
UTAH STATE BOARD OF EDUCATION
BEFORE THE DUE PROCESS HEARING OFFICER

████ a student, by and through his parent,
████,

Petitioner,

vs.

NOAH WEBSTER ACADEMY,

Respondent.

DECISION AND ORDER

Hearing No.: DP-2425-09

(Hearing Officer: Wallace J. Calder)

APPEARANCES

████ appeared pro se on behalf of Petitioners █████ and █████ ("Petitioners"). Erin Preston, Esq., Utah Education Law, appeared on behalf of Respondent Noah Webster Academy ("Respondent"). This matter was assigned to the undersigned Due Process Hearing Officer, Wallace J. Calder ("Hearing Officer").

PROCEDURAL HISTORY

The student who is the subject of this due process hearing, █████ (the "Student" or █████) is █████ year-old boy who lives with Petitioner, his mother. The Student was initially enrolled in Respondent's school (the "School" or "NWA") in September, 2022. The Student stopped attending NWA in November 2023. Petitioners submitted a written Request for a Due Process Hearing to the Utah State Board of Education ("USBE") dated January 21, 2025, which was received and entered of record on January 21, 2025. In their Due Process Complaint, Petitioners allege

violations of the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 et seq. (“IDEA”), among other claims. The Hearing Officer was formally appointed on January 22, 2025. On January 22, 2025, the Hearing Officer filed an initial Minute Entry, which was served on all parties, which included initial instructions, deadlines for initial actions, and specific instructions for communicating with the Hearing Officer.

On February 5, 2025, the parties informed the Hearing Officer in writing that they agreed to waive the Resolution Meeting and to engage in mediation, which was approved by the Hearing Officer. A mediator was appointed by the USBE, and the parties thereafter engaged in a lengthy mediation process until an impasse was declared by the mediator on June 13, 2025.

On June 16, 2025, the Hearing Officer sent an email to all parties to schedule a pre-hearing conference call during the week of June 16, in order to schedule the hearing date and enter other orders. Both parties responded and agreed to a pre-hearing telephone conference on June 23, 2025. On June 18, 2025, the Hearing Officer emailed to the parties a two-page agenda for the pre-hearing conference call. At the pre-hearing conference the issues for Petitioner and Respondent were discussed and identified, a three-day hearing was scheduled for July 14-16, 2025, the five-business day deadline for exchanging documents and witness lists was set for July 7, and other deadlines for pre-hearing motions and briefs were agreed to and set. No attorney has entered an appearance in this matter on behalf of Petitioners. The Hearing Officer’s Pre-Hearing Order was served on the parties on June 30, 2025.

On July 7, 2025, Petitioner timely submitted her witness list to Respondent. On July 7, 2025, Respondent’s counsel timely submitted Respondent’s witness lists to Petitioner. The record reflects that on July 7, 2025, Petitioner sent a series of nine emails with document and audio

files attached to Respondent and the Hearing Officer. These files were in various formats such as Word, pdf, Google and html. On July 7, 2025, Respondent attempted to send Respondent's documents through Dropbox and Petitioner replied that she did not "have Dropbox." Respondent then sent the document files as an email attachment (as requested by Petitioner) in compressed zip files. Petitioner timely submitted her Pre-hearing brief to the Hearing Officer.

On July 8, 2025, both parties informed the opposing party and the Hearing Officer that they were having difficulty accessing the electronic document files of the opposing party. Both parties indicated that the document file format used by the submitting party was incompatible with their system, or the files were corrupted, or there were other issues accessing the documents in the files. The Petitioner proposed that both parties re-send all of their documentation in universally accepted formats. Respondent agreed to re-scan all of Respondent's documents in a format accessible to Petitioner. Respondent was able to provide all documentation to Petitioner on July 8, 2025. Petitioner submitted additional documents as well. In response to questions regarding documents presented at the hearing, the Hearing Officer provided guidance to the parties.

On July 9, 2025, Respondent submitted a Stipulated Motion to Extend Five Business Day Disclosure Deadline. Petitioner informed the parties that she was not willing to sign the stipulation as it was written. Respondent thereafter filed a Motion to Extend Hearing Date by One Day to Comply with Five Day Business Rule. Petitioner objected to this motion. On July 9, 2025, Petitioner filed her Pre-Hearing Brief. On July 10, 2025, at 12:01 a.m., Respondent filed a Motion for One Day Extension to File Pre-Hearing Brief and Other Pre-Hearing Motions. On July 10, 2025, Petitioner sent a number of emails citing concerns with the document production by Respondent.

On July 10, 2025, the Hearing Officer entered an Order Regarding Motions to Extend Deadlines for Document Exchange and Briefs, Continue Hearing Date and File Pre-Hearing Motions. The Hearing Officer denied Respondent's Motion to Extend Deadline for five Day Rule. Both parties experienced problems receiving documents due to formatting issues, but these issues were resolved on July 8. The Hearing Officer ruled that the parties acted timely and in good faith in attempting to exchange documents and that both parties complied with their obligation to timely exchange documents and, therefore, there was no need to extend the five-day rule. The Hearing Officer also denied Respondent's Motion to Extend Deadline for Pre-Hearing Briefs finding that Respondent's delay in submitting Respondent's brief was not due to any electronic formatting issues. The Hearing Officer also denied Respondent's Motion to Continue Hearing Date for One Day due to the Hearing Officer's ruling that the parties' document exchange was timely. Finally, the Hearing Officer granted Respondent's request to file additional pre-hearing motions so long as there was sufficient time for a response from Petitioner and a ruling prior to the hearing.

On Friday, July 11, 2025, Petitioner sent an email to the Hearing Officer at 11:42 a.m. requesting a subpoena for a private individual who works at Kids on the Move (KOTM), a private program the Student was attending. This individual's attorney objected to his client testifying. The Hearing Officer informed Petitioner that due to the late request there was not sufficient time to prepare and serve the subpoena, prior to the beginning of the hearing on Monday, July 14. Moreover, there would not be time for the individual to file an objection to the subpoena. On July 11, 2025, the parties continued to have discussions regarding the scheduling of witnesses at the hearing.

The parties also filed cross-motions to exclude certain evidence at the hearing. The Hearing

Officer took these motions under advisement and informed the parties that a decision would be made on the motions at the beginning of the hearing. At the hearing Respondent's counsel argued that document binders provided by Petitioner contained hundreds of pages of documents that were not previously provided by Petitioner. A great many of these documents Petitioner alleged to be transcripts of audio/video files of IEP team meetings, but other documents were also included. The Hearing Officer expressed concern not only with the untimely providing of these documents but also with the fact that the Respondent would not have an opportunity to review and verify their authenticity. The Hearing Officer denied Petitioner's and Respondent's cross-motions to admit documents and exclude the opposing party's documents and audio/video recordings at the hearing. However, the Hearing Officer further ruled that at the time any of such evidence was requested to be admitted into the record during the hearing the Hearing Officer would make a ruling on admissibility on any objection made to each individual document or audio/video recording.

On July 14-16, 2025, an impartial due process hearing was conducted at the offices of the USBE in Salt Lake City, Utah, in this matter. The hearing was held in accordance with the procedural requirements of the IDEA and its implementing regulations found at 34 CFR §§ 300.507-515 and 532, and the USBE SpEd Rules IV.G-N and V, (June, 2023). Petitioner appeared at the hearing in person and called 6 witnesses and submitted exhibits totaling hundreds of pages. Respondent's school Director and Special Education Director appeared in person at the hearing and were represented by their attorney Erin Preston, who called 4 witnesses and submitted exhibits containing hundreds of pages. The hearing transcript is three volumes, totaling 536 pages, and includes an index of exhibits.

It should be noted that there was a significant delay in receiving the hearing transcripts and

exhibits from the court reporter's office. Due to this delay the Hearing Officer and the parties were not going to have sufficient time to review the transcripts and exhibits, file Closing Briefs and allow the Hearing Officer sufficient time to meet the previous decision deadline of August 11, 2025. As a result of the delay in receiving the transcripts, Respondent requested a seven-business day continuance of the hearing deadline, which was granted by the Hearing Officer. The due date for the parties Closing Brief was extended to August 11, 2025, and the due date for the Hearing Officer's written decision was extended to August 20, 2025. On August 11, 2025, Respondent's counsel filed Respondent's Closing Brief, which includes proposed Findings of Fact and Conclusions of Law. On August 11, 2025, Petitioner filed Petitioner's Closing Brief which includes proposed Findings of Fact and Conclusions of Law.

BURDEN OF PROOF

Petitioner, as the party challenging the Respondent's implementation of special education and related services to the Student, has the burden of proof by a preponderance of the evidence for all issues raised by Petitioner in this matter. *Schaffer v. Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005). The Tenth Circuit Court of Appeals has held that "the burden of proof in such a challenge rests with the party claiming a deficiency in the school district's efforts." *Thompson R2-J School Dist. v. Luke.*, 540 F.3d 1143, 1148 (10th Cir. 2008). The Hearing Officer informed Petitioner at the pre-hearing conference, and in the Pre-Hearing Order, and at the beginning of the hearing, that Petitioner would have the burden of proof and the duty to present evidence first at the hearing. Respondent has the burden of proof by a preponderance of the evidence for the issue raised by Respondent in this matter. *Id.*

ISSUES

The following issues raised by Petitioner in Petitioner's Complaint were set forth in the Pre-Hearing Order, and were presented by Petitioner to the Hearing Officer at the hearing for decision:

1. Whether Respondent failed to implement the Student's IEP by:
 - a) failing to provide all accommodations set forth in the Student's IEP;
 - b) failing to fully implement the Student's IEP service minutes;
 - c) failing to provide a Special Education Teacher in the Student's classroom to provide the Student's services;
 - d) school staff using behavior techniques with the Student that were not provided for in the Student's IEP; and
 - e) failing to have appropriately trained special education staff implement the Student's IEP.
2. Whether Respondent failed to conduct a re-evaluation of the Student in 2024 for OT and Speech at the request of Petitioner.
3. Whether Respondent failed to provide instruction to the Student in the Least Restrictive Environment by failing to provide homebound instruction to the Student.

The following issue was presented by Respondent to the Hearing Officer at the hearing for decision:

1. Whether the Hearing Officer should bar any claims of Petitioner for alleged violations occurring prior to January 21, 2023.

FINDINGS OF FACT

After considering all of the evidence received at the hearing in the form of testimony and exhibits, as well as the oral and written arguments of Petitioner and Respondent's counsel, the Hearing Officer's Findings of Fact are as follows:

1. The student in this matter, [REDACTED] currently resides with Petitioner [REDACTED], who is [REDACTED]'s mother. Petitioner's Complaint states that the Student was born in 2010, which would make him 15 years of age. However, the Student's initial and subsequent IEPs at the School indicate that the Student was born in 2014, which makes the Student currently 11 years of age. (Petitioner's Complaint, Exhibit R4, p. R026.)
2. Petitioner was aware that the Student had special needs since he was eight months old and, Student has been "in a program" since he was nine months old. The Student attended Baby to Baby, Kids Who Count, and Giant Step. Petitioner's had the Student's behavioral needs assessed in August 2017, at the Kids on the Move autism center (KOTM). An Individualized Treatment Plan from KOTM dated August 14, 2017, states that the "parents are requesting ABA services to address [Student's] deficits in communication, social, play, joint-attention and daily living skills." The Petitioner reported that the Student engaged in "tantrum behavior" if he is instructed to wait for preferred items, from 10+ times a day, including "hitting head against floor, wall, or another person." (Exhibit P7.11.2, p. 7.)
3. The Student's educational records include a Health and Developmental History Questionnaire that Petitioner provided to the Student's previous school in April 2019. The form indicates that the Student had difficulties with speech, sensory processing, toileting, social skills, play skills, attention/impulsivity and behavior, among other things. In response

to a request to describe the Student's behavior when he is frustrated or angry, Petitioner stated that the Student "can get to pull someone's hair." (Testimony of A█████ R█████, Tr. 3, p. 78; Exhibit R2, p. R017.)

4. The Student was allowed to be enrolled in the School in the 2nd grade because the 3rd grade class was full. The Student began attending Respondent's School on September 12, 2022. Student began receiving school-based special education services under a transferred IEP developed at Student's previous school. (Testimony of A█████ R█████, Tr. 3, pp. 70-73; Exhibit R1, p. R003.)
5. In late September 2022, the School began administering assessments as part of the Student's three-year re-evaluation. The re-evaluation was limited in scope due to the Student's non-responsiveness to formal testing measures resulting from his significant deficits in social awareness, communication, and his inability to focus on or follow adult-directed activities. (Statement of Petitioner, Tr. 1, p. 24; Exhibit P7.6 .)
6. The assessments conducted as part of the Student's November 2, 2022, three-year re-evaluation included the following:
 - a. Non-Verbal Intelligence Assessment;
 - b. Academic Achievement Evaluation;
 - c. Speech/Language Evaluation, including a hearing screen; and
 - d. Occupational Therapy Evaluation.

(Testimony of A█████ R█████, Tr. 3, pp. 105; Exhibit P7.6.)

7. On November 2, 2022, the Student's IEP team at the School developed an IEP for the Student. The Student's November 2, 2022, IEP provides, in relevant part, as follows:

- a. The IEP team agreed that the Student continued to qualify for special education and related services under the disability classification of Autism.
- b. Present Levels of Academic Achievement and Functional performance (PLAAFP):
 - i. Student Strength: Student's strength is in the area of social behavioral.
 - ii. Student Weaknesses: Student has been diagnosed with Autism Spectrum Disorder and is non-verbal. The Student has significant deficits in all academic areas. Student is not toilet trained and wears diapers. Student does not eat solid food but drinks all his nutrients from a bottle.
 - iii. Outside assessments reviewed were a Psychoeducational Profile – Third Edition and an Autism Spectrum Disorder diagnosis.
 - iv. Fine Motor: An Occupational Therapy Evaluation was conducted on September 21, 2022. The Student demonstrates the ability to follow 1-step directions in 4 out of 5 opportunities. The Student does not demonstrate an interest in writing tasks and requires max assist to hold a writing utensil and for cutting tasks.
- c. Annual Goals: the Student's IEP contains Annual Goals in the following areas:
 - i. OT;
 - ii. Math Calculation;
 - iii. Speech and Language;
 - iv. Early Reading Skills;

- v. Functional Communication;
 - vi. Individualized Daily Support; and
 - vii. Social Skills.
- d. Special Education Services:
 - i. Math Calculation: 300 minutes per week in a special education class;
 - ii. Speech and Language Services: 160 minutes per month in a special education class;
 - iii. Early Reading Skills: 300 minutes per week in a special education class;
 - iv. Individualize Daily Support: 380 minutes per week in a special education class;
 - v. Functional Communication (Cough Drop App): 240 minutes per week in a special education class;
- e. Related Services:
 - i. Occupational Therapy: 120 minutes per month in a special education class;
 - ii. Social Work: 60 minutes per month in a special education class;
 - iii. The box for transportation as a related service was not checked.
- f. Accommodations:
 - i. Alternate location – Daily;
 - ii. Assistive Communication Devices – Daily;
 - iii. Breaks – Daily;
 - iv. Directions reread – Daily;

- v. Human reader – Daily;
 - vi. Minimize distractions – Daily;
 - vii. One-on-One Para-educator – Daily.
- g. The IEP team meeting on November 2, 2022, was attended by Petitioner (Parent), Special Education Teacher, Occupational Therapist, LEA Representative, Regular Education Teacher, Speech and Language Pathologist, and English Language Learner (ELL) Specialist.

(Testimony of A█████ R█████, Tr. 3, pp. 84-85; Exhibit R6.)

8. The Educational Meeting Summary from the Student’s November 2, 2022, IEP team meeting provides, in relevant part, as follows:
- a. The Team reviewed Procedural Safeguards;
 - b. The team reviewed testing and the Student’s Current Levels. Student met his goal of following one-step directions and he is still working on fine motor goals and needs hand over hand assistance.
 - c. The team agreed that Autism is the Student’s eligibility;
 - d. The team discussed the Student’s IEP and proposed the following services:
 - i. Occupational Therapy;
 - ii. Start using a communication device using the Cough Drop App.
 - iii. Math: match numbers to corresponding number, know shapes by name;
 - iv. Reading: first 7 letters of the alphabet and sounds, capital, and lowercase letters;
 - v. Functional Skills: going to recess with class and lineup when it is time;

- vi. Service Minutes: 1560 per week for services; and
- vii. Student qualifies for extended school year services.
- viii. Parent shared “it’s hard with him. He just needs lots of love. He doesn’t prefer any toys or candies. He is also trying to change his own clothes.” Student’s older sister is noticing a [positive] change.
- ix. School team proposed continuing autism eligibility and the team agreed.

(Testimony of A█████ R█████, Tr. 3, pp. 82-83; Exhibit R6. P. R050.)

- 9. On December 15, 2022, Respondent referred the Student for psychological testing from an outside Licensed Psychologist in order to gather more information on potential academic barriers. Adaptive, social/behavioral, and autism testing was requested by Respondent. The evaluator made repeated attempts to obtain a parent report from Petitioner on the BASC but it was not returned. The summary in this report states that the Student “appears to have significant difficulty with repetitive and idiosyncratic behavior, functional communication, and age-appropriate social interaction.” (Testimony of A█████ R█████, Tr. 3, p. 91; Exhibit R7.)
- 10. A typical school day for the Student began with the Student working at his desk on his goals usually in half hour increments with a para-educator. (Testimony of G█████ L█████, Tr. 1, p. 108.)
- 11. At the beginning of and during the 2023-2024 school year, School staff who worked with the Student received the following professional development trainings:
 - a. Mandt training at the beginning of the year with an assessment;
 - b. pottyng and diapering training;

- c. Leader and Me training;
- d. bi-weekly teaching instruction from special education director and special education teacher with testing and role-playing evaluations;
- e. the Special Education Director would observe teaching sessions and provide feedback and instruction to the para-educators;
- f. training on behaviors of students with disabilities and how to handle them by the Special Education Director at beginning of the year;
- g. training from a BCBA on functional behavior evaluations and analysis, understanding behaviors, antecedents and de-escalating aggressive behaviors;
- h. training on implementing behavior intervention plans.

(Testimony of G ■■■ L ■■■, Tr. 1, pp. 108-122.)

12. The Student's behaviors in the classroom were mainly "grabbing and scratching," and "most antecedents were unidentified." (Testimony of G ■■■ L ■■■, Tr. 1, p. 118.)
13. Para-educators were trained to use de-escalation techniques with the Student, to offer breaks and sensory items such as rubber bands, weighted blankets, weighted vest and a yoga ball. (Testimony of G ■■■ L ■■■, Tr. 1, p. 122.)
14. At the beginning of 2023, School staff began using what was referred to as a "calm down chair" for the Student when the Student had aggressive behaviors in the classroom such as grabbing hair, clothes and lanyards of staff and scratching staff and others. The calm down chair was often at the Student's own desk. The Student was asked to sit in the chair for several minutes to calm down. If the Student didn't want to stay in the chair staff would redirect him and ask him to sit down. The Student would occasionally hit his head on the wall 3 to 4 times

a week and staff were trained by the Special Education Director to put a soft object such as a hand or a blanket between the Student's head and the wall and try to redirect the Student. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 122-125, 128.)

15. If the Student was successful in grabbing staffs' hair staff were trained to ask for other staff to assist, speak in a calm voice, hold the Student's hands and give him sensory input such as gently squeezing his hand and staff would back away and tell the Student "no . . . we don't grab people." The Student had been pulling staffs' hair since the beginning of the school year. The Student pulled the para educator's hair almost daily and sometimes pulled her hair out. The para educator also witnessed the Student pulling the hair of other staff and students. School staff had received Mandt training at the beginning of the school year which included escalations and de-escalations and how to handle behaviors. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 125-127, 151-156.)
16. Depending on the energy level and the mood of the Student on a given day, the Student would be able to sit at his desk during academics between 5 and 20 minutes before needing a break. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 129-131.)
17. On the occasions when the para-educator witnessed OT working with the Student on fine motor activities at his desk, the Student would be threading beads on a string, using writing utensils or other activities. (Testimony of G■■■■ L■■■■, Tr. 1, p. 132.)
18. The Student's para-educator was trained to collect data on the Student's behaviors with an Antecedent Behavior Consequence (ABC) chart tracker provided to the School by Petitioner, and it was shared daily with the Special Education Director and Petitioner. The Student's aggressive behaviors began to worsen after the first month of 2023. (Testimony of G■■■■

L■■■■■, Tr. 1, pp. 133-135.)

19. School staff documented the Student's behaviors in a parent communication log because the Petitioner asked for detailed reports on the Student's behavior and the Student could not tell Petitioner about his day. (Testimony of D■■■■■ C■■■■■, Tr. 3, pp. 44-45.)
20. When the Student exhibited negative behaviors, School staff would implement various calming strategies such as a toy car that he likes, sitting on his bouncy ball, giving him his bottle, and holding a weighted blanket or a weighted vest. (Testimony of G■■■■■ L■■■■■, Tr. 1, pp. 135-136.)
21. In March 2023, the Student engaged in a number of significant behavior incidents. On March 6, 2023, the Student wrapped his arm around another student's neck from behind in a chokehold. The Student also pulled the para-educator's hair and caused hair to be pulled out and also scratched the para-educator. (Testimony of G■■■■■ L■■■■■, Tr. 1, p. 136.)
22. In the Fall of 2023, School staff were trained and instructed by the Special Education Director to place mittens on the Student's hands on one or two days "as a physical and visual representation of not using your hands for hurting people." (Testimony of G■■■■■ L■■■■■, Tr. 1, p. 137.)
23. The Student's para-educator worked with him from one to three hours per day on his goal areas of reading, math, communication, and writing. There were three main para-educators that worked with the Student in addition to other service providers and the School's Special Education Teacher. During the 2023-2024 school year there were approximately nine para-educators in the School, and currently there are 14. (Testimony of G■■■■■ L■■■■■, Tr. 1, p. 141.)

24. During the 2022-2023 and 2023-2024 school years the School had one Special Education Teacher, who was also acting as the Special Education Director. There were approximately 80 students with IEP's attending the school during the time in question. The classroom that the Student attended had three special education students, including the Student. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 142-143.)
25. The Special Education Director trained the Student's para-educator how to implement the IEP of each individual student she worked with, including the Student. The para-educator had access to the Student's IEP and goals in the classroom. (Testimony of G■■■■ L■■■■, Tr. 1, p. 143.)
26. The Student's para-educator began working at the school in the Fall of 2022. The para-educator is currently a freshman in college studying to become a special education teacher. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 144-145.)
27. The para-educators maintained a daily Service Log for services provided to the Student. The Service Log for the Student for the 2022-2023 school year does indicate that the special education service minutes set forth in the Student's IEP were provided to the Student. (Testimony of G■■■■ L■■■■, Tr. 1, p. 161-163; Exhibit R8.)
28. The Student's para-educators scheduled two bathroom/diaper changes for the Student in the morning and afternoon. On rare occasions the Student would pull staffs' hair in the bathroom or run to the gym on the way to the bathroom. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 145-146; Exhibit R9.)
29. On May 2, 2023, the Student tried to grab another student and then grabbed two para-educators' hair multiple times. The Student was placed in timeout for each of the separate

instances, and the total time in timeout was 10 to 15 minutes. The purpose of the time-out chair was to “create separation from others to allow time for [the Student] to calm down after an aggression.” (Testimony of G■■■■ L■■■■, Tr. 1, pp. 212-216; Exhibit P7.9.)

30. Starting in the summer of 2023, Petitioner hired a woman named A■■■■ B■■■■ to provide “supported living services” to the Student for approximately 18 to 24 hours per week in Petitioner’s home. Ms. B■■■■ testified that the Student “was never aggressive with me,” and she never saw any aggressive behaviors with the Student’s sister. Ms. B■■■■ stated that during the summer of 2023, she observed a scratch on Student’s abdominal area and one on his arm, and she also started observing the Student smearing fecal matter on the wall. Ms. B■■■■ stated that within three weeks to a month after the Student stopped attending the School he stopped smearing fecal matter on the wall. Ms. B■■■■ and Petitioner have worked together at the same company for the past nine months. (Testimony of A■■■■ B■■■■, Tr. 1, pp. 58-62, 86, 95-96, 97.)
31. School staff report that the Student frequently pulled the hair of school staff. On one occasion one of the Student’s para-educators went to help another para-educator whose hair had been grabbed by the Student. The Student tried to scratch the para-educator’s face. The para-educator took hold of the Student’s wrists from behind, crossed his arms across his chest and hugged him to give him pressure to calm him. The “bear hug” was not intended to restrain him. At the time of this incident the para-educator had not received training on restraint. (Testimony of C■■■■ C■■■■, Tr. 2, pp. 145-147.)
32. At the beginning of the 2023-2024 school year the Student’s para-educators received MANDT training and training on child abuse and reporting requirements. (Testimony of

Q ■■■■ C ■■■■, Tr. 2, pp. 144-145.)

33. On September 26, 2023, the Student received a scratch on his abdominal area while at school, which Petitioner was notified of by the para-educator when she picked up the Student after School. The para-educator told Petitioner that she was carrying the Student down the hallway to Specialties and at the door the Student slid down her in order to get down and as he slid from her arms he was scratched on his stomach by keys on the para-educator's lanyard. The Student was initially startled by the scratch and became aggressive towards the para-educator, but eventually calmed down. The scratch did not bleed. Petitioner was informed by the para-educator of the injury when she picked up the Student from school less than an hour after the injury occurred. After returning from vacation on approximately October 12, 2023, the para-educator whose keys had scratched the Student was told that Petitioner did not her to work with or have any contact with the Student. (Testimony of Petitioner, Tr. 1, p. 38; Testimony of ■■■■ S ■■■■, Tr. 2, pp. 102-113, 122-124, 129; Exhibit P7.7.)
34. The Student would often scratch himself intentionally or accidentally at school. (Testimony of L ■■■■ S ■■■■, Tr. 2, p. 130.)
35. The Student came to school one or two days in October 2023, with a scratch on his body. (Testimony of G ■■■■ L ■■■■, Tr. 1, pp. 148-149.)
36. In October and November 2023, there were days when the Special Education Director/Teacher would be in the Student's room and other days when she would be down the hall in her office. Usually there were three staff members and three students, including the Student, in the Student's classroom. (Testimony of G ■■■■ L ■■■■, Tr. 1, pp. 218-219.)
37. On October 5, 2023, the Student became escalated and pulled the hair of his para-educator.

Several school staff members were required to unwind the para-educator's hair from the Student's hand. School staff responded to this incident by redirecting the Student using the time-out chair. The Student was instructed to sit in this chair, which was located in the back of the classroom, until the Student calmed down. The time-out chair was a normal classroom chair. The Student sat in this chair for several minutes. (Testimony of G [REDACTED] L [REDACTED], Tr. 1 pp. 122-125; Exhibit P7.2.)

38. On October 5, 2023, Petitioner exchanged a series of texts with school staff regarding the Student's hair pulling incident on October 5. Petitioner admitted that the Student pulls hair, and even pulls his sister's hair when angry or forced to do things. Petitioner also stated that the Student pulled her hair, but she then pulled his hair to show him what it felt like. (Exhibit P7.2.)
39. On October 9, 2023, School staff and Petitioner met to discuss the Student's October 5th behavior incidents. Petitioner asked to review camera footage of the Student's behavior incidents on September 26 and October 5. The School Director informed Petitioner that the School's cameras only hold information for 5 to 10 days, and the footage from September 26 was taped over. The footage from October 5th was viewed but due to the camera angle the footage did not show what happened when the Student was directed to the timeout chair. Petitioner was very upset and wanted to know what happened to trigger the Student grabbing staffs' hair. School staff stated that the first incident happened after the classroom door slammed shut, but there doesn't seem to be an obvious antecedent to what is triggering him. Petitioner stated that the Student can get sensory overload, even with his sister's voice. (Testimony of G [REDACTED] L [REDACTED], Tr. 1, p. 171-174; Testimony of Petitioner, Tr. 3, p. 204;

Exhibit R10.)

40. On October 17, 2023, School staff met with Petitioner. Respondent presented to Petitioner a Prior Written Notice and Consent for Evaluation to obtain Petitioner's consent to conduct a FBA, Sensory Assessment and a Communication Assessment. Petitioner refused to sign the consent at that meeting. (Testimony of D■■■■ C■■■■, Tr. 2, p. 58; Exhibit P7.3.)
41. On October 27, 2023, Petitioner sent an email to School staff stating that she and the Student's social worker agreed that she should sign the consent for the evaluation. The Special Education Director emailed the Consent to Petitioner, which included the printed date it was originally presented to Petitioner on October 17, 2023. (Testimony of D■■■■ C■■■■, Tr. 2, p. 58; Exhibit P7.3.)
42. On October 27, 2023, Petitioner signed and returned to Respondent the consent for an evaluation of the Student to include a FBA, a Sensory Assessment and Communication assessment. The Special Education Director hand-wrote on the Consent that it was actually signed by Petitioner on October 27, 2023. (Testimony of D■■■■ C■■■■, Tr. 2, pp. 59-71; Exhibit R12.)
43. On November 1, 2023, an IEP team meeting was held, including Petitioner. The team discussed the Student's behaviors and the Student's need for more sensory input, including a discussion of a sensory diet. A report on the Student's Social Behavioral Skills goal included a discussion of four behavior observations that took place between September 14 and October 16, 2024. The report states that the Student was pulling hair and becoming upset more frequently. The conclusion from these observations was that the Student's "behaviors and lack of connection affects his ability to learn and socialize in the general education

classroom and to be around his peers. It also affects his ability to connect with staff who care for him when they are having to keep more of a distance for their safety.” This was the first day that a sensory diet for the Student was included in his IEP. (Testimony of G■■■■ L■■■■, Tr. 1, p. 176-177; Testimony of D■■■■ C■■■■, Tr. 2, pp. 95-97; Exhibit R13; Exhibit R14.)

44. The Student’s November 1, 2023, IEP includes the following special education and related services and provisions:

- a. Functional communication – 200 weekly minutes;
- b. Individualized supports - 500 weekly minutes
- c. Math – 150 weekly minutes;
- d. Behavior modification services – 80 monthly minutes;
- e. Occupational Therapy – 120 monthly minutes;
- f. Sensory Diet Accommodations – all day.

(Testimony of D■■■■ C■■■■, Tr. 2, pp. 12-15.)

45. The Student was provided with a one-to-one aide for his entire day at school. (Testimony of D■■■■ C■■■■, Tr. 2, p. 15; Exhibit R8.)

46. The Student’s service minutes in his IEP were provided at different times throughout the day by the Special Education Director/Teacher and para-educators, as set forth in the Student Service Log for the Student. (Testimony of D■■■■ C■■■■, Tr. 2, p. 15; Exhibit R8.)

47. The Student’s 80 Behavior modification minutes per month were provided by the Social Worker that saw the Student for 20 minutes a week. (Testimony of D■■■■ C■■■■, Tr. 2, p. 18.)

48. The Student’s Annual Goal 3A in the November 1, 2023, IEP was developed based on four

observations by the Social Worker in September and October 2023. (Testimony of D [REDACTED] C [REDACTED], Tr. 2, pp. 20-21; Exhibit R13.)

49. School records do not contain Progress Reports with respect to the Student's Annual Goals set forth in the Student's November 1, 2023, IEP because the Student was removed from the School 10 days after the IEP was developed. (Testimony of D [REDACTED] C [REDACTED], Tr. 2, pp. 23-24.)
50. The Student's November 1, 2023, IEP requires 500 minutes per week of Individualized Support. There were no lesson plans prepared for this service time. The Student was given one-to-one individualized daily support from his para-educators for toileting, lunch, recess, PE, art, music and working on behaviors. (Testimony of D [REDACTED] C [REDACTED] Tr. 2, pp. 25-26.)
51. The checkbox on the IEP regarding the School providing transportation was checked. The Special Education Director stated it was checked by her by mistake. "The school did not provide transportation to [the Student], as his mother brought him to school every day. She didn't even want him going on a bus to go (sic) like field trips." Petitioner admits she was unaware of Transportation being checked on the IEP, and does not know why that checkmark is there. The Student did not receive transportation from November 1, 2023, to November 20, 2023. (Testimony of D [REDACTED] C [REDACTED] Tr. 2, pp. 26-27; Testimony of Petitioner, Tr., 3, p. 233.)
52. The Student attended classes with his peers in the general education classrooms for Read Aloud, talent shows, show and tell, Art and Music. The Student generally would not interact with students in these classes but he did run around and play and occasionally would grab other students. (Testimony of G [REDACTED] L [REDACTED], Tr. 1, p. 177-178; Exhibit R13.)
53. The Student's IEP requires daily use of sign language. The Special Education

Director/Teacher has a bachelor's degree in sign language and she "worked with the children in that special education room and taught the paras the words for the week and how to help them to respond to us and ask us things instead of pointing, grunting, or yelling." (Testimony of D■■■■ C■■■, Tr. 2, p. 29.)

54. The Special Education Director/Teacher did consider the Student's increasing hair pulling behavior a significant impediment to his learning and to other student's learning. The behavior incidents were usually a very short amount of time and then they would move on with the Student to the next activity. (Testimony of D■■■■ C■■■, Tr. 2, p. 31; Tr. 3, p. 22.)
55. At the November 1, 2023, IEP team meeting, the team discussed conducting an FBA and BIP for the Student. The Petitioner and her advocate proposed to continue with collecting behavior data with the ABC Chart and implementing the sensory diet for the Student for the next 3 to 6 months. Petitioner stated that she did not want to have a BIP developed and implemented at that point in time, and the IEP team agreed to her proposal. This was evidenced by the fact that the word "no" and Petitioner's signature was written on the consent next to the checkbox for "Communication," and also the word "no" was written next to the checkbox for "Functional Behavior Assessment" and Petitioner signed her name below it and wrote the date "Nov 1, 2023." The Sensory Assessment was not refused by Petitioner on the Consent. (Testimony of D■■■■ C■■■, Tr. 2, pp. 65-71; Exhibit R12.)
56. At the November 1, 2023, IEP team meeting, the IEP team developed a sensory diet for the Student as part of the Student's IEP. Petitioner signed a Sensory Equipment/Accommodation Parental Consent Form. Petitioner also signed a document which identified certain protocols School staff would follow to support the Student's "specific emotional, academic, and

behavioral needs.” This document was also signed by Petitioner. This document did not include use of a calming chair or timeout chair or mittens. The Student’s para-educator stated that all of the sensory items and behavior protocols were used with the Student in the classroom. The School did not document the implementation of the sensory diet with the Student, but it was provided to Student every day. (Testimony of G■■■■ L■■■■, Tr. 1, pp. 182-186; Exhibit R14; Testimony of D■■■■ C■■■■, Tr. 2, p. 29.)

57. The School did not prepare progress reports on the Student’s goals set forth in the November 1, 2023, IEP because the Student did not attend School after the Thanksgiving break in November. (Testimony of D■■■■ C■■■■, Tr. 2, p. 79.)
58. The Student’s Written Expression Goal 8A regarding the Student’s ability to write his name by the end of the IEP year, and the Student’s Goal 7A regarding increasing the Student’s attention from 1 to 2 minutes up to 4 to 5 minutes by the end of the IEP year, are appropriate for the Student’s level of functioning. (Testimony of D■■■■ C■■■■, Tr. 2, pp. 81-82.)
59. The School conducted hearing and vision assessments of the Student and could not get a reading on the Student. (Testimony of D■■■■ C■■■■ Tr. 2, p. 93.)
60. The checkbox on the Student’s November 1, 2023, IEP regarding whether a BIP is required was marked “no.” Petitioner and her advocate at the IEP team meeting did not want to do a BIP at that time. The team agreed to wait 3 to 6 months and see how the student’s behavior was before moving forward with the FBA and BIP. (Testimony of D■■■■ C■■■■, Tr. 3, pp. 26, 28; Exhibit R13.)
61. The Student’s November 1, 2023, IEP does not include use of a time-out chair or mittens with the Student as approved behavior supports. At the request of Petitioner, School staff

stopped using a separate time-out chair for the Student on October 16, 2023, and stopped using the mittens on November 17, 2023. (Testimony of D■■■■ C■■■■ Tr. 3, pp. 55-56; Exhibit R13.)

62. If the Student's behavior prevented him from participating with his peers in art or music class School staff would take the Student back to his classroom and work on art or music with him during those service minutes. (Testimony of D■■■■ C■■■■, Tr. 3, pp. 37-38.)
63. School staff dealt with the Student's hair pulling and scratching behavior by working across a desk from the Student rather than sitting next to him. The para-educators and service providers all wanted to work with the Student despite his behaviors. (Testimony of D■■■■ C■■■■, Tr. 3, pp. 39-41.)
64. The Student stopped attending the School on November 16, 2023. (Testimony of A■■■■ R■■■■, Tr. 3, p. 75, 95; Exhibit R1.)
65. Prior to November 16, 2023, Petitioner did not provide any notice to Respondent of her intent to withdraw the Student from the School and place him at another school or facility. (Testimony of A■■■■ R■■■■, Tr. 3, pp. 95- 96.)
66. On November 21, 2023, Petitioner filled out and submitted a School Complaint Form to Respondent which stated it related to an event that occurred on October 5, 2023. The complaint alleged that the Special Education Director discriminated against and harassed the Student, specifically referencing violations of "Section 504" and "Title II." Among other things, Petitioner requested "an investigation into whether [the Student] was placed in a small room . . ." Petitioner also stated that "I am keeping him home for his safety, due to him being restrained, confined, and isolated." The Complaint states that "if the school takes more than

ten days to resolve this matter they have to provide a FAPE in another place. I request that FAPE take place in my home.” (Testimony of A█████ R█████, Tr. 3, p. 96; Exhibit R22.)

67. On December 4, 2023, Respondent’s Administration met with Petitioner and provided a letter responding to Petitioner’s November 21, 2023 Complaint. In the letter Respondent denied discrimination, harassment or that the Student was placed in a small room, but acknowledged that the Student’s “current placement appears to not be the Least Restrictive Environment for [the Student] which is denying him FAPE.” It was further stated that the IEP team needed to immediately meet and discuss FAPE and LRE for the Student and also immediately move forward with an FBA. Petitioner asked the School Director why there was not a special education teacher in the Student’s classroom and the Director replied that the School did not have the funds for it. The School had budgeted for a Special Education Director and para-educators who worked under the direction of the Special Education Director. The Special Education Director was not in the classroom full-time, but the para-educators documented the provision of special education services to the Student in their Student Service Logs and through progress monitoring. The Director did not believe it was necessary to have a full-time licensed special education teacher in the classroom in order for the Student to receive FAPE and that the para-educators in the classroom did provide FAPE to the Student. (Testimony of A█████ R█████, Tr. 3, pp. 75, 173-183, 201-202; Exhibit R22.)
68. On December 6, 2023, Petitioner signed a Prior Written Notice and Consent for Evaluation to conduct an FBA for the Student. (Testimony of Petitioner, Tr. 3, p. 231.)
69. Respondent hired a private company, RBS, to conduct an “Independent Functional Behavior Assessment (FBA) for [the Student]” in response to the Student “engaging in aggressive

behavior (e.g., hair pulling, choking, etc.) while at school.” RBS immediately initiated the assessments needed for the FBA, which included 2 one-hour behavior observations of the Student at the School by a BCBA from RBS. (Testimony of A [REDACTED] R [REDACTED], Tr. 3, pp. 102-103.)

70. On December 8, 2023, the Student’s para-educator completed the Teacher Rating Scales for the Behavior Assessment System for Children, Third Edition (BASC3), and the Comprehensive Teacher Form for the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3). On December 9, 2023, Petitioner completed the Parent Rating Scales for the BASC-3 and the Vineland-3. (Testimony of G [REDACTED] L [REDACTED], Tr. 1, pp. 186-188; Testimony of A [REDACTED] a R [REDACTED], Tr. 3, p. 106Exhibit R28 and R30.)
71. On December 15, 2023, Petitioner sent a written request for an Independent Educational Evaluation (IEE) to Respondent’s Special Education Director. The letter states that Petitioner does “not agree with the school’s evaluation,” but does not identify the specific evaluation she disagreed with. Petitioner requested that the Student be evaluated in 17 separate areas with a number of sub-tests in each area. (Testimony of A [REDACTED] Ra [REDACTED], Tr. 3, pp. 103-105; Exhibit R22.)
72. The Student’s FBA was completed by RBS prior to January 12, 2024. (Testimony of M [REDACTED] S [REDACTED], Tr. 2, pp. 158-158; Exhibit R25)
73. On January 11, 2024, Respondent provided Petitioner with Prior Written Notice of Refusal to Take an Action in response to Petitioner’s request for an IEE. Respondent agreed to fund an IEE for a Non-Verbal Intelligence Assessment, Academic Achievement Evaluation, Speech/Language Evaluation, and an OT Evaluation because these were the evaluations

previously conducted by Respondent on November 2, 2022. Respondent refused an IEE for Auditory Discrimination, Auditory Synthesis, Auditory Immediate Memory, Visual Discrimination, Visual Immediate Memory, Tactile-Kinesthetic Discrimination, Modality Integration, Visual Activity, and Music Therapy. The reason given for refusing these evaluations was that they were not previously conducted by Respondent and that a BASC-3 and Vineland-3 had just been completed a week before Petitioner's IEE request. (Testimony of A[REDACTED] R[REDACTED], Tr. 3, pp. 105-107; Exhibits R15, R16.)

74. On January 16, 2024, Respondent sent a letter to Petitioner indicating that the observations and documentation for the FBA and BIP were completed and an IEP team meeting was scheduled for January 19, 2024. (Testimony of A[REDACTED] R[REDACTED], Tr. 3, pp. 118; Exhibit R25.)
75. On January 16, 2024, the School Director received a phone call from the local police department regarding a complaint that the Student had been hurt at school on his belly. The Director explained to the officer how the Student had been injured by the keys of one of the School's para-educators. The officer indicated that the situation didn't warrant a criminal case and gave her a case number. The Director never heard anything further from the police department. Petitioner admitted that she called the police regarding the incident and the police eventually told Petitioner they were closing the case. (Testimony of A[REDACTED] R[REDACTED], Tr. 3, pp. 122-123, 125; Testimony of Petitioner, Tr. 3, p.207.)
76. On January 22, 2024, the Director received a telephone call from a person at the Division of Child and Family Services (DCFS) regarding incidents with the Student that reportedly happened at school that she wanted to talk about. The School Director and the Special

Education Director spoke with the DCFS investigator and answered her questions. On February 15, 2024, the School Director received an email from the DCFS investigator stating that she had closed out her investigation. Petitioner admitted that she made the report to Child Protective Services (CPS) and that CPS opened the case with the Office of Civil Rights (OCR). Petitioner admits she did speak with OCR staff. The School Director never heard from OCR. (Testimony of A█████ R█████ Tr. 3, pp. 124-127; Testimony of Petitioner, Tr. 3, p. 207; Exhibit R26, P7.1.)

77. On February 7, 2024, the Special Education Director sent an email to Petitioner regarding many canceled IEP team meetings and the need to meet to finalize the FBA and BIP. The email also states that the Student “has the right to attend school and be educated” but Petitioner had refused all of the offered Zoom lessons, speech, occupational therapy, Essential Elements, and lessons to fulfill the Student’s service minutes. (Testimony of A█████ R█████, Tr. 3, pp. 143-144; Exhibit R36.)
78. On February 8, 2024, the Student’s para-educator and Special Education Teacher wrote an email to Petitioner stating that since the Student was not returning to school the School wanted to work with him using virtual learning. A schedule of virtual learning classes was provided along with login information. They also stated that they “would love to continue working with [the Student] as he was making good progress on his goals.” The Student did not attend the virtual learning sessions. (Testimony of G█████ L█████, Tr. 1, p. 161-163; Exhibit R37.)
79. Petitioner testified that the Student was having very difficult behaviors at home and had lots of needs. At home the Student pulled Petitioner’s and her daughter’s hair and attacked them,

was touching his feces, and had run away. Petitioner stated she doesn't blame School staff, but believes "they need to be a little more prepared probably for [the Student's] kind of disability." (Testimony of Petitioner, Tr. 3, p. 209-210.)

80. On February 21, 2024, the Student was privately evaluated at KOTM at Petitioner's request for "ABA therapy to address aggression, SIB [self-injurious behavior], and feces smearing and to address skill deficits in the following areas: communication, daily living skills, social and play skills, and frustration tolerance." (Testimony of A█████ R█████, Tr. 3, pp. 161; Exhibit R41.)
81. On February 26, 2024, KOTM prepared an Individualized Treatment Plan for the Student to address, among other things, hair pulling and feces smearing. The Report states that the Petitioner reported that the Student began "feces smearing two months ago." On August 23, 2024, a similar Individualized Treatment Plan was prepared by KOTM for the Student, which also addressed hair pulling and feces smearing. The August 2024, plan included treatments for reducing hair pulling and feces smearing by March 2025. (Testimony of A█████ R█████, Tr. 3, pp. 161-165, 168; Exhibit P7.11.3; Exhibit P7.11.4.)
82. Petitioner reports that since attending KOTM the Student has reduced the amount of hair pulling. (Testimony of Petitioner, Tr. 3, p.209.)
83. KOTM is not a traditional school that is required to comply with IDEA or implement the Student's IEP. (Testimony of A█████ R█████, Tr. 3, pp. 161-168; Exhibit P7.11.3; Exhibit P7.11.4.)
84. On February 27, 2024, the Student's IEP team met to review the FBA and a BIP for the Student. The February 27, 2024, FBA and BIP were signed by Petitioner, the BCBA and

Behavior Consultant from RBS, a state facilitator, and 10 School administration and staff members. (Testimony of A [REDACTED] R [REDACTED] Tr. 3, p134; Exhibit R32.)

85. The February 27, 2024, Educational Meeting Summary notes state that Petitioner felt good about the BIP, and also stated that an IEP team meeting would be scheduled to review data on the 19th and 26th of March 2024. (Testimony of A [REDACTED] R [REDACTED], Tr. 3, pp. 138-139; Exhibit R33.)
86. The Student's February 27, 2024, BIP was never implemented by Respondent because the Student did not attend the School in person thereafter. In January 2024, Respondent sent out five emails and a telephone call to Petitioner regarding re-enrollment for the Student for the 2025-2026 school year. Petitioner has not re-enrolled the Student in the School. (Testimony of A [REDACTED] R [REDACTED], Tr. 3, p. 140-142; Exhibit R34.)
87. On March 8, 2024, a second email was sent by the Student's para-educator and special education teacher to Petitioner offering virtual learning until the Student was allowed to attend in-person. The subjects offered for virtual learning were Early Reading Skills, Functional Communication, Math Calculation, Writing, Speech and Language, Functional Communication Skills, and Occupational Therapy. (Testimony of G [REDACTED] L [REDACTED], Tr. 1, p. 165; Exhibit R37.)
88. On March 26, 2024, the Student's IEP team, including Petitioner, met to review and revise the Student's IEP. At the time of this meeting the School was still receiving daily attendance excusals for the Student and had not been informed that the Student had been withdrawn from the School. The data upon which the proposed goals were based was received by School staff while the Student was still attending school prior to November 16, 2023. (Testimony

of A█████ R█████, Tr. 3, pp. 149-154; Exhibit R41.)

89. At the March 26, 2024, IEP team meeting the team discussed developing goals to help the Student come back to school based on the FBA and BIP. The team also discussed training by RBS for the para-educators to work with the Student. The Petitioner requested a bigger classroom with windows and for a certain student the Student had problems with to not be in the classroom. Respondent did not agree to Petitioner's requests. The Director stated that there were no other classrooms with windows to use and that the Student would not learn to get along with the other student unless he was around him. (Testimony of A█████ R█████, Tr. 3, pp. 172-173; Exhibit R41.)
90. During the 2022-2023 school year, the Student was absent 35 times and tardy 23 times. (Testimony of A█████ R█████, Tr. 3, p. 74; Exhibit R1.)
91. Respondent provided Goal Progress Reports for the Student for the period of time the Student attended the School during the relevant 2022-2023 and 2023-2024 school years, as follows:

STUDENT'S PROGRESS REPORTS

Year/Quarter /Goal	#1 OT	#2 Math Calculation	#3 Speech Language	#4 Early Reading Skills	#5 Functional Communication	#6 Individualized Daily Support	#7 Social Skills
2022/23-Q2							
A	Emerging <40%	Emerging <40%	Good Prog 60-79%	Emerging <40%	Emerging <40%	Emerging <40%	Good Prog 60-79%
B	Emerging <40%	Emerging <40%	Good Prog 60-79%	Emerging <40%	Emerging <40%		
C	Emerging <40%		Progress 40-59%		Good Prog 60-79%		
Q3							
A	Emerging <40%	Emerging <40%	Mastered	Emerging <40%	Emerging <40%	Emerging <40%	Good Prog 60-79%
B	Progress 40-59%	Progress 40-59%	Good Prog 60-79%	Emerging <40%	Progress 40-59%		
C	Progress 40-59%		Progress 40-59%		Progress 40-59%		
Q4							
A	Emerging <40%		Mastered	Emerging <40%	Emerging <40%	Good Prog 60-79%	Good Prog 60-79%
B	Good Prog 60-79%	Progress 40-59%	Progress 40-59%	Emerging <40%	Progress 40-59%		
C	Progress 40-59%		Progress 40-59%		Progress 40-59%		
2023/24 Q1							
A	Progress 40-59%	Emerging <40%		Progress 40-59%	Emerging <40%	Emerging <40%	Good Prog 60-79%
B	Mastered >80%	Good Prog 60-79%		Emerging <40%	Emerging <40%		
C	Good Prog 60-79%		Emerging <40%		Progress 40-59%		

(Testimony of A█████ R█████, Tr. 3, p. 88-89; Exhibit R6. P. R053-061.)

92. During the 2023-2024 school year, the Student was absent 137 times and tardy 4 times.

(Testimony of A█████ R█████, Tr. 3, p. 75; Exhibit R1.)

93. The School hired a special education teacher in August 2024. Before being hired as a special education teacher she was assigned to work with the Student as a para-educator during the 2023-2024 school year. (Testimony of L█████ S█████, Tr. 2, p. 118.)

DISCUSSION

I.

JURISDICTION: STATUTE OF LIMITATIONS

A threshold issue in due process hearings involves the application of the IDEA's two-year statute of limitations to the issues set forth in Petitioner's Complaint, which was filed on January 21, 2025. The IDEA, its implementing regulations, and the USBE SpEd Rules provide, generally, that a parent must request a due process hearing within two years of the date the parent knew or should have known about the alleged action that forms the basis of the due process complaint. 20 USC § 1415; 34 CFR § 300.507(a)(2) and 300.511(e); and USBE SER IV.I.4 and IV.M.6. The limitations period was included as part of the 2004 IDEA amendments, and became effective as of July 1, 2005. In this matter the facts set forth above clearly show that Petitioner was aware of the alleged actions of Respondent that form the basis of Petitioner's due process complaint at the time of said actions. Therefore, it is concluded that the jurisdictional period of this due process hearing began on January 21, 2023.

II.

GENERAL LEGAL STANDARDS

Students with disabilities who are protected by the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC §1400(d); 34 CFR § 300.1(a). The IDEA further provides that a party may present a complaint and request for due process hearing with respect to any matter relating to the identification, evaluation, educational placement, or provision of a FAPE to a disabled student. 20 USC §1415(b)(6). “Whenever a hearing is requested, the parent(s) or student who is an adult or the LEA involved in the dispute must have an opportunity for an impartial due process hearing. The hearing officer must conduct the hearing and file a decision within 45 days following the resolution meeting, or the termination of mediation conducted in lieu of resolution. A hearing officer may extend the timeline for filing a decision in a due process hearing at the request of either party. A decision made in a due process hearing conducted pursuant to these SpEd Rules is final, unless a party to the hearing appeals the decision to a civil action under 34 CFR § 300.516 and these SpEd Rules IV.Q. A civil action may be filed in either State or Federal court; if appealed to State court, the appeal must be filed within 30 days of the date of the due process hearing decision. A Federal court may apply a similar time limit (UCA 53E-7-208(4)(a)). SpEd Rules IV.Q(2).

A child has received an educational benefit under IDEA if the evidence clearly shows that the child made progress on the educational goals that were individually formulated through the IEP process. *Thompson*, 540 F.3d at 1145. The legal standard for determining whether the child has made progress has been the subject of a good deal of litigation in the courts.

The U.S. Supreme Court has provided additional guidance and clarification with respect to

the IDEA's FAPE standard. In *Endrew F. v. Douglas Cnty. Sch. Dist. RE-I*, 580 U.S., 137 S. Ct. 988, 999 (2017), the Court held as follows: "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court further held as follows:

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act 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.*, at 1000. Deference is given to the expertise and exercise of judgment by the school authorities, with parents and school representatives to be given the opportunity to fully air their opinions regarding how an IEP should progress. *Id.*, at 1001. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 999 (*internal citations omitted*). Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as Rowley put it, be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Rowley*, at 203-204. "If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom." *Endrew*, 137 S. Ct. at 1001.

The courts have consistently held that IEPs are not evaluated retrospectively. "We do not judge an [IEP] in hindsight; rather, we look to the [IEP's] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [Student] with a meaningful benefit." *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010). Whether an IEP is appropriate is determined by the facts and circumstances known

to the IEP team at the time it was developed. While it is possible that some time following the development of the IEP different or additional goals, services, or accommodations may appear to be needed for a student. Unless the need was known or apparent at the time the IEP was developed, the IEP cannot be concluded to have been inappropriate when developed. In hindsight, it is always possible to conclude that the IEP Team could have written better goals or identified additional accommodations for Student. However, the standard for determining if a student has received FAPE is whether the IEP was reasonably calculated to provide educational benefit to the student. *Board of Educ. Of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). Whether an IEP is reasonably calculated to provide educational benefit is determined prospectively. *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993), petition for reh'g denied, (3d Cir. 1993); and *Adams v. State of Oregon*, 31 IDELR 130 (9th Cir. 1999). It should be noted that an IEP team may meet and revise an IEP at any time to include new goals and benchmarks, related services, and/or accommodations, if appropriate for the student.

Although LEAs should strive to follow IEPs as closely as possible, the IDEA does not require perfect adherence to a child's IEP. Minor discrepancies between the services provided and the services called for by the IDEA are not enough to amount to a denial of FAPE. *L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *Van Dun ex. rel. Van Dun v. Baker Sch. Dist. 5J*, 502 F. 3d 811, 821 (9th Cir. 2007); *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs.*, 117 LRP 27963 (8th Cir. 07/14/17); *T.M. v. District of Columbia*, 64 IDELR 197

(D.D.C. 2014); *Placentia-Yorba Linda Unified Sch. Dist. v. K.F.*, 125 LRP 12007 (C.D. Cal. 2025) (Districts are not liable for every shortfall in IEP services. To obtain relief under the IDEA, a parent must show that the implementation failure was "material.").

III.

PETITIONERS' ISSUES

The following issues raised by Petitioner in Petitioner's Complaint were set forth in the Pre-Hearing Order, and were presented by Petitioner to the Hearing Officer at the hearing for decision in this matter.

1. Whether Respondent failed to implement the Student's IEP by:
 - a) failing to provide all accommodations set forth in the Student's IEP;
 - b) failing to fully implement the Student's IEP service minutes;
 - c) failing to provide a Special Education Teacher in the Student's classroom to provide the Student's services;
 - d) school staff using behavior techniques with the Student that were not provided for in the Student's IEP; and
 - e) failing to have appropriately trained special education staff implement the Student's IEP.
2. Whether Respondent failed to conduct a re-evaluation of the Student in 2024 for OT and Speech at the request of Petitioner.
3. Whether Respondent failed to provide instruction to the Student in the Least Restrictive Environment by failing to provide homebound instruction to the Student.

Issue 1(a)

Petitioner has alleged in her Complaint that Respondent failed to implement the accommodations set forth in the Student's November 2, 2022, and the November 1, 2023, IEPs. A review of the facts set forth above does not support this allegation by Petitioner.

The first IEP of Student that was developed by Respondent, and was implemented during the jurisdictional period related to this due process hearing, was the November 2, 2022, IEP. Beginning in September 2022, Respondent began conducting various evaluations of Student as a part of Student's three-year reevaluation. On November 2, 2022, Student was determined to be eligible to receive special education services as a student with Autism, and an IEP was developed for Student. The testimony of Student's Special Education Teacher and para-educators consistently states that Student's teacher and para-educators were informed of Student's IEP goals, services, and accommodations and the para-educators were trained on Student's IEP and accommodations. The accommodations set forth in the Student's November 2, 2022 IEP are: alternate location, assistive communication devices, breaks, directions reread, human reader, minimize distractions, and one-on-one para-educator. The para-educators testified and provided the Student's Service Logs and Daily Behavior logs to show they materially implemented the Student's accommodations on a daily basis. The one accommodation where a failure to implement occasionally occurred was with minimizing distractions, especially with loud noises, but it is concluded that this occasional failure to implement did not result in a material failure to implement Student's accommodations.

After the beginning of the 2023-2024 school year, the Student's behaviors were noted by both School staff and Petitioner to be increasing. The parties had many discussions regarding the causes for this increase in behaviors. In early October 2023, Respondent requested consent from

Petitioner to conduct an FBA, and the parties also discussed developing a sensory diet for the Student. Respondent proposed new behavior goals and a sensory diet accommodation in the Student's IEP developed on November 1, 2023, but Petitioner had not provided consent for the FBA. The sensory diet accommodations were only in place for 10 days following the development of the IEP before Petitioner removed Student from attending the School on November 16, 2023. Petitioner eventually provided consent for an FBA on December 6, 2023, and the FBA and a BIP were completed on February 27, 2024. In view of the fact that Petitioner had previously removed the Student from attending the School, the BIP was never implemented.

As discussed above, LEAs should strive to follow IEPs as closely as possible, but the IDEA does not require perfect adherence to a child's IEP. Minor discrepancies between the services provided and the services called for by the IDEA do not give rise to an IDEA violation. While no conclusion is being made that Respondent perfectly implemented Student's accommodations, it is concluded that the evidence does not establish a significant or material failure by Respondent to implement Student's accommodations. Therefore, it is concluded that LEA appropriately implemented Student's accommodations as set forth in Student's IEP. Petitioner did not elicit any testimony or present any documentation that the Student's accommodations were not materially provided to the Student. Petitioner did not meet her burden of proof on this issue.

Issue 1(b)

The IDEA Federal and state regulations define FAPE, in part, as special education and related services provided in conformity with an Individualized Education Program (IEP). 34 C.F.R. § 300.17. Federal regulations also require states to ensure that a free appropriate public

education (FAPE) is made available to all children with disabilities residing within the state. 34 C.F.R. § 300.101 Accordingly, Utah requires that as soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. SpEd Rules III.B.2(b).

Petitioner has alleged that Respondent did not provide all of the service minutes set forth in the Student's IEP's to the Student. The above facts show that the para-educators maintained a daily Service Log for services provided to the Student. The Service Log for the Student for the 2022-2023 school year does indicate that the special education service minutes set forth in the Student's IEP were substantially provided to the Student. However, Petitioner has expressed her concern regarding the implementation of the largest number of service minutes identified in the Student's IEP for Individualized Supports (500 minutes per week). Petitioner asked how these service minutes were provided to the Student. The Special Education Director explained that these minutes were one-to-one individualized daily support from her and the Student's para-educators for activities such as toileting, lunch, recess, PE, art, music and working on behaviors, and that all of these service minutes were provided throughout the Student's day. Petitioner did not elicit any testimony from any witness or present any exhibits that indicated that the service minutes in the Student's IEP were not substantially provided to the Student. Petitioner did not meet her burden of proof on this issue.

Issue 1(c)

Petitioner has alleged that Respondent has failed to provide a special education teacher in the Student's classroom to provide the special education services set forth in the Student's IEP. The testimony of Deanna Curtis, the School's Special Education Director, who also is the Special

Education Teacher, stated that she is not in the Student's classroom teaching the Student full-time, but also spends time doing paperwork and other assignments as the Special Education Director. Respondent's teaching model is to have para-educators full-time in the classroom who have been trained, and are directly supervised, by her to provide instruction to, and implement the accommodations for, the Student. The testimony from the para-educator witnesses, the School Director and the Special Education Director/Teacher all consistently testified that Ms. Curtis did provide instruction to the Student and did train the para-educators on what to teach and how to work with the Student.

The question is whether Respondent's teaching model appropriately implemented the Student's IEP and provided a FAPE to the Student. It must be noted that one troubling aspect of the Respondent's special education teaching model is that during the time the Student attended the School there was only one special education teacher and 80 special education students with IEP's at the School. This fact clearly indicates that the Special Education Teacher would simply not have had much time to spend with each special education student, including the Student. Petitioner did not elicit any testimony regarding the special education population at the school except for the three to four students in the Student's severe classroom. The testimony that was received was that the Special Education Teacher was in the classroom part-time with the Student and did train and instruct the one-on-one para-educators to provide appropriate instruction to the Student.

Petitioner asked the Special Education Director if the para-educators were qualified and trained to provide the specialized instruction set forth in the student's IEP. The Special Education Director testified that they were qualified and trained to work with the Student. The Student is severely autistic, is non-verbal and lives in his own world and generally has no interest in what is

going on around him, as described in the Student's IEP. All of the Student's academic Annual Goals are basically teaching pre-kindergarten skills like learning numbers from 1-10 and the first 7 letters, tracing shapes, learning colors, using scissors, writing his name and using his communication App. The Special Education Director testified that the para-educators were trained by her and qualified to provide appropriate instruction on the Student's goals. The para-educators also testified that they were qualified and trained by the Special Education Director to provide instruction to the Student. It should also be noted that the Student's Progress Reports as described in the chart above also indicate that the Student was generally making progress on his annual goals. This is an indication that the Student was receiving a FAPE. Petitioner did not elicit any expert testimony or provide documentation that Respondent's teaching model did not provide a FAPE to the Student. It is doubtful that Respondent's teaching model would provide a FAPE to all special education students, specifically those who are being taught grade level academic concepts. However, it is concluded that Petitioner did not meet her burden of proving that not having a full-time special education teacher in the Student's classroom denied him FAPE.

Issue 1(d)

It cannot be disputed that Petitioner has, and sincerely expresses, a deep concern for her son and her desire for him to be safe and happy. Because of the Student's severe Autism and the fact that he is non-verbal, the Student's ability to express his feelings or tell Petitioner how his day at school went is severely limited. Petitioner has stated that her main concern is the Student's safety at school. Petitioner has admitted that the student can become aggressive, and has attacked her and her daughter at home. Petitioner also admitted that the Student does pull hair and scratch school staff and other students. However, the Student's para-educators, Special Education Director and

the School Director all stated the Student is also generally sweet and empathetic to others and they love working with him.

School staff were questioned by Petitioner regarding their use of a “time-out chair,” or a “calm down chair” with the Student. All of the School staff testified that this chair was only used by staff to redirect the Student when he was aggressive and to allow him time to calm down. The chair was described as a normal desk chair that was placed either in the back of the classroom or at the Student’s desk in the classroom. It was never in a closet or a separate room. The para-educator was always with Student. The Student would be directed to sit in the chair for 1 to 3 minutes after he became aggressive, and then asked to return to work on whatever the current activity was. School staff testified that Petitioner was aware of the use of the time-out chair. Petitioner asked the para-educators about a time when the Student was in the time-out chair for 10 to 15 minutes. The para-educators testified that on one day the Student did spend a total of 10 to 15 minutes in the time-out chair because the Student engaged in a series of aggressions before eventually calming down. Petitioner also questioned School staff about a scratch on the Student’s arm that he allegedly received in the time-out chair, but no evidence was actually produced that the Student was scratched in the time-out chair. School staff testified that in October 2023, School staff stopped using the time-out chair at the request of Petitioner.

Petitioner testified that she also expressed her concern to School staff when she was informed by the Special Education Director of a proposal to use mittens on the Student when he became aggressive so that he could not pull hair or scratch. School staff testified that the mittens were only used once, and were not used again at the request of Petitioner.

Petitioner also testified about her concern regarding an incident where the Student was

aggressively pulling the hair of a para-educator and the para-educator placed him in what she called a “bear hug” for several minutes. The para-educator testified that the Student was sitting on her lap and she held the Student’s wrists across his chest so he could not continue to pull hair and scratch for several minutes until he calmed down. The para-educator testified that at the time she held the Student in a “bear hug” she had not received training on the use of restraints with special education students. Respondent’s Director testified that School staff only used safety holds and mittens when his behavior posed a risk to himself or others and they worked to deescalate him first using other strategies.

Petitioner argues that the time-out chair, the mittens and the bear hug specifically were not behavior techniques that were provided for in the Student’s IEP. A review of the Student’s 2022 and 2023 IEPs show that Petitioner is correct that none of these techniques are specifically mentioned in the Student’s IEPs. Respondent argues that the mittens and the bear hug were temporary safety measures and were only used one time each and only for several minutes. Respondent also argues that the time-out chair was used but only for a few minutes at a time, and that Petitioner was aware of its use in 2023. It is clear that the time-out chair was actually a timeout and was not a seclusion or restraint of the Student. The Supreme Court has held that a school district’s placement of a student with a disability in timeout does not trigger the IDEA’s procedural protections. *Honig v. Doe*, 484 U.S. 305 (1988). Therefore, it is concluded that Respondent did not deny the Student educational benefit or impede the Student’s right to a FAPE by the temporary use of the behavioral techniques identified as the time-out chair, mittens and bear hug, even though they were not specifically approved in the Student’s IEPs.

Petitioner has alleged that the actions of Respondent caused the Student to regress behaviorally. Petitioner used the testimony of Ms. B■■■■, her coworker and home direct care service provider for the Student, as evidence of this regression. Specifically, Ms. B■■■■ testified that the Student began withdrawing and smearing his feces during the summer 2023 while attending the School, and stopping doing so one month after he stopped attending the School. However, this testimony is specifically contradicted by the KOTM plan dated February 21, 2024, wherein it states that Petitioner stated that the Student's feces smearing had started two months earlier (which would have been December 2023), and the August 2024 KOTM plan states that the feces smearing was still continuing and a plan was made to stop it by March 2025. Therefore, Ms. B■■■■'s testimony is concluded to not be credible on this issue.

Issue 1(e)

Petitioner has alleged that Respondent failed to have appropriately trained special education staff implement the Student's IEP. However, the facts set forth above do not support Petitioner's claim. The testimony of Deanna Curtis, the School's Special Education Director, who is also the School's Special Education Teacher, clearly identified her educational background, teaching licensure qualifications and teaching experience. Her endorsements even include sign language. She is clearly qualified as a special education teacher under Utah standards to provide special education instruction and to supervise others providing such instruction.

Petitioner's main argument with respect to staff training is that "specially designed instruction was delivered by unlicensed paraprofessionals not qualified to provide unsupervised specially designed instruction." A review of the facts set forth above does not support Petitioner's argument. Respondent has admitted that School staff who provide most of the instruction to the

Students are the para-educators in the classroom. In Utah, “para-educator” means a school employee who has been trained and who works under the supervision of teachers or other professionally-licensed or certified practitioners to support and assist in providing instruction and other services to students. Para-educators are sometimes referred to as paraprofessionals (Board Rules R277-324). SPED Rules I.E.35. “Qualified personnel” means personnel who have met USBE-approved or USBE-recognized certification, licensing, registration, paraeducator qualification standards, or other comparable requirements that apply to the area in which the individuals are providing special education or related services. SPED Rules I.E.45. Paraeducators, when used to carry out Part B of the IDEA, must be appropriately trained and supervised, and utilized in accordance with the USBE Paraeducator Standards. SPED Rules IX.E.2.

The Utah Standards for Instructional Paraeducators are incorporated by reference into the Board Rules R277-324. These Standards set forth the core competencies and knowledge that are required of instructional para-educators. A teaching license is not required. The para-educator must have knowledge and proficiency in assigned instructional area such as reading/reading readiness, math/math readiness, and writing/writing readiness. The para-educator may assist in delivering instruction according to a supervisor’s lesson plans, use basic interventions, demonstrate the ability to record relevant information/data about students, use assessment instruments, and organize material. Respondent is a Title I Schoolwide Program. A para-educator at a Title I school like Respondent must be a high school graduate or equivalent and meet at least one of the following requirements: (a) two years or 48 semester hours at an accredited higher education institution; (b) associate or higher degree from an accredited higher education institution; or (c) satisfy a rigorous Board approved assessment that demonstrates: (i) knowledge of, and the ability to assist in

instructing, reading, writing and mathematics; or (ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness. (Board Rules R277-324-5). Respondent's Special Education Director, School Director and the School para-educators testified at the hearing that the para-educators met the above requirements. Moreover, Petitioner did not elicit any testimony or produce any documents that rebutted the testimony of the Para-educator's qualifications. Therefore, Petitioner did not meet her burden of proof on this issue.

2. Whether Respondent failed to conduct a re-evaluation of the Student in 2024 for OT and speech at the request of Petitioner.

The facts set forth above show that in the Fall of 2022, Respondent conducted, among others, an OT evaluation and a Speech/Language evaluation of the Student as part of the Student's three-year reevaluation. On November 16, 2023, Petitioner unilaterally removed Student from attending the School but did not inform Respondent. On December 15, 2023, Respondent made a written request to Respondent for an IEE to include, among others, an OT evaluation and a Speech/Language evaluation. On January 15, 2024, Respondent provided to Petitioner Prior Written Notice of Refusal to Take Action, which agreed to provide Petitioner an IEE for OT and Speech/Language. At an IEP team meeting on February 27, 2024, Petitioner informed Respondent that the Student had been withdrawn from the School. Respondent did not take any action to provide the OT or Speech/Language IEE.

An IEE means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student in question. SpEd Rules IV.B.1(a). The parents of a student with a disability have the right to obtain an IEE of the student at public expense if they disagree with an evaluation obtained by the LEA. 34 CFR §300.502(b)(1); and SpEd Rules

IV.B.3(a). If a parent requests an IEE at public expense, the LEA must, without unnecessary delay, either file a request for a due process complaint and hearing to show that its evaluation is appropriate, or ensure that an IEE is provided at public expense. SpEd Rules IV.B.3(c).

The facts set forth above clearly show that Respondent conducted an OT and a Speech/Language evaluation of the Student, and that the Petitioner notified Respondent that she disagreed with the evaluations and requested an IEE. Under these circumstances, Respondent is required to provide the IEE or file a due process hearing request to support the appropriateness of its previous evaluations. Respondent agreed to provide the IEE for OT and Speech/Language. While it is true that Petitioner informed Respondent that the Student would not be returning to the School, this communication took place approximately 10 weeks after Petitioner's request and six weeks after Respondent agreed to the IEE. It is concluded that Respondent had sufficient time to conduct the IEE prior to the time Respondent was notified of the Student's withdrawal. Therefore it is concluded that Respondent must provide the OT and Speech/Language evaluations or request a due process hearing to prove its previous evaluations were appropriate. It is further concluded that this current due process hearing will not fulfill the obligation of Respondent for a due process hearing to prove up its previous evaluations because no issue was raised or argued regarding the appropriateness of the evaluations. Respondent must seek to obtain consent from Petitioner for conducting the OT and Speech/Language evaluations, and once consent is obtained Respondent must then move forward expeditiously with providing the evaluations.

3. Whether Respondent failed to provide instruction to the Student in the Least Restrictive Environment by failing to provide homebound instruction to the Student.

Educating children in the least restrictive environment in which they can receive an

appropriate education is one of the IDEA's most important substantive requirements. *Nebo Sch. Dist.*, 379 F.3d at 976 (quoting *Murray v. Montrose County Sch. Dist.*, 51 F.3d 921, 927 (10th Cir. 1995)). The IDEA federal regulations and the SPed Rules provide that a district must ensure that to the maximum extent appropriate, students with disabilities are educated with similar-aged students who are nondisabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114(a)(2), and SpEd Rules III.O.1. A continuum of alternative placements must be available to meet the student's needs, including: instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR §300.115, and SpEd Rules III.Q.

In determining the educational placement of a child with a disability, a district must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and is made in conformity with the LRE provisions of the regulations and rules. 34 CFR §300.116(a), and SpEd Rules III.R.1. A district shall ensure that a parent of a student with a disability is a member of any group that makes decisions on the educational placement of the parent's student. 34 CFR §300.327 and 300.501(c), and SpEd Rules III.S.1. In selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of services that the child needs. 34 CFR §300.116(d), and SpEd Rules III.R.1(d). A child with a disability cannot be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 CFR § 300.116, and SpEd Rules III.R.1(e).

It seems that the focus of Petitioner's LRE argument is that the School refused her request to provide Homebound Services to the Student. The School staff on the Student's IEP team did not agree that Homebound Services was the appropriate placement for the Student. Petitioner also argues that the Student needed a larger classroom with windows and not to be in the same classroom with another student that the Student had attacked on several occasions. Petitioner argues that the other student was a trigger for the Student. However, Petitioner, School staff, service providers and evaluators consistently observe that the Student is usually in a world of his own and generally does not take notice of other people or things around him. The Student does become aggressive and grab hair or scratch others around him. But the antecedents for these behaviors are yet to be understood, even by the School's and private behavior specialists who have worked with the Student or evaluated him, as set forth in the evaluations described in the facts above.

Respondent's position is that there was no other available room at the School, let alone one with windows, and the only way the Student can learn to get along with other students is to be around them. These are definitely competing interests. However, the IEPs at issue reflect a placement in a special education classroom with several peers, with reading time, art, music and PE with general education peers, and with substantial para-educator support, related services, and behavioral strategies. This placement is clearly less restrictive than a homebound placement would be. Moreover, the data described above supports the fact that Student was making progress in this placement. Petitioner did not provide any expert testimony or documentation that supports her contention that the Student's LRE is a homebound placement. Therefore, Petitioner did not meet her burden of proof that homebound instruction is the Student's LRE.

III.

RESPONDENT'S ISSUE

1. Whether the Hearing Officer should bar any claims of Petitioner for alleged violations occurring prior to January 21, 2023.

In view of the circumstances of this matter, it is concluded that the jurisdictional period of this complaint investigation began on January 21, 2023. Any claims of petitioner for alleged violations occurring prior to January 21, 2023, are barred.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and analysis of issues and the Hearing Officer's own legal research, the Hearing Officer now enter the following Conclusions of Law:

1. Petitioners did not meet Petitioners' burden of proof as to whether Respondent failed to implement the Student's IEP by failing to provide all accommodations set forth in the Student's IEP. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

2. Petitioners did not meet Petitioners' burden of proof as to whether Respondent failed to implement the Student's IEP by failing to fully implement the Student's IEP service minutes. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

3. Petitioners did not meet Petitioners' burden of proof as to whether Respondent failed to implement the Student's IEP by failing to provide a Special Education Teacher in the Student's classroom to provide the Student's services. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

4. Petitioners did not meet Petitioners' burden of proof as to whether Respondent failed to implement the Student's IEP by school staff using behavior techniques with the Student that were not provided for in the Student's IEP *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

5. Petitioners did not meet Petitioners' burden of proof as to whether Respondent failed to implement the Student's IEP by failing to have appropriately trained special education staff implement the Student's IEP. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

6. Petitioners did meet Petitioners' burden of proof to show that Respondent failed to conduct a re-evaluation of the Student in 2024 for OT and Speech at the request of Petitioner, as required by 34 CFR §300.502(b)(1); SpEd Rules IV.B.3(c).

7. Petitioners did not meet Petitioners' burden of proof as to whether Respondent failed to provide instruction to the Student in the Least Restrictive Environment by failing to provide homebound instruction to the Student. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005).

8. Respondent did meet Respondent' burden of proof as to whether the Hearing Officer should bar any claims of Petitioner for alleged violations occurring prior to January 21, 2023.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED as follows:

1. Petitioners' requests for relief under Petitioners' Issues Nos. 1(a), (b), (c), (d), (e), and 3 are hereby DENIED, and Petitioner's Complaint is dismissed with prejudice.

2. Petitioners' request for relief under Petitioners' Issue No. 2 is hereby GRANTED. Respondent is hereby ordered to seek consent from Petitioner for an IEE for OT and Speech/Language, and once consent is obtained from Petitioner Respondent shall provide the IEE without undue delay.

3. Respondent's request for relief under Respondent's Issue No. 1 is hereby GRANTED. All claims of Petitioner for alleged violations occurring prior to January 21, 2023, are hereby barred.

All other relief not specifically ordered herein is DENIED.

Any party aggrieved by the findings and decision has the right to bring a civil action with respect to the complaint notice requesting a due process hearing. A civil action may be filed in either State or Federal court; if appealed to State court, the appeal must be filed within 30 days of the date of the due process hearing decision. A Federal court may apply a similar time limit (UCA 53E-7-208(4)(a)). 34 CFR § 300.516; and SpEd Rules IV.Q.1, 2.

Entered this 20th day of August, 2025.

By: /s/ Wallace J. Calder
Wallace J. Calder
Hearing Officer

CERTIFICATE OF SERVICE

On the 20th day of August, 2025, a copy of the foregoing **DECISION AND ORDER** was sent by electronic transmission to the following:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Erin Preston, Esq.
Attorney for Respondent
erinpreston@utaheducationlaw.com

Angela Rasmussen, Director
Noah Webster Academy
205 E. 400 S.
Orem, UT 84058
arasmussen@mynwa.us

Deanna Curtis
Special Education Dir.
Noah Webster Academy
205 E. 400 S.
Orem, UT 84058
dcurtis@mynwa.us

Dr. Leah Voorhies
Assistant Superintendent of Student Support
Cindy Poulson
Special Education Dispute Resolution Specialist
Utah State Board of Education
leah.voorhies@schools.utah.gov
cindy.poulson@schools.utah.gov

By: /s/ Wallace J. Calder
Wallace J. Calder
Hearing Officer