Dec. 16, 2020) (under the IDEA, reimbursement private school placement includes associated costs of transportation); Knable, 238 F.3d at 770.

In sum, the undersigned concludes that Petitioners are entitled to reimbursement in the total amount of \$41,484.12 for reasonable costs incurred in placing ■ at Horizon Academy for his 8th grade school year.⁸³ The undersigned declines Petitioners' request for reimbursement of the cost of ■ lunches, as it appears they would have incurred the same or similar cost regardless of where ■ attended school.⁸⁴

2. Reimbursement of Costs for Private Evaluation, Speech Services, and Mental Health Therapy

Petitioners seek additional reimbursement for expenses they contend were incurred in attempt to obtain a FAPE for ■ Specifically, Petitioners seek reimbursement of the following amounts:

- \$1,500.00 for the private evaluation by Dr. Taylor in the summer of 2022, Vol. IV Tr. at 981:11-16 (■ mother); Petitioners' Ex. 194, T_000981;

⁸¹ Petitioners' Ex. 201 shows three uniform purchases totaling \$326.22 (\$132.27 + \$31.20 + \$162.75 = \$326.22).

⁸² At the due process hearing, ■ mother testified that the roundtrip distance from their home to Horizon Academy was 90 miles. Vol. IV Tr. at 1054:8 to 1055:4 (■ mother). Her mileage calculations were set forth on Petitioners' Demonstrative Ex. 204, which showed 93 trips in 2024 at the reimbursement rate of \$0.67 per mile (93 trips x 90 miles/trip = 8,370 miles x \$0.67 = \$5,607.90), and 100 trips in 2025 at the reimbursement rate of \$0.70 per mile (100 trips x 90 miles/trip = 9,000 miles x \$0.70 = \$6,300.00). \$5,607.90 in 2024 + \$6,300.00 in 2025 = \$11,907.90 in total mileage reimbursement.

⁸³ 83 \$29,250 for tuition expenses + \$326.22 for school uniforms + \$11,907.90 for mileage = \$41,484.12 in total reasonable expenses subject to reimbursement.

⁸⁴ Petitioners seek reimbursement in the amount of \$634.91 for the cost of ■ lunches while he attended Horizon Academy. Vol. IV Tr. at 1055:13 to 1056:4 (■ mother). At the due process hearing, ■ mother testified that she arrived at a rough estimate of the lunch cost by looking at the items that ■ packed in his lunch each day, and the costs of those items on her grocery store receipt. Vol. IV Tr. at 1055:13 to 1056:4 (■ mother). On cross examination, when asked whether she had to pay for the cost of ■ lunch when he attended a school in the District, ■ mother stated that she had subtracted the cost of a school lunch in the District from her estimate. Id. at 1172:25 to 1173:10. However, the demonstrative exhibit did not reflect any calculations in this regard.

- \$9,075.00 for speech services obtained from Caplinger from August of 2022 to March of 2025, Vol. IV Tr. at 998:12 to 999:25 (■ mother); Petitioners' Exs. 193, 196 and 197; and
- \$4,080.00 for mental health therapy provided by Jamie Gabriel, licensed social worker, Vol. IV Tr. at 1057:9-22 (■ mother).⁸⁵

a. Private Evaluation by Dr. Taylor

Regarding reimbursement for cost of the private evaluation by Dr. Taylor, Petitioners assert they obtained the evaluation in an attempt to obtain a FAPE, after the District refused their request to evaluate ■. See Petitioners' COL ¶ 183. However, the facts show that, two days before the private evaluation with Dr. Taylor was scheduled to begin, the District reversed its initial decision and notified Petitioners that it agreed to evaluate ■.

At the due process hearing, ■ mother testified that, upon learning that the school's evaluation would not be completed until the start of the next school year, she decided to proceed with Dr. Taylor's evaluation, which was scheduled to begin two days later. Vol. IV Tr. at 1171:16 to 1178:5 (■ mother). The record contains no evidence suggesting that Petitioners were somehow obligated to move forward with Dr. Taylor's evaluation, or that they would have incurred financial loss if they chose to cancel the evaluation. While the undersigned can understand Petitioners' desire to move forward with the independent evaluation by Dr. Taylor, the law does not support reimbursement of the expense under these circumstances, i.e., where the school has agreed to perform its own evaluation. See, e.g., 34 C.F.R. § 300.502(b)(1) (parents have right to independent education evaluation at public expense if parents disagree with evaluation obtained by the school district).

On these facts, the undersigned denies Petitioners' request for reimbursement of the independent evaluation expense.

b. Speech Services

Regarding reimbursement for the costs of Caplinger's private speech services, the undersigned considers this request in the context of Petitioners' request for compensatory education services, discussed below.

c. Mental Health Therapy

Petitioners assert they obtained private mental health services when the District failed to add mental health supports to ■ IEP. Petitioners' COL at ¶ 182. As discussed, the undersigned has declined to find a denial of FAPE based on inadequate mental health supports. Accordingly, the undersigned denies Petitioners' request for reimbursement of mental health therapy expenses.

⁸⁵ The record does not indicate the time period for which Petitioners seek reimbursement of the cost of mental health services provided by Gabriel.

3. Compensatory Education/Services

Petitioners request an award of compensatory education to remedy the educational loss caused to as a result of Respondent's failure to provide a FAPE.

In determining equitable relief, the undersigned 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 undersigned's goal is to provide the relief reasonably necessary to make up for the effects of the loss of educational benefit to ■ resulting from the District's denial of a FAPE. See Ferren, 612 F.3d at 717-719. In other words, the undersigned seeks to adopt a qualitative award that would place ■ in the same position that he would have occupied but for the District's IDEA violations. See Reid v. Dist. of Columbia, 43 IDELR 32 (D.C. Cir. 2005).

a. Educational Loss to ■

As discussed, the undersigned has found the District denied a FAPE to ■ based on a number of IDEA violations, including: (1) inadequacies of the 6th-grade and 7th-grade IEPs; (2) a material failure to implement substantial parts of the 7th-grade IEP; and (3) failure to provide ESY speech services in the summer of 2024. While it is not possible to precisely measure the exact amount of educational loss sustained by ■ the record indicates that these violations resulted in a significant and substantial educational loss to ■.

More specifically, the evidence showed that, in 7th grade, ■ academic performance declined or failed to improve in several respects. As to math, in the 2nd, 3rd, and 4th quarters of 7th grade, ■ did not meet the measurable objectives for his math goal (measuring automaticity). See May 2024 Progress Report, Joint Ex. A-75 at USD000291-292. Further, his performance on the aMath screener (measuring broad math abilities) steadily declined from the 10th percentile in the spring of 6th grade, to the 8th percentile in the fall of 7th grade, to the 4th percentile in the winter of 7th grade. See Benchmark Report, Joint Ex. A-56 at USD497_000119.⁸⁶

As to writing, the evidence showed that the writing prompts used to establish the 7th-grade IEP goal and monitor progress thereunder were not scored objectively or accurately, thus casting significant doubt on whether ■ made any meaningful progress in writing during 7th grade. At the due process hearing, his special education teacher (Williams) testified that ■ work on writing prompts administered in the fall and spring of 7th grade appeared to be "very similar." Vol. III Tr. at 902:24 to 904:20 (Williams).

As to reading, ■ scores on the FastBridge aReading exam also declined in 7th grade, falling from the 55th percentile in the fall, to the 2nd percentile in the winter, to the 1st percentile in the spring. See Benchmark Report, Joint Ex. A-56 at USD497_000118.

⁸⁶ For the spring of 7th grade, the Benchmark Report does not contain a score for aMath.

Respondent asserts ■ was making academic progress, in that (1) his IEP goals were increased in 7th grade; (2) evidence showed he was making progress toward the IEP goals; (3) the present levels information in the October 2023 IEP indicated that he had showed progress in his punctuation skills; and (4) his 7th-grade ELA teacher, Ms. Hermreck, testified generally that he had made academic progress in her class. See Respondent's Proposed FOF and COL, ¶¶ 42, 173, 206, 206, 207, 225. In light of the undersigned's findings regarding deficiencies in the IEP goals and/or progress monitoring, as well as evidence reflecting significant academic decline in math and reading in 7th grade, the undersigned disagrees that the record demonstrates adequate academic progress.

Considering the evidence as a whole, the undersigned finds that, as a result of the District's failure to provide a FAPE, ■ sustained substantial educational loss and failed to make appropriate academic progress in 7th grade. Accordingly, the undersigned finds that an award of compensatory education is appropriate in the circumstances of this case.

b. Petitioners' Request for Compensatory Education

Based on the testimony and expert report of Dr. Willard, Petitioners seek an award of compensatory education totaling \$68,626.00, which Petitioners request to be placed in a trust for the benefit of ■ education. See Vol. I Tr. 183:4 to 189:21 (Willard); Willard Report at 30-38, Petitioners' Ex. 207.⁸⁷

Dr. Willard separated her recommendation for compensatory education into two parts. In the first part of her recommendation, to remediate numerous deficits that she identified in the ■ 6th-grade and 7th-grade IEPs, Dr. Willard suggested establishing a compensatory education fund totaling \$37,906.00, based on the following:

- (1) two hours per week of academic tutoring in reading for 48 weeks per year over the course of two years at a cost of \$80.00 per session, or \$160.00 per week, for a total of \$15,360.00;
- (2) one hour per week of individualized coaching in executive functioning over the course of two years at a cost of \$1,100.00 per school quarter, or a total of \$8,800.00 for eight school quarters over two years;
- (3) one hour per week of individual mental health support counseling to address emotional regulation, self-esteem, and any lingering anxiety symptoms at a cost of \$120.00 per hour for 48 weeks per year over the course of two years, for a total of \$11,520.00; and
- (4) provision of assistive technology over the course of two years at a cost of \$2,226.00. See Willard Report at 27-32, Petitioners' Ex. 207.

⁸⁷ Dr. Willard also proposed changes to ■ IEP. See Willard Report at 32-36, Petitioners' Ex. 207. In light of the fact that ■ is no longer enrolled in the District, the undersigned finds this recommendation is moot.

In the second part of her recommendation, to address any findings by the hearing officer that the District failed to implement the 6th-grade and 7th-grade IEPs, Dr. Willard suggested establishing a compensatory education fund totaling \$30,720.00, based on the following:

- (1) two sessions per week of academic tutoring in reading by a certified special education teacher, Orton-Gillingham tutor, or writing specialist for 48 weeks per year, over the course of two years (i.e., a total of 192 sessions), at a cost of \$80.00 per session, or \$160.00 per week, for a total of \$15,360.00; and
- (2) two sessions per week of academic tutoring in math by a math specialist with experience working with students with learning disabilities for 48 weeks per year over the course of two years at a cost of \$80.00 per session (i.e., a total of 192 sessions), or \$160.00 per week, for a total of \$15,360.00. See id. at 37.

As a preliminary matter, the undersigned notes that the first part of Dr. Willard's recommendation is based on numerous deficiencies identified by Dr. Willard in the 6th-grade and 8th-grade IEPs, whereas the undersigned has found relatively fewer number of deficiencies in the IEPs. Moreover, under the circumstances of this case, it appears that awarding a separate category of compensatory education based on inadequacies in the IEPs would, at least to some extent, substantially overlap with and/or potentially duplicate the appropriate amount of compensatory services necessary to make up for lost educational benefits resulting from the District's failure to implement the 7th-grade IEP.

Accordingly, in determining the amount and type of educational services that may be required to make up for the lost educational benefit to ■ the undersigned declines to award a separate category of compensatory education based on inadequacies in the IEPs. Instead, as discussed below, undersigned will consider the record as a whole to determine what, if any, compensatory education is appropriate to make up for the educational loss sustained by ■ as a result of the substantive IDEA violations found in this decision.

c. Award of Compensatory Education

In determining an appropriate award of compensatory education, the undersigned looks to the substantive nature of the District's IDEA violations, the educational loss sustained by ■ as a result thereof, and the equitable relief reasonably necessary to make up for that loss.

As discussed, the undersigned has found the District substantively denied a FAPE by: (1) not providing special education or related services to address ■ executive functioning deficits in 6th grade and 7th grade; (2) not providing adequate goals or services to address ■ writing and math deficits in 7th grade; (3) not providing pull-out, targeted instruction in math, writing, and reading during flex class in 7th grade; (4) not providing in-class support for writing and reading during ELA class and social studies class in 7th grade; and (5) not providing ESY speech services in the summer following 7th grade.

In light of these violations, the undersigned considers whether the evidence supports an award of compensatory education in the areas of (1) executive functioning; (2) writing, reading, and speech; and (3) math.

i. Executive Functioning

With regard to executive functioning, the undersigned found a denial of FAPE based on the school's failure to provide special education and/or services to address ■ deficits in 6th grade and 7th grade. As discussed, in 6th grade, Dr. Taylor's report and the school's evaluation identified deficits in ■ executive functioning skills, including diminished abilities to effectively plan and break down tasks, complete a task accurately, monitor tasks, and control emotional outbursts; yet the school failed to adequately address those deficits in the 6th-grade and 7th-grade IEPs.

The record contains no evidence regarding what effect, if any, school's the failure to address executive functioning may have had on ■ academic performance, or whether ■ executive functioning skills changed or stayed the same over the course of 6th grade and 7th grade. Nevertheless, it is logical to infer that ■ would have experienced some academic improvement had his executive functioning deficits been adequately addressed in the 6th-grade and 7th-grade IEPs.

The evidence does show that, during 8th grade at Horizon Academy, ■ received instruction specifically focused on executive functioning skills, which he testified helped him to greatly improve on his planning and organization skills, as well as his ability to initiate a task. Vol. III Tr. at 628:23 to 630:5 (■ Further, in the spring of 2025, Dr. Willard's evaluation showed that ■ executive functioning score was in the Average range, demonstrating "substantial improvement," by 33 points, over his score on a similar test administered Dr. Taylor in the summer of 2022 (when ■ scored in the Significantly Elevated range). Willard Report at 16-19, Petitioners' Ex. 207.

On this record, the undersigned finds that the educational services provided by Horizon Academy in the area of executive functioning have provided adequate remedial measures to equitably account for any educational loss sustained by ■ as a result of the District's failure to address his executive functioning deficits in 6th grade and 7th grade. Accordingly the undersigned declines to award additional compensatory education in the area of executive functioning.

ii. Writing, Reading, and Speech⁸⁸

As discussed, the undersigned found a denial of FAPE based on the school's failure to: (1) adequately address ■ writing deficits in the October 2023 IEP; (2) provide pull-out, targeted instruction during flex class in writing for the entire school year, and in reading beginning in January 2024; (3) provide in-class support during ELA class in writing for the entire school year and in reading beginning in January 2024; (4) provide in-class support during social studies

⁸⁸ In light of the interrelation between ■ deficits in speech and his abilities to read and write, the undersigned considers these areas together for purposes of determining an appropriate award of compensatory education.

class in writing and reading beginning in January 2024; and (5) provide ESY speech services during the summer of 2024.

The record demonstrated that, in 7th grade, ■ incurred an educational loss in that: (1) the record showed no improvement in his writing abilities; and (2) his scores on the FastBridge aReading assessment declined from the 55th percentile in the fall, to the 2nd percentile in the winter, to the 1st percentile in the spring. See Benchmark Report, Joint Ex. A-56 at USD497_000118. Further, the evidence showed that ■ speech deficits were directly related to his writing and reading abilities. Thus, the school's failure to provide ESY speech services in the summer of 2024 would have necessarily had a negative impact on the effectiveness of the ESY writing and reading services that ■ received during that summer. Additionally, Dr. Willard's assessment in the spring of 2025 showed that, while ■ had shown significant improvement in reading comprehension (39th percentile), he still had Very Low scores in spelling (4th percentile) essay composition (8th percentile). Willard Report at 11, Petitioners' Ex. 207.

Upon careful consideration of the record as a whole, the undersigned finds that an award of compensatory education in the areas of writing, reading, and/or speech is necessary to remedy the educational loss sustained by ■ during his 7th grade school year.

In fashioning an appropriate award, the undersigned notes that the speech services provided by Caplinger are integrally related to the special education services in writing and reading that the school failed to provide, and presumably helped to mitigate ■ educational losses during the time of the FAPE deprivation. Thus, the undersigned finds that reimbursement of the expenses incurred for Caplinger's speech services during the time of the FAPE deprivation is appropriate. As noted, the FAPE deprivation involving writing, reading, and speech occurred from the beginning of 7th grade (i.e., August of 2023) through the summer of 2024. The evidence submitted by Petitioners shows that, during this time period, Petitioners paid Caplinger for 41 invoices totaling \$3,717.00 for speech services. See Petitioners' Exs. 193, 196 and 197.⁸⁹ Accordingly, the undersigned finds that Petitioners are entitled to reimbursement in the amount of \$3,717.00 for speech services obtained from Caplinger from August 2023 through July 2024.

Additionally, the undersigned finds that an award of compensatory education in the form of academic tutoring in reading and/or writing is reasonably necessary to make up the educational loss sustained by ■. In determining an appropriate amount of compensatory education, the undersigned approximates roughly 20 academic weeks per semester, and 8 weeks of summer school. Based on these estimates, the undersigned finds that, to make up for missed special education services in the areas of writing and reading during 7th grade and the summer of 2024, one session per week of academic tutoring is appropriate, for a total of

⁸⁹ More specifically, from August 2, 2023 through January 10, 2024, Petitioners paid 18 invoices for \$80.00 each, totaling \$1,440.00. From January 17, 2024 through July 31, 2024, Petitioners paid 23 invoices for \$99.00 each, totaling \$2,277.00. See Petitioners' Exs. 193, 196 and 197. \$1,440.00 + \$2,277.00 = \$3,717.00

48 sessions. Further, in light of the interrelationship between ■ deficits in speech/language and his reading and writing abilities, the undersigned will allow Petitioners the option to allocate some or all of these academic tutoring sessions toward speech services as well.

iii. Math

With regard to math, the undersigned found a denial FAPE based on the school's failure to: (1) adequately address ■ math deficits in the October 2023 IEP; and (2) provide pull-out, targeted instruction in math during flex class in 7th grade.

The record demonstrated that, in 7th grade, ■ incurred an educational loss in that (1) he did not meet the measurable objectives for his math goal (measuring automaticity), and (2) his scores on the aMath screener (measuring broad math abilities) steadily declined from the 10th percentile in the spring of 6th grade, to the 8th percentile in the fall of 7th grade, to the 4th percentile in the winter of 7th grade. See May 2024 Progress Report, Joint Ex. A-75 at USD000291-292l Benchmark Report, Joint Ex. A-56 at USD497_000119. Additionally, Dr. Willard's assessment in the spring of 2025 showed that ■ continued to have Very Low scores in numerical operations (4th percentile). Willard Report at 11, Petitioners' Ex. 207.

Upon careful consideration of the record as a whole, the undersigned finds that an award of compensatory education in the form of academic tutoring in math is reasonably required to make up the educational loss sustained by ■. Specifically, the undersigned finds that one session of academic tutoring per week is appropriate to make up for missed special education services in 7th grade, for a total of 40 sessions.

In determining the appropriate amount of academic tutoring required to make up for the educational loss incurred by ■ as a result of lost special education services, the undersigned has aimed to apply a qualitative analysis to make up for the substance of missed educational instruction, as opposed to a strict calculation of the number of hours or amount of time missed. In so doing, the undersigned recognizes that one-on-one academic tutoring would generally provide an opportunity for more effective instruction in a shorter amount of time than what might be reasonably expected to occur during pull-out instruction in a special education resource room, or during in-class support in a general education classroom.

Further, after careful consideration, the undersigned denies Petitioners' request to establish a fund or trust to pay for the costs of academic services ordered as compensatory education. Instead, the undersigned finds that, under the circumstances of this case, an appropriate award of compensatory education can be adequately provided by requiring the District to either pay directly and/or reimburse Petitioners for the costs of academic tutoring ordered herein at the time the services are actually rendered to ■. See, e.g., Tilley v. Thomas Edison Charter Sch. N., Case No. 1:22-cv-00105-TS-CMR 2024 U.S. Dist. LEXIS 107468, at *20-21 (D. Utah. June 17, 2024).

VI. Conclusion

For reasons stated, the undersigned finds that Respondent failed to provide a free, appropriate public education ("FAPE") to ■ on grounds that: (1) his 6th-grade and 7th-grade IEPs were not reasonably calculated to allow him to make appropriate progress in light of his circumstances; (2) the school materially failed to implement special education services provided under his 7th-grade IEP; and (3) the school improperly declined to provide ESY speech services during the summer of 2024. Additionally, the undersigned finds that Respondent committed procedural violations that deprived ■ parents of the opportunity to meaningfully participate in the IEP decision-making process, thereby causing substantial harm and/or educational loss to ■.

The undersigned concludes that Petitioners are entitled to reimbursement in the total amount of \$41,484.12 for reasonable costs incurred in placing ■ at Horizon Academy for his 8th-grade school year. Additionally, the undersigned awards compensatory education in the form of (1) reimbursement in the amount of \$3,717.00 for private speech services provided to ■ from August 2023 through July 2024; and (2) academic tutoring, as set forth below.

Regarding academic tutoring, the undersigned orders that, for a period of 15 months from the date on which this decision becomes final and non-appealable, the District shall, at the request of Petitioners, either reimburse Petitioners or pay the providers of Petitioners' choosing for the costs of services rendered to ■ during the 15-month time frame, as follows:

- 1) Up to 48 sessions of academic tutoring in reading and/or writing by an Orton-Gillingham tutor, a certified reading specialist, or a special education teacher with experience working with students with dyslexia. Alternatively, Petitioners may opt to use some or all of these sessions for speech language therapy by a provider with credentials similar to the services provided by Dr. Caplinger and her company.
- 2) Up to 40 sessions of academic tutoring in math by a math specialist with experience working with students with learning disabilities, or a special education teacher with experience working with students with dyscalculia.

Each session may last up to one hour. The District shall be responsible to pay the provider's usual rate, up to a maximum of \$80.00 per session. Further, the District shall make disbursements of requested payments within 30 days of receipt.

The undersigned further finds that Petitioners are the prevailing parties in this matter.

IT IS SO ORDERED.

Dated this 26th day of January, 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.⁹⁰ 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.

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.

⁹⁰ 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.

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 e-mail, with return acknowledgment of receipt requested and confirmed, to the following parties:

Matthew J. Rogers, Esq.

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Dr. Crista Grimwood

E-Mail: cgrimwood@ksde.org

KSDE Dispute Resolution Coordinator, Special Education & Title Services

Dated this 26th day of January, 2026.



Angela D. Gupta, Hearing Officer

Appendix A

Joint Exhibits Admitted into Evidence

Exhibit No.	Description
A-1	J.T. Educational Records from Lawrence Unified School District 497 (USD497 000001-114)
A-2	2020-2021 KAP Grade 4 English Language Arts Score (USD000925-926)
A-3	2020-2021 KAP Grade 4 Math Score (USD000941-942)
A-4	4/13/2022 Quail Run Elementary: SPED Team Meeting Notes (USD000669-683)
A-5	4/26/2022 Prior Written Notice for Evaluation or Reevaluation (USD000330-332)
A-6	4/27/2022 Prior Written Notice for Evaluation or Reevaluation (T 000001-3)
A-7	4/27/2022 Prior Written Notice for Evaluation or Reevaluation (USD497_000125-127)
A-8	5/10/2022 BASC3 Assessment by father (USD000732-767)
A-9	5/10/2022 BASC3 Assessment by mother (USD000768-802)
A-10	5/10/2022 Prior Written Notice for Evaluation or Reevaluation (USD497_000128-131)
A-11	2021-2022 KAP Grade 5 English Language Arts Score (USD000931-932)
A-12	2021-2022 KAP Grade 5 Mathematics Score (USD000929-930)
A-13	2021-2022 KAP Grade 5 Science Score (USD000927-928)
A-14	6/1/2022 Evaluation Reo01i of Tish Holub Taylor. Ph.D. (T 000004-16)
A-15	2021-2022 Individual Benchmark Repo1i: CBMR-English (USD497 000117)
A-16	9/13/2022 Notice of Meeting (USD497_000132-133)
A-17	9/14/2022 Events entered into PSSP (USD000329)
A-18	9/16/2022 BASC3 Assessment by J.T. (USD000803-826)
A-19	10/4/2022 BASC3 Assessment by Tori E. Miller (USD000863-893)
A-20	10/6/2022 BASC3 Assessment by Debbie Brucker (USD000827-862)
A-21	10/6/2022 BASC3 Assessment by Mindy K. Stutler (USD000894-924)
A-22	10/13/2022 Evaluation Team Report (T_000017-30)
A-23	10/13/2022 Individualized Education Program (T 000031-45)
A-24	10/13/2022 IEP Meeting Notes (USD497_000149-150)
A-25	10/13/2022 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (USD497_000151-153)
A-26	10/31/2022 Incident Report (USD000250)
A-27	2/9/2023 Behavior Entry (USD497_000121)
A-28	2/13/2023 Re-Entry Plan of Support (USD000278)
A-29	3/7/2023 Progress Report (USD000279-282)
A-30	2022-2023 KAP Grade 6 English Language Arts Score (USD000935-936)
A-31	2022-2023 KAP Grade 6 Math Score (USD000933-934)
A-32	8/19/2023 Assessment Results of Allison M. Caplinger, MA, CCC-SLP(T 000046-50)
A-33	9/27/2023 Notice for 10/10/2023 IEP meeting (T_000051-52)
A-34	9/27/2023 Notice for 10/10/2023 IEP meeting (USD497_000154-155)
A-35	9/28/2023 CBM Writing Probes (USD000315-316)
A-36	10/10/2023 Individualized Education Program (T_000053-68)
A-37	10/30/2023 Behavior Entry for J.T. (USD497_000124)
A-38	11/05/2023 IXL Practice Summary (USD000224-226)
A-39	12/20/2023 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (USD000297-300)
A-40	10/13/2023 IEP with Amendment (USD497 000156-174)
A-41	1/2/2024 2nd Quarter Progress Report (T_000107-110)
A-42	1/25/2024 IEP Meeting Agenda (T_000111-115)

Exhibit No.	Description
A-43	2/2/2024 Behavior Entry for J.T. (USD497 000122)
A-44	2/04/2024 IXL Practice Summary (USD000211-212)
A-45	2/19/2024 CBM ORF Probes (USD000301-312)
A-46	2/25/2024 IXL Practice Summary (USD000208-T 000210)
A-47	2/26/2024 Prior Written Notice for Evaluation or Reevaluation (USD497 000194-196)
A-48	2/28/2024 COMP efficiency Progress Monitoring Report (USD000322-323)
A-49	11/28/23 to 2/28/2024 Service Log for J.T. (USD000333-336)
A-50	2/29/2024 Notice of Meeting on 3/22/24 (T_000119-122)
A-51	2/29/2024 Notice of Meeting on 3/22/24 (USD497_000197-198)
A-52	3/3/2024 IXL Practice Summary (USD000216-217)
A-53	3/5/2024 CBM Writing Prompts (USD000317-319)
A-54	3/6/2024 CBMmath Automaticity Report (USD000324-325)
A-55	3/6/2024 CBMmath Automaticity Report with handwriting (USD000320-321)
A-56	2023-2024 CBM Progress Results (USD497 000115-121)
A-57	3/21/2024 Behavior Entry for J.T. (USD497_000123)
A-58	3/22/2024 Prior Written Notice for Evaluation or Reevaluation (T_000128-131)
A-59	3/22/2024 Prior Written Notice for Evaluation or Reevaluation 6 (USD497 000199-202)
A-60	3/22/2024 IEP Amendment (USD497_000175-193)
A-61	3/22/2024 IEP Concerns Meeting Notes (USD497 000203-207)
A-62	3/25/2024 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (T 000132-134)
A-63	3/25/2024 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (USD497_000208-211)
A-64	4/16/2024 CBM Writing Prompts (USD000313-314)
A-65	4/28/2024 IXL Practice Summary (USD000206-207)
A-66	5/2/2024 CELF-5 Individual Score Report (USD000713-731)
A-67	5/9/2024 Notice of Meeting (T 000135-137)
A-68	5/9/2024 Request for Consent for Special Education Action (USD497_000212-213)
A-69	5/12/2024 IXL Practice Summary (USD000218-220)
A-70	5/20/2024 Handwritten Meeting Notes (USD000394)
A-71	5/20/2024 Evaluation Team Report (T 000138-158)
A-72	5/20/2024 Evaluation Team Report (USD497_000214-222)
A-73	5/21/2024 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (USD000283-284)
A-74	5/21/2024 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (T_000159-161)
A-75	5/24/2024 Progress Report (USD000291-296)
A-76	5/24/2024 Progress Report (T_000162-167)
A-77	5/24/2024 Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent (T_000168-170)
A-78	2023-2024 KAP Grade 7 English Language Arts Score(USD000939-940)
A-79	2023-2024 KAP Grade 7 Math Score (USD000937-938)
A-80	6/7/2024 Request for Consent for Special Education Action (USD000285)
A-81	6/14/2024 WRAT-V Screening Assessment (T 000174-183)
A-82	8/1/2024 Notice of Intent to Place at Horizon Academy (USD000116-118)
A-83	8/1/2024 Phonological Awareness Screening Test (PAST) (T 000184-185)
A-84	8/1/2024 Notice of Intent to Place at Horizon Academy (T_000186-188)
A-85	8/8/2024 Letter from Kevin L. Harrell to mother (USD000119)

Exhibit No.	Description
A-86	8/8/2024 Notice of Meeting on 8/19/24 (USD497_000223-224)
A-87	8/8/2024 Notice of Meeting on 8/20/24 (USD497_000225-226)
A-88	8/9/2024 Notice of Meeting on 8/19/24 (USD497_000286-288)
A-89	9/29/2024 IXL Practice Summary (USD000227-229)
A-90	11/3/2024 IXL Practice Summary (USD000221-223)
A-91	1/26/2025 IXL Practice Summary (USD000213-215)
A-92	2/21/2025 Student Summary (USD000326-328)
A-93	Notes
A-94	Goal Statement

Petitioners' Exhibits Admitted into Evidence

Exhibit No.	Description
1	4/7/2022 Doolittle E-mail, Re: Request for Evaluation (USD 32)
4	5/5/22 ■ mother E-mail: J.T. Deficits and Taylor Evaluation (USD34-37)
14	3/8/22 Hayes E-mail: Please Read (T_1049-1050)
15	4/21/22 Hayes E-mail: Screenshot (USD52)
17	10/18/22 Email String between Kristen Kircher and J.T.
18	10/28/22 Email String between Kristen Kircher and J.T.
19	10/28/22 Email String between Kristen Kircher and Tori Mitchell
20	11/4/22 Email String between Kristen Kircher and J.T.
21	11/16/22 Email String between Kristen Kircher and J.T.
23	12/1/22 Email String between Kristen Kircher and J.T.
24	12/2/22 Email String between Kristen Kircher, Lindsay Bishop and J.T.
25	12/6/22 Email String between Kristen Kircher and J.T.
26	12/14/22 Email String between Kristen Kircher and J.T.
27	12/20/22 Text Message String between Trish Cottrell and Kristen Kircher
30	1/12/23 Email String between Kristen Kircher and J.T.
31	1/17/23 Email String between Kristen Kircher and Tori Mitchell
32	1/17/23-1/18/23 Email String between Kristen Kircher and J.T.
33	1/24/23 Email String between Kristen Kircher and J.T.
34	2/13/23 Email String between Kristen Kircher and J.T.
35	2/23/23 Email String between Kristen Kircher and J.T.
36	3/1/23 Email String between Kristen Kircher and J.T.
37	3/7/23 Email String between Kristen Kircher and J.T.
38	3/7/23-3/8/23 Email String between Kristen Kircher and J.T.
39	3/9/23 Email String between Kristen Kircher and J.T.
40	3/20/23 Email String between Kristen Kircher and J.T.
41	4/7/23 Email String between Kristen Kircher and J.T.
42	4/21/23 Email String between Kristen Kircher and J.T.
43	4/25/23 Email String between Kristen Kircher and J.T.
44	5/2/23 Email String between Kristen Kircher and J.T.
46	12/7/23 Email String between Kristen Kircher and J.T.
53	4/16/24 Email String between Kristen Kircher and J.T.
61	12/21/22 Email from Kristen Kircher to Therese Brink Edgecomb re: Teacher Concerns
81	9/22/23 Williams Email, Re: Concern [Redacted] (USD497_377)
84	12/23/2023 to 1/3/2024 Email String re: Para Support
89	1/1/2024 Williams Email, Re: Meeting Agenda (USD497_465-476)

Exhibit No.	Description
91	1/2/2024 Williams Email: [redacted] and J.T. Grades - Completed Work not Showing up in PowerSchool (USD497_403-USD497_404)
92	1/2/2024 Williams Email: J.T. - Spanish Grade (Forwarded) (USD497_405-USD497_406)
93	1/3/2024 Rabiola Email, Re: Points (USD497_408-USD497_410)
96	1/21/2024 Nelson Email: No Subject Line (USD497_276-USD497_277)
97	1/21/2024 ■ mother E-mail: J.T. IEP Meeting (T_660-662)
107	12/5/24 Williams Email: No Subject Line (USD497_548-USD497_551)
108	2/13/2024 to 2/14/2024 Email String re: Email to Parents about Service Minutes
136	5/21/2024 ■ mother E-mail: No Subject Line (USD497_1019-1022)
138	5/24/2024 Storck E-mail: No Subject Line (USD497)1039-1041)
141	6/4/2024 ■ mother E-mail: No Subject Line (USD497_1051-1053)
143	6/9/2024 ■ mother E-mail: No Subject Line (USD497_1079-1086)
150	8/1/2024 and 12/19/24 Writing Samples.
160	8/23/2024, 2/23/2024 Burton E-mail: Re: J.T. 112 IEP (USD29-30)
164	8/30/24 Jones E-mail: Team 4 TLC Class Introductory Letter to Parents (T_294)
172	Email string between Sage Isenmann, ■ father, and ■ mother re: Feedback
173	9/20/2024 Email from Emily Hathhorn to ■ mother re: ELA Update
175	9/20/2024 Email from Sage Isenmann re: 9/20 Newsletter
179	10/9/2024, 3/4/2022-7/29/2024 Jamie Gabriel Child & Family Therapy Total Paid (T_979-980)
181	10/13/2024 Jones E-mail: Team 4 TLC Update (10/13/2024) (T_463)
183	2024-2025 Horizon Academy ILP Year 1 Comments Section
189	June 2025 Email String re: Confidential: Report Card (J.T.)
193	4/12/22-1/27/2025 all Invoices CA Communications, LLC (T_891-895)
194	Debit Purchase of \$1,500.00 on 6/1/202 Screenshot (T_981)
196	8/12/2022-3/25/2025 CAP Communications LLC Billing and Payments (T_940-947)
197	CAP Communications, LLC Total Balance \$0.00 (T_965-978)
201	8/6/2024, 8/16/2024, and 9/9/2024 Order Confirmations (T_899-905)
203	6/14/2024 Horizon Documents (T_1010-1011; T_948-949)
204	Mileage, Lunch estimate, and Summary of Expenses as of 5/21/2025 (T_964)
207	4/7/2025 Report of Marcy Willart, Ph.D.
234	2024-2025 Horizon Academy Year 1 Teacher Comments
235	6/3/2025 Horizon Academy Individualized Learning Program for J.T.

Respondent's Exhibits Admitted into Evidence

Exhibit No.	Description
1001	August/September 2022 Email String between Kristen Kircher, Jennifer Storck, and mother
1003	10/4/22 Email String between Kristen Kircher and J.T.
1004	10/12/22 Email String between Kristen Kircher and J.T.
1005	10/13/22 Email String between Kristen Kircher and J.T.
1006	Email String between Kristen Kircher and father
1012	11/4/22 Email String between Kristen Kircher and J.T.
1013	11/4/22 Email String between Kristen Kircher and J.T.
1015	11/8/22 Email String between Kristen Kircher and J.T.
1020	12/2/22 Email String between Kristen Kircher, Stephanie Holaves, and J.T.
1021	12/2/22 Email String between Kristen Kircher, Lindsay Bishop, and J.T.
1026	1/10/23 Email String between Kristen Kircher and J.T.
1027	1/27/23 Email String between Therese Brink Edgecomb, mother, and Kristen Kircher

Exhibit No.	Description
1028	10/10/2023 IEP Meeting Notes
1029	3/8/23 Email String between Kriste Kircher, mother and Trish Cottrell
1032	5/12/23 Email String between Kristen Kircher and Tori Mitchell
1033	5/12/23 Email String between Mindy Stutler and Kristen Kircher
1036	1/11/24-1/12/24 Email String between Kristen Kircher and J.T.
1042	1/25/2024 E-mail from Hermreck to F. Williams, Re: ELA Work (USD497_477)
1045	1/29/24 Email String between Kristen Kircher and Faye Williams
1048	2/1/24 Email String between Kristen Kircher and mother
1053	2/13/24 Email String between Kristen Kircher and J.T.
1070	6/4/2024 E-mail from mother to L. Stithem, Re: Signing PWN -- Inclusive of T_000654 through T_000659
1079	8/20/2024 Letter from K. Carson to Parents Re: Horizon (USD497 760-761)