

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. East Windsor Board of Education¹

Appearing on behalf of Student: Attorney Piper Paul
Piper Paul Law LLC
1465 Post Road East #100
Westport, CT 06880

Appearing on behalf of the Board of Education: Attorney Christine Chinni
Chinni & Meuser LLC
14 Station Street
Simsbury, CT 06070

Appearing before: Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing in the above-captioned matter was requested by Student's Attorney via letter dated April 7, 2020.² The Board of Education ("BOE") received the request for hearing on April 8. The 30-day resolution period ended May 8 and the original 45-day deadline to mail the final decision and order was June 22.

A telephonic pre-hearing conference was held on April 23. Attorney Paul appeared on behalf of Student and Attorney Chinni appeared on behalf of BOE.

The following issues were identified:

1. Did the Board of Education provide Student with a free appropriate public education during the period April 8, 2018 through the end of the 2017-18 school year?
2. Did the Board of Education provide Student with a free appropriate public education during the 2018 extended school year?
3. Did the Board of Education provide Student with a free appropriate public education during the 2018-19 school year?
4. Did the Board of Education provide Student with a free appropriate public education during the 2019 extended school year?
5. Did the Board of Education provide Student with a free appropriate public education during the 2019-20 school year?
6. If the Board of Education did not provide Student with a free appropriate public education, is Institute of Professional Practice, Inc. Learning Academy an appropriate placement?

¹ In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally-identifiable information.

² All dates are 2020 unless otherwise indicated.

7. If the answer to Issue Six above is in the affirmative, should Student be placed at Institute of Professional Practice, Inc. Learning Academy at Board of Education's expense?
8. If the answer to any one of the Issues One through Five above is in the negative, what shall be the remedy?

Hearings were scheduled for June 9, June 10, and June 12. On June 1, Student's Attorney requested to cancel the June 9 hearing date to permit her additional time to prepare and submit exhibits. After considering the positions of the parties, the request was granted.

Hearings were held on June 10 and June 12. At the June 10 hearing, BOE's Attorney requested a 30-day extension of the June 22 deadline to mail the final decision and order to accommodate additional hearing dates. After considering the positions of the parties, the request was granted, and the deadline was extended to July 22. Additional hearings were scheduled for June 29, July 2, July 14, and July 15.

Hearings were held on June 29 and July 15. The July 2 and July 14 hearings were cancelled.

On July 2, Student's Attorney requested an extension of the deadline to mail the final decision and order to accommodate additional hearing dates. After considering the positions of the parties, the request was granted, and the deadline was extended to August 21. Additional hearings were scheduled for July 23, July 24, July 30, August 3, and August 4.

Hearings were held on July 23, July 24, August 3, and August 4. The July 30 hearing was cancelled. At the August 3 hearing, Student's Attorney requested a 30-day extension of the deadline to mail the final decision and order to accommodate an additional hearing date on August 18. After considering the positions of the parties, the request was granted, and the deadline was extended to September 20.

The final hearing was held on August 18.³ At the final hearing, BOE's Attorney requested a 30-day extension of the deadline to mail the final decision and order to accommodate a briefing schedule. After considering the positions of the parties, the request was granted, and the deadline was extended to October 20. The parties were granted until September 14 to file post-hearing briefs.

The parties subsequently requested and were granted extensions of the deadline to file briefs to September 21, then September 23, then September 28, then October 2 and finally October 5. Student's Attorney also requested an extension of the deadline to mail the final decision and order to accommodate the extended briefing schedule. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until November 19.

To the extent that the procedural history, statement of jurisdiction, findings of fact, or discussion actually represent conclusions of law, they should be so considered, and vice versa.

Statement of Jurisdiction

This matter was heard as a contested case pursuant to Connecticut General Statutes ("CGS") § 10-76h and related regulations, 20 United States Code ("USC") § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, and § 4-181a and § 4-186.

³All hearings were held via videoconference because school facilities were closed due to the COVID-19 pandemic.

Findings of Relevant Fact⁴

Background

1. Student was diagnosed with Autism Spectrum Disorder (“ASD”) and receptive and expressive language disorders. She has an IQ of 50, which makes her cognitive skills level very limited. Student is a visual learner (Testimony of Student’s Mother, School Psychologist, Fifth Grade Special Education Teacher, Middle School SLP)⁵
2. Change is hard for Student and sometimes results in behavioral outbursts. It takes time for messages to get through to Student and for her to respond. Student cannot be left alone; she cannot independently get off the school bus, cross the street by herself or walk home. Student’s Mother’s goal for Student is for her to be able to function independently and advocate for herself. She wants Student to have “the strength to survive without [mom].” (Testimony of Student’s Mother)
3. Student attended BOE’s Elementary School for grades one through four and attended BOE’s Middle School for fifth grade. She will be in sixth grade during the 2020-21 school year. (Testimony of Student’s Mother)
4. Student received private speech and language therapy from 2015 until August 2019, received private in-home Applied Behavior Analysis (“ABA”) services from Private BCBA. The home ABA services helped in managing negative behaviors. Student’s Parents discontinued the home ABA services when their long-time Private BCBA moved and the change to different people coming to cover the sessions was too stressful for Student. (Testimony of Student’s Mother, Student’s Stepfather)
5. Strategies to Reach Independence in a Variety of Environments (“STRIVE”) is a language-based program using ABA and discrete trial instruction (“DTI”) to address social, academic, functional and behavior management skills and activities of daily living (“ADLs”). It focuses on functional activity. Throughout the day in the STRIVE classroom, appropriate language, vocabulary, and communication skills are modelled to promote Student’s use of these skills. Every student in the STRIVE program has a program book with all of the skills being taught to them. (Testimony of Fourth Grade Special Education Teacher, BOE BCBA, COTA)
6. During all periods covered by the issues in this case, Student had a one-to-one (1:1) Paraprofessional assigned to her during the school day. BOE BCBA and special education staff train paraprofessionals, practice data collection and programming with them, and conduct professional development throughout the year on topics such as functions of behavior, data collection, prompting, and building independence. (Testimony of BOE BCBA, Fifth Grade Special Education Teacher).
7. Student falls at the far end of the ASD disability spectrum. Given Student’s challenges due to her ASD diagnosis, intellectual disability that affects executive functioning, low cognitive ability, difficulty with problem solving, reasoning, and sustained attention, and inability to complete ADLs without support, it is not likely that she will be able to safely live independently. She has good skills to thrive in a supported living situation with adult support. (Testimony of BOE BCBA, School Psychologist, Fifth Grade Special Education Teacher,

⁴ In the Discussion, Findings of Fact are cited as “FOF-#.”

⁵ Hearing Officer Exhibits are cited as “HO#”; Student’s Exhibits as “S#”; and BOE’s Exhibits as “B#.” See Appendix A for a full list of exhibits.

Fourth Grade Special Education Teacher, Middle School SLP, Elementary SLP, Occupational Therapist, COTA)

Qualifications of Representatives that Testified

8. Fourth Grade Special Education Teacher holds a bachelor's degree in liberal studies/education with a concentration in early childhood education and a Master of Education degree in moderate disabilities. She is certified to teach special education and has four years of teaching experience. She has taught at BOE's Elementary School for two years where she teaches in the STRIVE program. (B18; Testimony of Fourth Grade Special Education Teacher)
9. Fifth Grade Special Education Teacher holds a bachelor's degree in psychology and a Master of Education in special education. She is a certified special education teacher and has been employed as such in BOE's STRIVE program since 2013. She became a licensed BCBA in 2018. Since 2019, she has also been employed as a BCBA for another organization.. She is presently pursuing a master's degree in Applied Behavior Analysis. (B20; Testimony of Fifth Grade Special Education Teacher)
10. BOE's Board Certified Behavior Analyst ("BOE BCBA") holds a bachelors' degree in psychology and elementary education, a master's degree in special education, an early childhood certification, and certification as a BCBA and as a special education teacher. She has 16 years' experience in BOE's district; first as a special education teacher and currently three years as a BCBA. BOE BCBA was Student's first grade special education teacher. BOE BCBA consults with STRIVE program staff and conducts training on early release professional development days. During training, they go through students' program books and talk about areas where a student might be struggling (B32; Testimony of BOE BCBA)
11. School Psychologist served in the U.S. Air Force prior to obtaining a bachelor's degree in education, a master's degree in educational psychology, and a certificate of advanced studies in psychology. She completed two years towards her doctorate. She has 24 years of experience; with 20 of those years in BOE's district as a psychologist for grades pre-K through sixth. She has conducted hundreds and possibly a thousand student psychoeducational evaluations, which is her main job. (Testimony of School Psychologist)
12. Elementary School Speech Language Pathologist ("Elementary SLP") holds an associate degree in liberal arts and sciences, a bachelor's degree in communication sciences and related disorders, a masters in speech-language pathology, and a graduate certificate in behavioral intervention with autism. She has 19 years' experience; five of those years with BOE, ending in July 2020 (B21; Testimony of Elementary SLP)
13. Middle School Speech Language Pathologist ("Middle School SLP") holds a bachelor's degree in psychology, a post-baccalaureate in communication disorders, and a masters in speech-language pathology. She is a Connecticut licensed speech-language pathologist and supervises graduate students. She has 11 years' experience; with five of those years in BOE's district. She provides services to students who have communication or speech-language goals in their IEP, consults with teachers and paraprofessionals, and participates in functional skills class when time allows. (B24; Testimony of Middle School SLP)
14. Occupational Therapist holds a bachelor's degree in occupational therapy and a master's degree in neuroscience. She is a board-certified occupational therapist with 36 years' experience; 26 of those years in BOE's district. She is BOE's district-wide OT. She was a contributing author to the Connecticut Occupational Therapy Association Guidelines for

- Occupational Therapy in Connecticut Schools 2017. Occupational Therapist supervises COTA; they work as a team. (B22; Testimony of Occupational Therapist, COTA)
15. BOE's Certified Occupational Therapy Assistant ("COTA") has an associate degree in occupational therapy. She is nationally certified and licensed in Connecticut. She has eight years' experience; with 3 of those years in BOE's district. She authored a chapter on the role of a COTA in the school system for Best Practices for Occupational Therapy in Schools 2nd Edition. She also researched and authored a section on the role of a COTA in schools for the Connecticut Occupational Therapy Association Guidelines for Occupational Therapy in Connecticut Schools 2017. She received the Connecticut Occupational Therapy Association's 2019 Award of Clinical Excellence. COTA worked with Student at both Elementary School and Middle School. (B19; Testimony of COTA)
 16. Assistant Superintendent for Student Services ("Assistant Superintendent")⁶ holds a bachelor's degree in psychology and special education, a master's degree in special education, and a Doctor of Education in educational and special education leadership. He has 19 years' experience as an educator, with 17 of those years in BOE's district. He is certified in Connecticut as a K-12 special education teacher and as an administrator. He was a special education teacher and has worked in all grade levels. He served as assistant principal and as director of special education. He has been an assistant superintendent for three years and brought the director of special education duties with him to that role. The primary focus of his career has been special education. He has taught at the undergraduate and graduate levels. Assistant Superintendent oversees related service providers, hires paraprofessionals, and conducts staff evaluations (B38; Testimony of Assistant Superintendent)
 17. Private Psychologist is a licensed clinical psychologist in Connecticut. She holds a PhD in Clinical Psychology with Specialization in Children and Families. She has experience working with children with ASD. She has conducted psychoeducational evaluations, taught assessment instruments, provided individual and group treatment, and consulted with schools and clinics. In consulting with schools, she has participated in Planning and Placement Team ("PPT") meetings and helped develop and implement Individualized Education Programs ("IEPs"). She has maintained a private practice since 2010. (S80; Testimony of Private Psychologist)
 18. Private Speech Language Pathologist ("Private SLP") holds a bachelor's degree in speech pathology with a minor in education, a master's degree in communication sciences, and a PhD in speech. She has taught speech and communication disorders at the college level and has worked in private practice. She has worked with many ASD students, conducted evaluations, consulted with schools, conducted parent training, and taught assessments to other professionals (S81; Testimony of Private SLP)
 19. Institute of Professional Practice, Inc.'s ("IPPI's") Project Director of Private Schools ("IPPI Director") oversees admissions for IPPI's three Learning Academies. She holds bachelors' degrees in elementary education and Spanish, a Master of Education degree in teaching and learning, and a graduate academic certificate in ABA. She is a board-certified behavior analyst and a licensed Behavior Analyst in Connecticut. She previously served as clinical supervisor, lead therapist, and ABA therapist at (S82; Testimony of IPPI Director)

Third Grade (period April 8, 2018 to end of 2017-18 School Year)

⁶ Assistant Superintendent served as BOE's representative in this case and was present for all witness testimony. During his testimony, Superintendent Christine DeBarge sat in as BOE's representative.

20. Student was in third grade during the 2017-18 school year. She participated in the STRIVE program where she made slow, steady progress in academics and participated in specials, lunch, and recess with her peers. (S31, S37, B7)
21. BOE conducted a triennial evaluation of Student in November and December 2017. BOE administered the Wechsler Intelligence Scale for Children (“WISC-V”), the Adaptive Behavior Assessment System (“ABAS-3”), the Wechsler Individual Achievement Test 3rd Edition (“WIATT-III”), the assessment of Basic Language and Learning Skills (“ABLSS”), the Sensory Processing Measure (“SPM”), and the School Functional Assessment (“SFA”) and conducted classroom observations, teacher consultations, review of records, and clinical observations. (S37, S39, S45, B3, B5, B6)
22. The WISC-V is considered the “gold standard in intelligence testing.” Student’s full-scale IQ score of 50 puts her in the extremely low range of intelligence. Student’s verbal comprehension and reasoning, working memory index, and processing speed are all extremely low. Student is inclined to learn in a rote manner, particularly for academic skills. She does not have solid reasoning skills to be able to use memory and problem-solving skills in learning. She can be taught certain rote skills such as looking both ways before crossing the street. She can develop better social and adaptive skills by being exposed to different experiences and environments. Student’s motivation is an important aspect of her ability to learn. (Testimony of School Psychologist)
23. School Psychologist recommended that Student’s program focus on developing more control of her behaviors and noted that use of ABA /DTI and the STRIVE program resulted in behavioral improvements. School Psychologist also recommended home and school interventions to promote Student’s communication, social and self-care skills. (S37, B6; Testimony of School Psychologist)
24. The ABAS-3 is a comprehensive, norm-referenced assessment of adaptive skills. Students overall adaptive skills are exhibited as being in the extremely low range. Results from Student’s Parent’s form (what is seen at home) were lower than those from the teacher form (what is seen at school). (S37, B6; Testimony of School Psychologist)
25. The WIATT assesses a wide variety of academic skills. Student scored in the well below average range for early reading skills and mathematics. She scored in the below average range for basic reading. She did not receive a composite score for written expression or oral language because only certain subtests were administered. She scored in the average range for spelling; in the well below average range for alphabet writing fluency; and in the well below average range for oral expression. The evaluator noted that Student did not understand many of the directions which affects the validity of the scores. The evaluator also noted that Student learns through intensive and individual instruction and often has difficulty generalizing skills to other parts of her day. (S37, S45, B3)
26. The ABLSS is a criteria-based assessment of basic language and learning skills that is used with students with developmental disabilities. It is used to develop a baseline and to facilitate IEP development and progress monitoring. BOE administers the ABLSS annually before PPT meetings to look at what skills were gained over the year. Student made gains in every area of the ABLSS when comparing September of first grade to December of third grade. Her greatest areas of improvement are requests, labeling, reading, and spelling. The evaluator recommended that Student continue to receive intensive instruction in language development, functional communication, functional academics, continued play and leisure skill development, and increased small group instruction and that her instruction continue to

follow an ABA approach to teaching skills and emphasizing continued development of verbal language and social skills. (S39, B4; Testimony of BOE BCBA, Fifth Grade Special Education Teacher, Fourth Grade Special Education Teacher)

27. The SFA and SPM were selected based on presenting concerns from Student's team. The SFA looks at a child in terms of overall language ability, not relative to same-aged peers. Elementary SLP chose that assessment because it gives a baseline of where Student is performing so they can develop goals and objectives; instead of giving an age-based standard. The SFA provides functional information instead of scores that show where Student falls on a continuum. The results can be compared to grade-level expectations. The SPM looks at sensory processing skills across all contexts of school to determine the impact of Student's skills on her functioning in the classroom. It includes assessment by parent and school personnel. Similar areas of concern were reflected on both the home and school forms. The evaluation found that Student displays deficits in expressive and receptive language. (B5; Testimony of Elementary SLP, Occupational Therapist)
28. OT's evaluation found that Student's sensory processing skills with vision and touch are typical, that she has some problems with balance and core strength, that she is able to move freely around the classroom but has difficulty noticing and moving around obstacles. In addition to the assessments, Occupational Therapist observed Student over time, having worked with her since 2015. Occupational Therapist sought to use sensory strategies to support Student in engaging in functional activities without outbursts as well as to improve her core strength and ability to navigate. (B5; Testimony of Occupational Therapist)
29. Evaluation results indicate that Student was functioning in the extremely low range of intelligence; she demonstrated relative strength on visual tasks as well as on tasks that relied on her understanding the concept of equality and the relationship among objects and that required her to use matching. Student's verbal reasoning abilities, fluid intelligence, and adaptive functioning were relative weaknesses. Her adaptive behavior within the school setting was noted as slightly better than at home. (S37)
30. A PPT meeting was held on January 9, 2018 to conduct an annual review, review evaluations, determine continuing eligibility for special education, and to develop an IEP. Third Grade Special Education Teacher, Student's Mother, Regular Education Teacher, School Psychologist, Elementary SLP, Occupational Therapist, Student's in-home Private BCBA, COTA, Special Education LTS, and Student's Grandmother attended the PPT meeting. The PPT reviewed the evaluation results. Student's Mother asked about using noise-cancelling headphones; Occupational Therapist and Third Grade Special Education Teacher agreed to work on that at school as well. (S31, B7)
31. The PPT recommended and agreed upon: 21.25 hours of special education services per week; 4 hours per month OT; 4 hours per month speech therapy; extended school year ("ESY")⁷ summer school; ESY OT for 30 minutes per week; ESY speech therapy for 30 minutes per week; adaptive PE; increased adult support; special transportation with seatbelt; ABA consult 30 minutes every other week; Connecticut Alternate Assessment & Alternate Science ("CTAA"); and iPad with ProLoQuo2Go (a speech-generating device) throughout the school day. (S31, B7)

⁷ ESY is maintenance based - to allow a student to maintain the skills acquired during the school year. (Testimony of Fourth Grade Special Education Teacher)

32. Student's eighteen IEP goals (with 33 total objectives) include: demonstrate an improvement in ability to attend to small group (3-4 students) lessons by looking in the direction of the speaker for 10 minutes with no more than 4 prompts; maintain low levels of challenging behaviors throughout the school day; while playing with a toy or completing an independent activity at her desk, when an instructor states her name, Student will make appropriate eye contact in 8/10 opportunities; expressively increase ability to label, sort, and categorize; by January 2019, will demonstrate the ability to read at a C level with no more than 3 prompts; when given a written direction, Student will read the direction and follow it accurately in 8/10 opportunities; demonstrate an increase in reading comprehension by filling in an appropriate word when given an incomplete sentence; given visuals and prompting as needed, Student will communicate using functional language and different word combinations for purposes of requesting, commenting, questioning, and protesting; demonstrate an increase in abilities in the mathematics domain; add up to 20 using objects, fingers, manipulatives, mental images, drawings, sounds, acting out, verbal expressions or equations; subtract up to 20 by using objects, fingers, manipulatives, mental images, drawings, sounds, acting out, verbal expressions or equations; sort 10 objects into groups by attribute and label the common attributes; tell and write 10 examples of time in hours and half-hours using analog and digital clocks; increase ability to label objects and pictures; given prompts as needed, Student will improve receptive language skills through increased attention and responding to directions; improve fine motor skills for success with writing and functional school related skills in the classroom; demonstrate improved motor planning and strength skills to navigate the classroom environment; independently follow a self-help schedule that consists of 3 different activities. (S31, B7)
33. Objectives include sitting, attending, and participating in small group; maintaining low levels of crying/flopping and scripting behavior; making eye contact when her name is called; expressively label, sort and categorize items; read at progressively higher levels with no more than four prompts; independently follow directions; increase reading comprehension; communicate using functional language, including spontaneously making requests; label examples of "all", "zero", "more", "less", "same", "different"; tell and write time in hours and half hours; identify the missing number in a sequence; solve addition problems up to the number 20; understand the function of objects; follow simple commands with spatial concepts; print smaller letters staying within designated lines; use and manipulate school tools and materials; maintain upright seated posture; navigate the classroom and school environment without bumping into people or objects; and independently follow a self-help schedule. (S31, B7)
34. The IEP included accommodations and modifications such as assistive technology, access to iPad with ProLoQuo2Go, visual schedules and supports, ABA, extra time for processing, cueing/prompting, concrete examples, discrete trials, extra time, verbally redirect for focus, repeated information/instructions, increased adult support. (S31, B7)
35. At the PPT meeting, Student's Grandmother "reported that she is happy to see how supported [Student] is at school" and Student's Mother "stated she was happy with the progress." (S31, B7)
36. Student's April 2018 progress report indicates that she made satisfactory progress on all eighteen of her IEP goals. Her progress report includes notes, such as: demonstrated improvement in small group settings; increased the time she is able to participate in morning meeting; averaged 3.5 minutes of crying and 1.7 for flopping this quarter; slow progress but

continues to show improvement; making progress following written direction; currently at an A level of reading with 1 or less prompts; has been very invested in artistic activities that tap into both fine motor and communicative skills, she is asking for materials using complete sentences, is using action words to make demand; mastered objective 8.1 to spontaneously request items using three word carrier phrase with 90% accuracy and fading cues and prompts; able to add numbers up to 20 but still requires prompting; continues to work on subtraction with prompting; showing progress working on telling time with a manual clock; is performing with more consistency in following directions with visuals and prompts, when the response is predictable she does well, when it is new or not expected it requires maximum cues and prompts as well as repetitions and models; currently working on wash face, brush teeth, brush hair and putting on deodorant – making strong gains and showing independence. (S22)

37. On April 19, 2018, BOE contacted Student's Mother to discuss Student's behavior of laughing when other students cry and the need to support other behavior. BOE sent a permission slip to Student's Mother to allow BOE to communicate with Private BCBA. (S38)
38. Student's June 2018 progress report indicates that she made satisfactory progress on all eighteen of her IEP goals. Her progress report includes notes, such as:
 - a. Objective 2.1 (maintain low levels of crying and flopping throughout the school day – no more than 10 minutes per day): Student averaged 4.3 minutes of crying and 2.1 for flopping per day this quarter.
 - b. Goal 4 (expressively increase her ability to label. Sort, and categorize): Student is making progress and showing improvement.
 - c. Goal 8 (given visuals and prompting as needed, Student will communicate using functional language and different word combinations for the purpose of requesting, commenting, questioning, and protesting): Student continues to make slow progress towards her objectives. Attention and motivation appear to affect her generalization of her skills. She appears to prefer the use of her device over speech and continues to communicate her thoughts and needs with a quiet volume and typically one-word. She is beginning to chain requests for action in a sentence by listening to and repeating the output from her device.
 - d. Objective 8.1 (spontaneously request items using a three-word carrier phrase with 90% accuracy and fading cues and prompts): Mastered.
 - e. Objectives 9.1 (able to identify or label examples of "all" and "zero" in 8/10 opportunities) and 9.2 (able to identify or label examples of "more" or "less" in 8/10 opportunities): Mastered.
 - f. Goal 10 (add up to 20, using objects, fingers, manipulatives, mental images, drawings, sounds, acting out, verbal expression or equations): Student continues to work on addition up to 20. She is making progress but still requires prompting.
 - g. Objective 13.1 (when shown a clock, Student will tell and write 10 examples of time to the hour in 8/10 opportunities): Mastered.
 - h. Objective 13.2 (when shown a clock, Student will tell and write 10 examples of time to the half-hour in 8/10 opportunities): Student is showing progress working on telling time to the ½ hour with a manual clock.
 - i. Goal 15 (given prompts as needed, Student will improve receptive language skills through increased attention and responding to directions): Student is following

- predictable directions that are expected for a situation or activity with 80%. Novel instruction of instruction that is out of order for her is often noted to be less accurate. She benefits from visual prompts to increase accuracy in this area.
- j. Objective 16.1 (given wide-lined highlighter paper – narrower paper – along with visual and verbal prompts, Student will demonstrate ability to print smaller letters staying along and between designated lines): Student’s written output greatly depends on the day and her motivation. There are times when she is very receptive to writing and others when she refuses to participate. She benefits from distinct boundaries on paper.
 - k. Goal 17 (demonstrate improved motor planning and strength skills to navigate the classroom environment): Student currently requires cues to sit upright during tabletop activities and also to maneuver around the building without bumping into people or items.
 - l. Goal 18 (independently follow a self-help schedule that consists of 3 different activities): Student is working on wash face, brush teeth, brush hair and putting on deodorant. She needs minimal prompting and is showing strong independence. (S22)
39. By the end of the 2018-19 school year, Student showed growth in data measurement and in her ability to access the school environment more fluently. She progressed from being a child who would drop to the floor to one who participated while seated in a chair for the entire session, navigating the classroom and building more independently. Student’s language tended to be short and telegraphic at first and then expanded to more attention and fluent response to language. Student still had some problem behaviors at the end of the school year, but they were much less frequent and were better managed. (Elementary SLP)

2018 Extended School Year (July-August 2018)

40. Student’s IEP calls for her to participate in ESY summer school 4.5 hours per school day from July 9 to August 9, 2018 and to have occupational therapy and speech therapy each for 30 minutes per week during summer ESY. All 18 of Student’s IEP goals are to be worked on during 2018 ESY. (S31, B7)
41. Student’s August 2018 progress report indicates that she mastered goal 13 and made satisfactory progress on goals 1, 2, 3, 4, 5, 6, 7, 9, 10, 14, 15, 16, 17, and 18 during the summer. Goals 11 and 12 were rated as “other”; goal 8 was not rated. Her progress report includes notes, such as:
- a. Objective 1.1 (sit and attend to small group activity for 10 minutes with no more than 4 prompts): Student attended circle for 15 minutes with an average of 3 prompts.
 - b. Objective 1.2 (participate in small group instruction by independently stating the answers to group questions in 8 out of 10 opportunities): Student would answer questions related to days of the week, months of the year, and a video clip.
 - c. Objective 2.2 (maintain low levels of scripting behavior during work sessions, resulting in an average of 10 or less redirections per day): Student engaged an average of 4 scripting behaviors per day over the summer.
 - d. Objective 3.1 (When an instructor states Student’s name, while she is completing an independent activity or playing at her desk, Student will make eye contact in 8 out of 20 opportunities): Student continued to make eye contact when working at her desk. When transitioned to the larger setting, she needed multiple prompts.

- e. Objective 4.1 (expressively name 3 different items belonging to 10 different categories in 8 out of 10 trials) was rated as “other”: Student is able to sort pictures by category but not able to label them. The objective was modified to include first labelling the category.
- f. Objective 4.5 (demonstrate ability to fill in a statement based on function in 8 out of 10 opportunities) was rated as “other”: Student acquired the functions “cut with” and “write with” over the summer.
- g. Goal 6 (demonstrate an increase in reading comprehension by filling in an appropriate word when given an incomplete sentence): Student is still working on the same words from the previous school year.
- h. Objective 7.2 (By January 2019, Student will demonstrate the ability to read at a C level with no more than 4 prompts): Student has just started C level books. She needs prompts to stay focused and move through the words on the page.
- i. Objective 9.3 (When given a set of numbers with one missing, Student will write in the missing number in 8 out of 10 opportunities): Student can fill in missing number up to 30 when presented with only 3 numbers.
- j. Goal 11 (subtraction): inconsistent progress.
- k. Goal 12 (sort 10 objects into groups by attribute and label the common attributes): Inconsistent.
- l. Goal 15 (given prompts as needed, Student will improve receptive language skills through increased attention and responding to directions): Student’s investment in structured activities is limited. We continue to work on following and providing directions for activities with intermittent success.
- m. Objective 16.1 (given wide lined highlighter paper – narrower paper – along with visual and verbal prompts, Student will demonstrate ability to print smaller letters staying along and between designated lines): Student’s written output varies depending on her motivation. She needs large boundaries on paper to help her stay within a certain space, but she is unable to write along lines.
- n. Goal 17 (demonstrate improved motor planning and strength skills to navigate the classroom environment): During highly motivated tasks, Student is capable of sustaining an upright posture, but she is inconsistent with this. She requires cues to notice and attend to her environment to navigate and move around without bumping into things. (S22)

Fourth Grade (2018-19 School Year)

- 42. Fourth Grade Special Education Teacher taught Student in the STRIVE program during fourth grade and served as her case manager. During fourth grade, the January 2018 IEP was in effect for the first half of the school year and was implemented in the STRIVE room and in her “specials” - art, PE, music. Fourth Grade Special Education Teacher did not write the IEP goals and objectives for the January 2018 IEP. She did participate in writing goals and objectives for the December 20, 2018 IEP which was implemented for the second half of the school year. (B7, B10, B18; Testimony of Fourth Grade Special Education Teacher)
- 43. Student’s typical week in the STRIVE program consists of her transitioning off the bus into the classroom, going through her morning work with the support of 1:1 Paraprofessional that is with Student throughout the day, 10-20 minute trials⁸ with reinforcement, a short break,⁹ functional activities and ADLs, a short break, more programming trials, a short break.

⁸ Trial based instruction is provided in class by Student’s 1:1 Paraprofessional.

⁹ During her short breaks, Student may choose a preferred activity to engage in during breaks.

Student's morning work consists of an ADL hygiene routine where she washes her hands, brushes her hair, and brushes her teeth. Student has bathroom, lunch, and recess routines as part of her ADLs program. (Testimony of Fourth Grade Special Education Teacher)

44. Student participates in art, music, recess, and lunch with nondisabled peers. Student's time with nondisabled peers each day has value in that it allows her to generalize skills learned in the classroom and to observe appropriate interactions between peers. Student picks up on actions and behaviors of other students. Her time with nondisabled peers allows her to be a kid and learn at the same time without always having an adult doing the teaching. (S21; Testimony of Fourth Grade Special Education Teacher, BOE BCBA, Middle School SLP, Fifth Grade Special Education Teacher, Occupational Therapist)
45. BOE BCBA consults with teachers in the STRIVE program. Paraprofessional took data on scripting, flopping, crying, and grounding throughout the school day. She also took data on Student's participation, accuracy, and independence in activities in pursuit of her goals and objectives. BOE BCBA and Fourth Grade Special Education Teacher also took data on Student's performance and activities. (Testimony of Fourth Grade Special Education Teacher)
46. At Student's Mother's request, Fourth Grade Special Education Teacher met with her on October 18, 2018 to learn more about Student's programs and how she can better support her at home. (S12)
47. On November 11, 2018, BOE BCBA developed a Behavior Intervention Plan ("BIP") to "address target behaviors that interfere with [Student's] ability to behave appropriately during the school day. The rationale for this intervention is to decrease the frequency of non-compliance, grounding, uncontrollable laughter, crying or non-functional vocalizations." The BIP identified frequency, duration, and examples of targeted behaviors to be decreased and increased; preventative and reactive interventions; a reinforcement system; data collections system; and tangible reinforcers that included edibles and activities. Student's Mother signed the BIP on November 27, 2018.¹⁰ (B9)
48. BOE did not conduct a formal Functional Behavioral Assessment ("FBA") prior to creating the BIP. BOE BCBA felt that an FBA was not needed because she reviewed data collected over three days and conducted direct observation to understand the hypothesized functions of Student's behavior. BOE BCBA's process had similar components to an FBA. The BIP was effective during Student's fourth grade year.¹¹ (Testimony of BOE BCBA, Fourth Grade Special Education Teacher)
49. With repeated practice, Student made progress and mastered some objectives. Student's behaviors and intellectual ability interfered with her progress. Student's November 2018 progress report indicates that she mastered goals 7 and 18 and made satisfactory progress on goals 2, 3, 4, 5, 6, 8, 9, 10, 14, 15, 16, and 17. Goals 1, 11, and 12 were rated as "other"; goal 13 was not rated (it was previously mastered). Her progress report includes notes, such as:
 - a. Goal 1 (improvement in ability to attend to small group lessons) was rated as "other":
Student has done a nice job waiting appropriately during small group lessons or activities. She is able to respond with adult prompting when called upon; Student requires a lot of

¹⁰ Student's Mother testified that Student's IEP has goals about behavior but was not aware of a specific BIP.

¹¹ There was no clear testimony on when the BIP was discontinued. The BIP was not referenced in an IEP and the change was not noted on Student's IEP or discussed in a PPT meeting. BOE BCBA does not know if it was communicated to Student's Parents.

- prompting to sit and attend to the activity or speaker. She is able to sit in the whole group without engaging in any target behaviors.
- b. Objective 2.1 (maintain low levels of crying and flopping throughout the school day – no more than 10 minutes per day): this quarter, Student averaged 5 minutes of crying and 35 flops per day.
 - c. Objective 2.2 (maintain low levels of scripting behavior during work sessions, resulting in an average of 10 or less redirections per day): While working, Student requires less than 10 redirections for scripting.
 - d. Objective 3.1 (When an instructor states Student’s name, while she is completing an independent activity or playing at her desk, Student will make eye contact in 8 out of 20 opportunities): Student successfully makes eye contact when working at her desk and when called in a larger group.
 - e. Objective 4.1 (expressively name 3 different items belonging to 10 different categories in 8 out of 10 trials) was rated as “other”: this program has been put on hold.
 - f. Objective 4.5 (demonstrate ability to fill in a statement based on function in 8 out of 10 opportunities) was rated as “other”: Student has acquired the functions of eat with, read, wash your hands with, write with, color with, and brush your teeth with.
 - g. Goal 7 (by January 2019, Student will demonstrate the ability to read at a “C” level with no more than 3 prompts): Mastered, Student is currently reading at the “D” level with some adult prompting.¹²
 - h. Goal 8 (given visuals and prompting as needed, Student will communicate using functional language and different word combinations for the purpose of requesting, commenting, questioning, and protesting): Student has begun to follow and express directions in real-world conditions through spatial concepts. She is displaying understanding and expression of “under” with 75% accuracy. She continues to require support for “in” and “on” expression though she is following it with moderate cues. Items in a category has been established when she has been given multiple trials. She has mastery of colors, numbers, and shapes. We continue to work on concepts such as big and small.
 - i. Objective 8.1 (spontaneously request items using a three-word carrier phrase with 90% accuracy and fading cues and prompts): mastered.
 - j. Objective 9.3 (When given a set of numbers with one missing, Student will write in the missing number in 8 out of 10 opportunities): Mastered. Student can fill in missing number up to 120. For example, she is given a number strip from 91-100 with only 2 or 3 numbers filled in. She is able to fill in the missing numbers independently.
 - k. Goal 10 (add up to 20, using objects, fingers, manipulatives, mental images, drawings, sounds, acting out, verbal expression or equations): Student continues to work on addition up to 20. She is making progress but still requires prompting.
 - l. Goal 11 (subtraction) rated as “other”: inconsistent progress.
 - m. Goal 12 (sort 10 objects into groups by attribute and label the common attributes): this program was put on hold.
 - n. Goal 15 (given prompts as needed, Student will improve receptive language skills through increased attention and responding to directions): Student has near mastery of identification of object by function in a field of 3.

¹² Reading encompasses accuracy, fluency, and comprehension. Student must obtain all three components to advance to the next level. (Testimony of Fourth Grade Special Education Teacher)

- o. Goal 18 (independently follow a self-help schedule that consists of 3 different activities): Mastered. Student is working on wash face, brush teeth, brush hair and putting on deodorant. She is able to do this independently. (S22; Testimony of Fourth Grade Special Education Teacher)
50. From March 2017 to December 2018, Student demonstrated some progress on 22 of 25 functional areas on the ABLLS, which is used to track progress. Student's progress in some areas was stronger than others, as is typical. (B25; Testimony of Fourth grade Special Education Teacher, BOE BCBA)
 51. A PPT meeting was held on December 20, 2018 to conduct an annual review and review or revise Student's IEP. Student's Mother, BOE BCBA, Regular Education Teacher, Fourth Grade Special Education Teacher, Elementary SLP, Occupational Therapist, and COTA attended. Student's Mother expressed concerns about Student's communication and desire that she use communication to more functionally express her wants and needs. Student's Mother also questioned whether ProLoQuo2Go is the most appropriate program for Student. Regular Education Teacher, Fourth Grade Special Education Teacher, Elementary SLP, and COTA each reported on Student's progress. Elementary SLP indicated that based on an outside evaluation, ProLoQuo2Go is the most appropriate program at this time. COTA stated that, based on Student's progress, she will no longer have individual OT and will participate in group OT one day per week. (B10, S24; Testimony of Student's Mother, COTA)
 52. The PPT made recommendations for Student's goals and objectives based on her performance and progress on the previous IEP. Certain goals and objectives were carried over with expectations for Student to perform at a higher level (i.e. reading); while others were carried over to continue working toward mastery. New objectives were developed to use mastered skills to generalize them to other environments; while some objectives were developed as an intervention because Student was not progressing satisfactorily (i.e. subtraction). (Testimony of Fourth Grade Special Education Teacher)
 53. The PPT recommended and agreed upon: 23 hours of special education services per week (an increase of 1.75 hours per week over the previous IEP); 2 hours per month OT (a decrease of 2 hours per month);¹³ 4 hours per month speech therapy with increased consult; ESY summer school; ESY speech with consult for 30 minutes per week; no ESY OT services; adaptive PE; increased adult support; special transportation with seatbelt; ABA consult 30 minutes every other week; CTAA; iPad with ProLoQuo2Go throughout the school day; and a PPT meeting in April to plan for transition to the middle school for the 2019-20 school year. (S24, B10)
 54. Student's eight IEP goals (with 29 total objectives) include: demonstrate an improvement in comprehension and decoding skills necessary to read for information and understanding; demonstrate an improvement in mathematical concepts and computation; improve receptive language skills through increased attention and fluent responding to directions in functional (real-world) settings; fluently communicate her thoughts and needs using all modalities of communication (speech, voice-output, written, gestured, etc.) language; demonstrate improvement in ability to attend to and participate in small group (3-4 students) lessons; maintain low levels of challenging behaviors throughout the school day; increase functional

¹³ Student's January 2018 IEP provided her with both individual and group OT. Occupational Therapist and COTA recommended eliminating individual OT sessions and continuing group sessions for Student in the December 2018 IEP because she no longer needed a significant amount of adult support in OT. Student's motor skills, core strength, and proprioceptive skills had improved, so more focus was put into functional activities and ADLs and preparing Student for the functional skills group at the Middle School. (Testimony of COTA, Occupational Therapist)

participation within the school environment; expressively increase ability to respond, label, sort, and categorize. (S24, B10)

55. The IEP includes accommodations and modifications such as alternative texts and worksheets, manipulatives, assistive technology, access to iPad with ProLoQuo2Go, visual schedules and supports, DTI, modified grades based on IEP, extra space for work, adaptive work space, breaks between tasks, get Student's attention before speaking, multi-sensory approach, verbally redirect for focus, repeat information/instructions, increased adult support, ABA consult for Student and staff for 30 minutes every other week, OT consultation for staff for carryover of skills. Student's November 2018 BIP is not specifically referenced in this subsequent IEP. The IEP does contain goals and objectives seeking to decrease certain undesirable behaviors and non-compliance and increase certain appropriate behaviors. (S24, B9, B10)
56. On January 15, 2019, Fourth Grade Special Education Teacher called and emailed Student's Mother regarding Student's aggressive behavior towards staff and peers that afternoon. Student was very upset and flopped to the ground on multiple occasions. (S12)
57. Data indicates that Student did not often engage in undesired behaviors at school; when she did engage in an undesirable behavior, it was at a higher level. BOE did see an increase in inappropriate laughing in the second half of fourth grade as a result of an increase in another student's behavior. This inappropriate laughing was most often a reaction to another student being upset or crying. (Testimony of Fourth Grade Special Education Teacher)
58. Student's January 2019 progress report indicates that she mastered goals 5, 6, 7, 9, and 18 and made satisfactory progress on goals 2, 3, 4, 8, 14, 15, 16, and 17. Goals 1, 10, 11, 12, and 13 were rated as "other". Her progress report includes notes, such as:
 - a. Objective 1.1 (sit and attend to small group activity for 10 minutes with no more than 4 prompts) rated as "other": Limited progress. During a small group (2-3 students) lesson lasting 15-20 minutes, Student needs an average of 9 prompts to stay engaged in the activity and comply with one step directions. Student is able to sit without engaging in any target behaviors.
 - b. Objective 1.2 (participate in small group instruction by independently stating the answers to group questions in 8 out of 10 opportunities): Student is able to provide answers to known questions when in small group with continuous reinforcement.
 - c. Objective 2.1 (maintain low levels of crying and flopping throughout the school day – no more than 10 minutes per day): Student averages 4 minutes of crying and 23 instances of flopping throughout the school day.
 - d. Objective 2.2 (maintain low levels of scripting behavior during work sessions, resulting in an average of 10 or less redirections per day): Student typically engages in scripting behavior during non-preferred work sessions or when she is upset. This requires an average of 12 redirections per work session. Student participates in 8 work sessions per day. These include 1:1 instruction, 2:1 instruction and small group work of up to 4 students.
 - e. Objective 3.1 (When an instructor states Student's name, while she is completing an independent activity or playing at her desk, Student will make eye contact in 8 out of 20 opportunities): While engaged in an independent activity at her desk, Student will make eye contact 90% of the time when an instructor states her name. She will make eye contact 75% of the time when her name is called, and she is more than 5 feet away from the instructor.

- f. Objective 4.1 (expressively name 3 different items belonging to 10 different categories in 8 out of 10 trials): this program was re-introduced 1/11/19. Student is 100% accurate when labeling at least 3 common fruits.
- g. Objective 4.2 (when given an array of 3 or 4 items, Student will determine which item does not belong in 8 out of 10 trials): Identifying what item doesn't belong and why in an array of 3-4 items is one of Student's strengths. She is 95% accurate with this skill.
- h. Objective 4.3 (when given an array of pictures and asked which one is of a certain class – i.e. clothing, vehicles – Student will label the correct picture in 8 out of 10 opportunities): Student is 98% accurate when labelling items from 18 classes.
- i. Objective 4.5 (demonstrate ability to fill in a statement based on function in 8 out of 10 opportunities): Student is 90% accurate when filling in a statement based on function of an item. Since November, she has acquired 5 new sets of items.
- j. Goal 5 (when given a written direction, Student will read the direction and follow it accurately in 8 out of 10 opportunities): Mastered.
- k. Goal 6 (demonstrate an increase in reading comprehension by filling in an appropriate word when given an incomplete sentence): Student is able to fill in the missing word when given a choice of 3 words to complete the fill in. She is, on average, 100% accurate with this skill. I hope to see her demonstrate this skill when presented with an incomplete sentence and no word bank.
- l. Goal 8 (given visuals and prompting as needed, Student will communicate using functional language and different word combinations for the purpose of requesting, commenting, questioning, and protesting): Student will refuse items with ease. We are working on her ability to accurately and swiftly use other forms of communication such as responding 70% and initiating <50%.
- m. Goal 9 (demonstrate an increase in abilities in mathematics domain): Mastered.
- n. Goal 10 (add up to 20, using objects, fingers, manipulatives, mental images, drawings, sounds, acting out, verbal expression or equations): Student has shown some regression with this skill. She requires more prompting from adults to choose and count manipulatives to represent the addition problem and then solve it.
- o. Goal 11 (subtraction) rated as "other": this program has been put on hold because of the regression Student is demonstrating with her addition facts.
- p. Goal 12 (sort 10 objects into groups by attribute and label the common attributes): this program remains on hold.
- q. Goal 13 (tell and write 10 examples of time in hours and half-hours using analog and digital clocks) rated as "other": Student has shown some inconsistent maintenance and some regression with this skill. She was able to tell and write time to the nearest five-minute mark. She has since shown inconsistent progress with that skill after we began teaching time to the nearest minute. I have begun intervention by having Student label the times on a clock in order to gain back the language she previously mastered.
- r. Goal 15 (given prompts as needed, Student will improve receptive language skills through increased attention and responding to directions): Student continues to have variable response times and accuracy due to attention and investment. She will follow functional directions with ease without prompting. She requires maximum supports and reinforcement to choose and respond when it is a non-preferred activity.

- s. Objective 16.2 (given verbal prompts and direct instruction, Student will demonstrate ability to use and manipulate a variety of school tools and materials during activities): Mastered.
- t. Objective 17.1 (demonstrate ability to maintain an upright seated posture during tabletop activities for 20 minutes without leaning or slouching on the desk or table on 3/4 observations): Mastered.

(S22; Testimony of Fourth Grade Special Education Teacher)

- 59. Progress reports were based on a review of data collected daily throughout Student's program which included introduction of new material alternated with maintenance of previously mastered material. (Testimony of Fourth Grade Special Education Teacher)
- 60. On January 30, 2019, Private BCBA documented Student's progress and needs based on a June 2018 assessment and observation. Her notes include:
 - a. Student's main area of deficit presented within the domain of communication.
 - b. Student has learned, within very structure routines, how to request items she may need to complete a task, but the generalization of this skill to naturally occurring scenarios and people other than her mom and direct therapist is lacking.
 - c. Student is more likely to respond to the question "what do you want?" than to approach an adult and independently initiate a request.
 - d. The person with whom Student is communicating needs to wait between one and three minutes for Student to respond to the request.
 - e. Student has made progress in the area of requesting the removal of an undesired activity.
 - f. She was taught to utilize phrases "I don't want to" and "I don't like that" continuously over a period of four months with the intent to increase her functional communication and reduce her aggressive behaviors.
 - g. This illustrates the level of repetition and consistency that Student requires to be able to learn a skill, retain it and use it functionally.

(S23A)

- 61. Via email on January 30, 2019, Student's Parents requested an Independent Educational Evaluation ("IEE") at BOE's expense. They requested that the scope of the IEE be a psychoeducational evaluation inclusive of behavioral and educational components and a speech-language evaluation. (B33; Testimony of Assistant Superintendent, Student's Mother)
- 62. Student's Parents' email indicated that they believe Student's outbursts are largely due to an inability to communicate her needs and desires appropriately and that this inability has remained a low priority in her IEPs. They stated that the largest factor is that the IEPs "are based off evaluations that are not substantial, comprehensive and appropriate." (B33)
- 63. Assistant Superintendent conducted a file review, including previous evaluations, and spoke to Student's current team members. He determined that Student was in an appropriate program, that she was making appropriate progress, and that the previous evaluations were appropriate. (Testimony of Assistant Superintendent)
- 64. On February 1, 2019, Assistant Superintendent notified Student's Parents that BOE "is electing to refuse your request" and indicated that he will file for due process to defend BOE's evaluations. Assistant Superintendent had not spoken to Student's Parents in person and wanted to hear their concerns, so he offered them an opportunity to participate in a PPT meeting to discuss their concerns. Student's Parents responded that they do want to participate in a PPT meeting and "are willing to withdraw the request for due process at this time." Assistant Superintendent understood Student's Parents to mean that they were

withdrawing their request for an IEE at BOE's expense. (B33; Testimony of Student's Mother, Assistant Superintendent)

65. On March 1, 2019, Fourth Grade Special Education Teacher emailed Student's Mother that the nurse desensitization procedure they have been doing helped tremendously. Student's Mother responded that it is a big step for Student and thanked the teacher for her help. (S92)
66. On March 12, 2019, Fourth Grade Special Education Teacher emailed Student's Mother telling her that Student had a small outburst during group work, that she was required to apologize to the impacted student and then sit at a desk by herself for two minutes to cool down, that Student was able to do her work completely independently with no behaviors, and that she otherwise had a great day. (S91)
67. A PPT meeting was held on March 14, 2019 as offered by Assistant Superintendent in response to Student's Parent's IEE request and to review/revise the IEP.¹⁴ Student's Mother, Assistant Superintendent, Regular Education Teacher, Fourth Grade Special Education Teacher, School Psychologist, Elementary SLP, BOE OT, Private BCBA, BOE BCBA, COTA, and Student's Parents' Advocate attended the meeting. Student also attended with 1:1 Paraprofessional. This meeting was intended to be a collaborative effort to resolve things that Student's Parents were not happy about. Student's Parents' Advocate said that there were a lot of concerns with the IEP. BOE staff felt that the meeting was very tense, and that Student's Parent's Advocate was confrontational, abrupt, and not collaborative. (B11; Testimony of Fourth Grade Special Education Teacher, BOE BCBA, Occupational Therapist, COTA)
68. With Student and Paraprofessional in attendance, the PPT could see the behavior plan strategies in action and see how appropriately Student behaved for the duration of the PPT. Student's Mother commented that they do not see that type of quiet, appropriate behavior from Student at home. Throughout the PPT meeting, Student's Mother was sharing behaviors that Student displayed at home that BOE's team was not seeing at school. Student's Mother did not think that the things they were doing in school would work at home. (Testimony of Fourth Grade Special Education Teacher, Assistant Superintendent, Student's Mother, BOE BCBA, Occupational Therapist)
69. Student's Parents expressed dissatisfaction with Student's progress and requested an out of district placement in a language-based program that provides instruction and supports behavior, academics, and independent living. BOE refused the request because Student's educational performance supports refusal and the out of district placement would not be in the LRE. The PPT recommended an individually administered adaptive behavior assessment conducted by School Psychologist. Student's Mother declined to consent to the assessment (B36; Testimony of School Psychologist, Fifth Grade Special Education Teacher, Assistant Superintendent)
70. The PPT recommended to continue the previous IEP with these changes/supports:
 - a. Conduct joint home visit with Private BCBA to develop home differential reinforcement of other behavior plan ("DRO");¹⁵

¹⁴ BOE did not prepare written minutes for the March 14, 2019 PPT because Student's Parents recorded the meeting. The recording is maintained in Student's file. (S11, B11; Testimony of Assistant Superintendent)

¹⁵ The DRO is used to decrease certain inappropriate behaviors and reinforce positive behaviors. It is conducted on a time schedule where Student earns a token for not engaging in target behaviors for a certain time-period. She gets a break when she earns four tokens. The time-period for compliance is systematically increased. (Testimony of BOE BCBA).

- b. Correct typos in objectives 1.1 and 1.2 and correct the dates on the service grid;
 - c. Schedule parent visitation to BOE Middle School for tour of programming by April 12.
- (B11; Testimony of BOE BCBA)
- 71. Student's Mother did not want BOE to make any IEP changes until she got an outside opinion.¹⁶ (BOE BCBA, Testimony of Student's Mother)
 - 72. On March 27, 2019, Elementary SLP emailed Student's Mother to discuss positive outcomes of an hour-long session. (S12)
 - 73. On April 2, 2019, BOE BCBA emailed Student's Mother to follow up on recommendations from the March 14, 2019 PPT meeting. The recommendations include scheduling a tour of the middle school and STRIVE program and to do a joint home visit with Private BCBA. Student's Mother emailed BOE BCBA to confirm a date for the middle school tour and to inquire as to the purpose of the home visit. BOE BCBA responded that the purpose of the home visit was for BOE BCBA and Fourth Grade Special Education Teacher "to come out and explain how we are using the DRO/BIP at school and see if there is a way we can modify it to work at the home." The intent was to collaborate with Student's Mother and Private BCBA on strategies being used successfully in school, not to provide in-home services. The home visit was scheduled for May 1, 2019. (S12; Testimony of Fourth Grade Special Education Teacher, Student's Mother, Assistant Superintendent, BOE BCBA)
 - 74. On April 22, 2019, Elementary SLP contacted Student's Mother to discuss materials used with Student and Student's increased tolerance in unexpected activities when she is encouraged to use the keyboard to communicate thereby giving her increased processing time. Student's Mother reported that Student had an outpatient evaluation completed and that the results would be shared with the team in time. (S12)
 - 75. Student's April 2019 progress report indicates that she made satisfactory progress on all of her IEP goals. Her progress report includes notes indicating improved accuracy in reading with fewer prompts; reading and following directions on a worksheet; answering WH questions about a book she is reading and about herself and her family; solving basic addition problems; understanding comparative vocabulary; identifying, labelling and stating value of coins; responding to functional and predictable activities in the classroom with up to two conditions; determining which item does not belong in an array of 3-4 items; and labelling associated items and functions. She also exhibited appropriate behavior for up to 20 minutes in small group lessons; averaged lower levels of crying, flopping, and noncompliance; and participated in functional activities such as food prep, folding clothes, and logging information on the computer with prompting. She mastered objectives related to labelling and replicating sequences of up to 8 items. Her progress report also notes that certain behaviors and communication are not spontaneous and sometimes need prompting; that she does not always use language appropriately; and that she may engage in inappropriate behaviors when things are not as she expects and in those conditions she often needs multiple redirections and incentives to engage appropriately. Student's progress was determined based on collected data and comparing to previous reporting periods. (S3, S10; Testimony of Fourth Grade Special Education Teacher)
 - 76. A home visit with Student's Mother, BOE BCBA, Fourth Grade Special Education Teacher, and Private BCBA took place on May 1, 2019. Student's Mother shared concerns about Student completing tasks, her rigidity in not leaving the home, and communicating when something is bothering her. They reviewed the school based DRO, visual schedules, and

¹⁶ See, Private Speech Evaluation and Private Psychological Evaluation, below.

PECS;¹⁷ modelled the DRO; and discussed how to offer specific reinforcement for behaviors at home. Private BCBA said she could work with the family on getting Student out of the house more and breaking up her routine to increase flexibility. Student's Mother agreed to keep track of when they leave the house, where they go, and how Student responds so they can see if there is a pattern. They also discussed writing out the steps for activities to provide direction and reinforcement. (S12; Testimony of Student's Mother, BOE BCBA)

77. A DRO for home was not developed because Student's Mother did not follow through on the paperwork and said that it would not be effective and that she could not implement it at home due to her need to attend to her young son. (Testimony of Student's Mother, Fourth Grade Special Education Teacher, BOE BCBA)
78. Student's June 2019 progress report indicates that she made satisfactory progress on all of her IEP goals. Student mastered reading D level books with less than 3 prompts; identifying coins and dollars by name and value; independently following predictable 1-step spatial directions; making eye contact during an activity when her name is called; determining which item does not belong in an array and stating why; labelling pictures in an array by class; replicating sequences of up to 8 items; and reading and following directions on a play-based worksheet. She made significant progress in naming 6 items that belong to 19 different categories after being introduced to a graphic organizer. Progress notes also indicate that she can read E level books (ahead of the October 2019 goal) and answer simple questions using pictures as clues; self-correction in reading is a strength; she does a great job reading directions and sometimes needs additional support to follow through; she is making progress with using TouchMath to add single digit numbers while continuing to require adult support; progressing with comparing numbers; better able to inhibit and attend for structured tasks in order to comprehend directions; uses a combination of oral language, typed words and phrases, and her voice output system to communicate responses and needs; answer more WH questions about herself and her family; is doing well responding when given increased time to process what has been asked of her; exhibits appropriate behavior for up to 25 minutes in small group lessons; and often works independently. The notes also indicate that she continues to display issues with flexibility for new tasks and will often refuse new items or activities when first displayed; she increases her ability to manage new activities when given time to observe modelled expectations; continues to display the most difficulty with initiating and commenting; continues to require frequent adult prompting to initiate, participate in and complete functional tasks such as planting vegetable and making rock decorations for the garden; she is making slow progress with relating commonly associated objects. (S3, S10)

Private Speech Evaluation

79. Student's Mother was concerned about Student's progress in communication and wanted to switch gears to focus on speech and language so that Student doesn't get "even further behind." (Testimony of Student's Mother)
80. At Student's Parents' request, Private SLP conducted a speech and language evaluation of Student ("Private Speech Evaluation") on April 9 and 10, 2019. Student's Mother wanted an independent evaluation to understand what Student can do with language and what she understands. Student's Mother did not provide Private SLP with any reports or records to review. The only background information Private SLP had about Student was relayed to her

¹⁷ PECS is a Picture Exchange Communication System. Student's Mother already had PECS at home. (Testimony of Student's Mother, BOE BCBA).

by Student's Mother. Private SLP did not observe Student in school or speak to school staff as part of the evaluation. Private SLP did not administer any standardized assessments. She assessed Student through language probes and relatedness. During the evaluation, Student had a tablet with ProLoQuo2Go with her but did not use it. Student was talking so Private SLP evaluated her verbal output. (S15; Testimony of Student's Mother, Private SLP)

81. Student's Mother met with Private SLP twice in July 2019 to go through the Private Speech Evaluation report and discuss how to apply it at home.
82. Private SLP's Therapist went to Student's home twice – once each in September and November 2019 – to teach Student's Mother to embed language in patterned activities and to use declarative language and visual referencing. Student's Mother found the training to be “immensely helpful.” Student's Mother also began taking courses on autism and how to work with ASD kids and found it to be extremely helpful. (Testimony of Student's Mother, Private SLP)

2019 Extended School Year (July-August 2019)

83. Student's IEP calls for her to participate in ESY summer school 4.25 hours per school day from July 8 to August 8, 2019 and to have speech therapy once a week for 30 minutes during summer ESY. Seven of Student's eight IEP goals are to be worked on during 2019 ESY.¹⁸ (B11)
84. Fourth Grade Special Education Teacher taught Student during 2019 ESY. Her summer program consisted of academic and behavioral supports to ensure satisfactory progress in maintaining the skills acquired during the school year. SLP Assistant worked with Student on speech-language goals during 2019 ESY (Testimony of Fourth Grade Special Education Teacher, Middle School SLP)
85. Student's August 2019 progress report indicates that she made satisfactory progress on all goals implemented during the summer. Her progress report includes notes, such as:
 - a. Objective 1.1 (by April 2019, Student will demonstrate the ability to read at a D level with no more than 3 prompts): Limited progress.
 - b. Objective 2.3 (when shown 2 numbers, Student will identify which number is the same, greater than or less than with 80% accuracy over 3 consecutive days) is rated as “other”: Student is progressing with the skill of comparing numbers and needs some adult reminders and directives. She is 74% accurate when identifying greater than, less than, and equal to.
 - c. Objective 2.4 (Student will identify coins and dollars by their names and value with 80% accuracy over 3 consecutive days): Mastered.
 - d. Goal 3 (given prompts as needed, Student will improve receptive language skills through increased attention and fluent responding to directions in functional - real-world - settings): Following directions during rote activities continues to be a strength for Student as she continues to perform well, demonstrating 75% accuracy. When provided with visual cues and verbal prompts, Student requires moderate adult support to problem solve. She greets adults independently with gestures (waving) but frequently requires verbal cues for appropriate names and eye contact.
 - e. Goal 4 (Student will fluently communicate her thoughts and needs using all modalities of communication – speech voice-output, written, gestured, etc.): Student uses the

¹⁸ Goal 7 – Independent Living skills – is not scheduled for implementation by Occupational Therapist during 2019 ESY.

prepositions “in” and “on” with 75% accuracy, using phonemic cues and verbal prompts. She refuses items verbally and with her communication device appropriately as well as demonstrates the ability to maintain interest and engagement throughout sessions.

- f. Objective 5.2 (When an instructor calls her name while she is completing an independence activity or engaged in play, Student will make eye contact on 80% of opportunities): Mastered.
- g. Objective 8.2 (when shown an array of 3-4 items, Student will determine which item does not belong and state the reason why with 80% accuracy over 3 consecutive days): Mastered.

(S3, S10)

Private Psychological Evaluation

86. At Student’s Parents’ request, Private Psychologist conducted an evaluation of Student on July 15 and 16, 2019 (“Private Psychological Evaluation”). Student’s Parents expressed concern about Student’s lack of development across domains and limited ability to communicate. The Private Psychological Evaluation “sought to better understand [Student’s] cognitive, academic, social, and behavioral profile in order to offer appropriate suggestions for interventions on her behalf.” (S8; Testimony of Student’s Mother, Private Psychologist)

87. The Private Psychological Evaluation included the following assessments:

- a. Clinical interview with Student’s Mother;
- b. Record review;
- c. Behavioral observations;
- d. Differential Abilities Scale 2nd Edition – School Age Battery and Early Years Battery under age 7 (“DAS-II”). Private Psychologist used the DAS-II school aged battery with normative data for Student’s age and used the early years battery because her skills were so significantly delayed;
- e. Kaufman Test of Educational Achievement 3rd Edition – select subtests (“KTEA-3”);
- f. Autism Diagnostic Observation Schedule 2nd Edition – Module 2 (“ADOS-2”);
- g. Informal academic and social probes, which included Student’s 2017 triennial school evaluation and Student’s March 14, 2019 IEP;
- h. background info from mom and review of records;
- i. Vineland Adaptive Behavior Scales 3rd Edition – Parent Rating Form (“Vineland-3”);
- j. Early years battery subtests for children under age 7.

(S8; Testimony of Private Psychologist)

88. Private Psychologist did not speak with any BOE staff as part of the evaluation. (S8; Testimony of Private Psychologist)

89. During the evaluation, Student had a tablet with ProLoQuo2Go with her but did not use it. (Testimony of Private Psychologist)

90. Private Psychologist found that Student’s skills are quite limited compared to her chronological age, that she often uses scripted language or behavior instead of words to communicate, that she correctly verbally responds “yes” or “no”, and that she needs adult direction and support. Private Psychologist recommended that Student’s program include:

- a. speech and language therapy 5 days per week, in a combination of individual and dyad settings;
- b. social relatedness intervention 5 days per week, in a combination of individual and dyad settings;

- c. daily individual special education services;
- d. individual occupational therapy 3 days per week with a focus on functional skill development, and a sensory diet;
- e. development of life knowledge through direct instruction with carry over to the home environment with parent training;
- f. 1:1 paraprofessional at all times during the school day;
- g. extended school year services;
- h. focus on engagement and developing life skills to support active thinking and not just rote learning;
- i. a language-based educational program.

(S8; Testimony of Private Psychologist)

91. Private Psychologist opined that Student's March 14, 2019 IEP did not contain enough functional programming, contained too much rote learning, and did not address Student's social needs. Private Psychologist does not recommend ABA therapy or DTI for Student. (Testimony of Private Psychologist)

Fifth Grade (2019-20 School Year)

92. In late August 2019, just before the school year began, Student's Mother provided Assistant Superintendent with copies of Private Psychological Evaluation and Private Speech Evaluation. Assistant Superintendent asked for Student's school-based teams (both previous year and incoming year) to review the evaluations and provide him with any questions or comments. (Testimony of Assistant Superintendent, Student's Mother, COTA)
93. On August 26, 2019, Student's Mother signed an authorization for release of information to permit Private Psychologist and BOE to release records to one another. In September 2019, Assistant Superintendent spoke with Private Psychologist about her Private Psychological Evaluation and with Private SLP about her Private Speech Evaluation. The Private Speech Evaluation referenced a matrix and attachments which were not included in the version provided to BOE. Assistant Superintendent requested that Private SLP provide those documents as part of the review. Private SLP sent the matrix and said that it wasn't meant for and wasn't appropriate for Student. She did not send the attachments. (B31, B34, B35; Testimony of Assistant Superintendent)
94. Student's BIP was not in effect when she transitioned to Middle School. Fifth Grade Special Education Teacher conducted an assessment and data review when Student came to Middle School and determined that a BIP/DRO was not necessary because Student's behaviors were manageable as a result of the effective BIP implemented at Elementary School. BOE always collects data on identified behaviors, including those related to safety and of social significance. (Testimony of Fifth Grade Special Education Teacher)
95. Everything in Student's school day is an opportunity for learning. ADLs are used to enrich Student's learning; to engage in ADLs independently, follow a visual schedule, communicate, read, use math and social skills. During speech-language services, everything in the room is narrated – talking about steps involved in an activity, incorporating colors, sizes, and adjectives. Middle School SLP includes Student in the conversation whenever possible and prompts her with questions. Student's speech-language services are provided in a one-to-one environment to support her level of sustained attention. (Testimony of Middle School SLP)

96. A PPT meeting was held on September 11, 2019 to review the private evaluations and to review or revise the IEP. Student's Mother, Student's Stepfather, Assistant Superintendent, BOE BCBA, Regular Education Teacher, Fifth Grade Special Education Teacher, School Psychologist, Middle School SLP, Occupational Therapist, Fourth Grade Special Education Teacher, COTA, Student's Attorney, and BOE's Attorney attended. The PPT reviewed ESY programming, the beginning of the school year, and the private evaluations.¹⁹ (B12; Testimony of Assistant Superintendent)
97. The PPT recommended continuing the previous IEP and provide these services/supports:
- provide parent training on ProLoQuo2Go; invite parent into school with SLP and Paraprofessional and Student for initial training; additional sessions can be scheduled based on parent input and communication with SLP;
 - BCBA can provide list of outside providers for in-home services and then can conduct home visit for the purpose of coordinating school to home programming;
 - provide parent video examples of models on quarterly basis or when individualized programming changes;
 - monthly team meetings for 45 minutes attended by rotating staff based on parent feedback;
 - administer adaptive behavior scales by school psychologist.
- (B12)
98. Student's Parents requested an out of district placement in a program that is language-based and provides instruction/supports in behavior, academics, and independent living; requested speech services to be provided five times per week by Middle School SLP; and requested weekly in-home services to be provided by school staff. The PPT refused these requests. (B12)
99. Student began participating in unified band which was implemented at Middle School this school year. Student is paired with a peer mentor who knows an instrument and they participate in band class together. Student plays the xylophone with two peer mentors and little adult intervention. Student loves the class and is able to navigate to the class independently with Paraprofessional following from a distance. (Testimony of Fifth Grade Special Education Teacher).
100. A parent meeting was held on October 18, 2019 for consultation and training on ProLoQuo2Go application use. Fifth Grade Special Education Teacher, Middle School SLP, and Student's Mother participated. Student's Mother indicated that she was proficient on it and requested a low-tech version so that other family could use it to communicate with Student. Middle School SLP provided screenshots for the family to use. Fifth Grade Special Education Teacher and Middle School SLP model and encourage Student's use of the iPad with ProLoQuo2Go. Student does not actively use the iPad as a speech generating device. Student's verbal utterances of 4-5 words are accepted in meeting her goals and objectives. A total communication approach is utilized; they accept whatever style of communication that Student uses – i.e. spoken, device generated, written. (B31; Testimony of Middle School SLP, Student's Mother, Fifth Grade Special Education Teacher)
101. Student's November 2019 progress report indicates that she made satisfactory progress on goals 1, 2, 3, 5, 6, 7, and 8. Goal 4 was rated as "other." Student mastered Objective 2.1 (solving addition problems); Objective 2.4 (identify coins and dollars by name and value);

¹⁹ BOE did not prepare written minutes for the September 11, 2019 PPT because they recorded the meeting. The recording is maintained in Student's confidential special education file. (B12)

Objective 7.2 (ability to locate important locations in the new school building); Objective 8.1 (name at least three items belonging to 10 different categories); Objective 8.2 (determine which item does not belong in array of 3-4 items and state reason why); Objective 8.3 (correctly label a picture by class when shown an array of pictures); and Objective 8.8 (replicate sequence of up to 8 modelled items). Her progress report includes notes, such as: she is reading passages up to 300 Lexile level and independently answering WH questions with 79% accuracy; independently completing addition past 20; learning the skill of counting backwards from 10; comparing numbers to determine greater than or less than; follows familiar directions with nearly 90% accuracy without repetition; requires cues to follow novel directions involving linguistic concepts; follows novel one-step directions independently; typically responds verbally to questions, utilizes her device when performing some familiar tasks- an apparent habit rather than need;²⁰ demonstrated inconsistent skill in use of prepositions; follows directions involving “in” and “on” with 90% accuracy however requires cues to follow directions involving other prepositions; utilizes total communication to indicate what she does not want; has only demonstrated maladaptive responses during speech-language sessions twice since the beginning of the school year. (S3, S10; Testimony of Middle School SLP)

102. A parent meeting was held in November 2019. Fifth Grade Special Education Teacher, Middle School SLP, and Student’s Mother participated. They discussed Student’s current progress and provided her progress report. Videos of Student’s performance and independent schoolwork that were recorded on Student’s iPad were shown to Student’s Mother. Student’s Mother expressed concern about Student’s behavior at home – having a tantrum when she can’t express her frustration. Fifth Grade Special Education Teacher indicated that the function of behaviors at school appear to be attention-seeking and suggested giving Student space when she engages in tantrum behavior. She also expressed the importance of consistency over time and that it may take four to six weeks for progress. Student’s Mother indicated that she would try that approach. (B31; Testimony of Fifth Grade Special Education Teacher, Student’s Mother)

103. Student’s January 2020 progress report indicates that she made satisfactory progress on goals 1, 2, 3, 5, 6, and 8; she mastered goal 7 (increase functional participation within the school environment). Goal 4 was rated as “other.” Student mastered objective 1.4 (read and follow simple instructions on worksheets); objective 2.1 (solving addition problems); objective 2.4 (identify coins and dollars by name and value); objective 8.1 (name at least three items belonging to 10 different categories); objective 8.3 (correctly label a picture by class when shown an array of pictures); and objective 8.8 (replicate sequence of up to 8 modelled items). Her progress report includes notes, such as: can answer “who” and “what” questions after reading a text at her independent level; working on “where” and “when” questions; reading books at 420 Lexile and answering comprehension questions with 80% accuracy; needs average of 2 prompts to decode unfamiliar words; demonstrates difficulty understanding pictured problems and coming up with solutions; exhibiting emergent problem-solving skills in certain situations; makes selection of preferred activity by gesturing or physically taking the activity rather than stating what she wants; follows one-step directions involving spatial concepts; continues to require written cues to successfully respond to questions involving prepositions; engages in crying an average of 1 minute per

²⁰ Student will occasionally say what she doesn’t want but not necessarily say what she does want. (Testimony of Middle School SLP)

day; engages in flops an average of 0.2 per day; engages in noncompliance an average of 45 seconds per day; determines which item does not belong in array of 3-4 items and state reason why for materials made for the program but has not demonstrated generalization of this skill to novel materials. Student demonstrated unsatisfactory progress on objective 2.2 (solve subtraction problems) and limited progress on objective 2.3 (identify which number is same, greater than or less than with 80% accuracy over 3 consecutive days - is able to identify for one day; has not demonstrated consistency with this skill). (S3)

104. A PPT meeting was held on January 6, 2020 to conduct an annual review, review or revise Student's IEP, and plan for evaluation/reevaluation. Assistant Superintendent, Student's Mother, Student's Stepfather, Regular Education Teacher, Fifth Grade Special Education Teacher, Middle School SLP, Occupational Therapist, and COTA attended. Fifth Grade Special Education Teacher, Regular Education Teacher, Middle School SLP, Occupational Therapist, and COTA reported on Student's progress. Middle School SLP, Occupational Therapist, and COTA recommended changes to Student's goals and objectives. BOE is working toward a higher-level model for Student. Her previous activities were more play focused for elementary school and are more focused on tablework with structured activity for middle school. A planned evaluation of adaptive scales did not happen because Student's Mother did not consent for it to be administered. Student's Parents declined consent for a reevaluation and stated that they are unsure whether they will agree to Student participating in 2020 ESY. (S4, B13; Testimony of Assistant Superintendent)
105. Student's speech-language goal (#3) is designed to help her reach her communication potential in the school setting. The goal is implemented in the speech-language room with Student's Paraprofessional present. They do various activities that focus on her objectives, such as to follow spoken directions, use prepositions and adjectives, distinguish quantity and quality attributes, and manipulate objects or point to things to indicate that she followed directions. At Student's Mother's request, Middle School SLP added an objective for Student to express how she is feeling. (Testimony of Middle School SLP)
106. Occupational Therapist and COTA collaborated to write Student's OT goals and objectives. They use familiar and developmentally appropriate language to implement Student's OT goal (#5). (Testimony of Occupational Therapist).
107. The PPT recommended to implement a new IEP with: academic instruction in resource room five times per week for 3 hours and 56 minutes per day (a decrease of approximately one hour per day); 2 hours per month OT; 5 hours and 20 minutes per month speech therapy (an 80 minute per month increase);²¹ extended school year ("ESY") summer school; ESY speech therapy for 30 minutes per week; adaptive/reg PE; adult support throughout the day; special transportation; CTAA; iPad with ProLoQuo2Go throughout the school day; annual and triennial will be combined next year. The PPT also recommended: provide parent video examples of models on quarterly basis or when individualized programming changes; monthly team meeting for 45 minutes attended by rotating staff based on parent feedback; case manager and Middle School SLP will send home data graphs one week prior to meeting; provide initial parent training on student programs in school with case manager for carryover

²¹ Middle School SLP thought that Student was making adequate progress with the amount of speech-language services previously allotted. Student's foundational communication skills are still lacking which is not surprising given her ASD and intellectual disability. In addition, Student's attention sometimes varies in sessions. Middle School SLP recommended the increased service time to show good faith and demonstrate that she is trying to work with Student's Parents. (Testimony of Middle School SLP, Assistant Superintendent)

on academic programs, additional sessions scheduled based on parent input and communication with case manager. Student's Parents requested speech services to be provided five times per week by Middle School SLP; the PPT refused the request for five days per week but increased from three to four days per week. (S4, B13; Testimony of Assistant Superintendent, Middle School SLP)

108. Student's six IEP goals (with 34 total objectives) include: demonstrate improvement in comprehension and decoding skills necessary to read for information and understanding; demonstrate an improvement in mathematical concepts and computation; utilizing a total communication approach, Student will demonstrate the communication skills necessary for comprehension, expression, and social interaction in the education setting; maintain low levels of challenging behaviors throughout the school day; demonstrate increased independence in functional tasks within the school environment; and expressively increase ability to respond, label, sort, and categorize. (S4, B13)
109. The IEP included accommodations and modifications such as alternative texts and worksheets, manipulatives, assistive technology, access to iPad with ProLoQuo2Go, visual schedules and supports, DTI, modified grades based on IEP, extra space for work, adaptive work space, breaks between tasks, get Student's attention before speaking, multi-sensory approach, verbally redirect for focus, repeat information/instructions, increased adult support, ABA consult for Student and staff for 30 minutes every other week, OT consultation for staff for carryover of skills. (S4, B13)
110. A parent meeting was held in late February. Student's Mother came to Middle School with her younger child. Student's Mother wanted to learn how they get Student to work in school. Fifth Grade Special Education Teacher talked about how to do DTI trials and provided a handout to help train her on DTI. Student's Mother requested information on prompting, which Fifth Grade Special Education Teacher sent to her later. Student's Mother was receptive to the information and resources. Student's Mother did not get very far with implementing the concepts at home because she had to care for her young son. (Testimony of Student's Mother, Fifth Grade Special Education Teacher)
111. Student was receiving private speech-language services during the 2019-20 school year. (S4)
112. Student's April 2020 progress report for the third quarter²² indicates that she made satisfactory progress on all of her IEP goals. Her progress report includes notes, such as: able to read passages between 400-480 Lexile and accurately answer comprehension questions with at least 80% independence, however this skill has not been consistent; averages 56% accuracy answering WH questions after reading a passage at her independent reading level; has typed up to 10 WPM on daily assignments; types an overall average 5.5 WPM across all typing assignments; mastered skill of 2 digit by 2 digit addition when there is a box over the tens column to indicate where to carry over the number when regrouping; prior to distance learning, was able to complete subtraction worksheet (single digit within 10) with 100% independence one occasion and completed skill with overall average of 62%; prior to distance learning, was able to identify coins by name and worth, working on adding quantity

²² Student's Mother expressed concern that Student's third quarter progress report that was due in April was not provided until late May. Assistant Superintendent testified that they were late for the entire school district as BOE struggled to determine the best method for getting them to parents since they typically get sent home with students in paper form. Students were not physically present in school in April due to facility closures because of the COVID-19 pandemic.

of 2 coins, throughout distance learning she has shown difficulty maintaining the skill so are re-teaching it; demonstrated advocacy in way of requesting preferred activities, following several turns of preferred activity is willing to transition to novel activity; follows spoken one-step directions with 56% accuracy; more successful when provided with a model that demonstrates targeted prepositions; follows directions about pictures in 10/11 opportunities; typically reverses the order of directions when presented with two-step directions; identifies pictured emotions with 60% accuracy; at this time, does not participate in reciprocal conversation turns; responds to greetings and will answer “how are you?”; when asked what she did the day before she does not respond; when asked yes/no questions about what she did, consistently says “no”; typically does not ask questions of others; prior to distance learning, had 0 instances of noncompliance and crying for nine consecutive days; overall average of noncompliance is 0 and overall daily average for crying is 0.9 minutes; zero instances of grounding since start of this IEP; decreased frequency of aggression; engages in average of 10.5 independent requests per day; able to locate items and places within school building with simple prompt however currently requires more than 2 prompts from adults to follow through with errand; able to correctly and consistently identify the pronoun “he” when commenting on a picture, does not currently consistently identify “she”; requires adult assistance to follow written directions within a large group; has mastered naming at least 2 associated objects with 13 different items; mastered fill-in statement for functions with at least 2 items for 7 different functions. Student demonstrated limited progress on objective 1.2 (independently answer WH questions after reading passage at her independent level); objective 3.5 (will participate in reciprocal conversations for minimum of 2 turns); objective 4.3 (request a walk or headphones prior to engaging in other target behaviors when another individual’s behavior is upsetting); objective 5.2 (demonstrate ability to follow multiple step direction of “go to X and do/say Y”); objective 5.4 (will request additional information using “who” or “where” when provided with a direction that includes partial information); objective 5.5 (receptively and expressively identify pronouns); and objective 5.9 (be able to answer WH questions about home, school, and the environment). (B15, B17)

113. Student’s progress was better than expected based on her profile. She made huge progress with the move from an elementary to middle school model. She adapted “quite well to the more structured model,” expanded her sentence length with and without the use of visuals, shown some independence with navigating through the school building; and uses words to request activities. (Testimony of Middle School SLP)
114. Student has made progress in the STRIVE program. When Student started in the program, “she had words but didn’t use them;” most of her communication was scripted and primarily receptive skills. Now, she is reading using a variety of words, can comment to others, and answers questions. (Testimony of BOE BCBA)
115. Student made progress over time. When Occupational Therapist first started working with Student, she would fall out of her chair, hold a crayon in her fist very lightly, and couldn’t button. She can now manage hygiene and self-help skills and is working on keyboard activities. She has shown functional growth and is flourishing in her program. (Testimony of Occupational Therapist).
116. As a result of the COVID-19 pandemic, BOE’s school facilities closed to in-person education on March 13 and students transitioned to distance learning through June 18 (the last day of the 2019-20 school year). BOE developed a Continued Education Opportunity Plan to implement Student’s IEP to the greatest extent possible during the facility closure.

The plan stated that Student's IEP goals 1, 2, 4, 5, and 6 will be implemented through a combination of instructional packets and Zoom sessions offered twice a week for 60 minutes each by Fifth Grade Special Education Teacher and Paraprofessional; that goal 5 will also be implemented through an activity calendar and ideas sent home and Zoom sessions of at least 30 minutes each week by COTA; and goal 3 will be implemented via direct service via Zoom four times a week for 20 minutes each by Middle School SLP and SLP Associate. Data was still collected during distance learning. Fifth Grade Special Education Teacher called Student's Mother to let her know that instructional packets would be available for pickup at BOE on March 16. The instructional packet included daily math and reading activities, list of DTI programs/tasks with a description on how to run them, and a list of previously mastered targets. (S89, B16, B30, B31; Testimony of Student's Mother, Fifth Grade Special Education Teacher, Middle School SLP, Assistant Superintendent)

117. On March 18, Middle School SLP emailed with Student's Mother to get feedback and to provide suggestions and feedback. She informed Student's Mother that BOE was looking into instituting teletherapy. Student's Mother was interested in the teletherapy. They continued to communicate daily in March. Student's Mother provided updates on what Student was working on and her performance. Middle School SLP provided feedback, suggestions, and additional materials. On March 22, Student's Mother signed consent for participation in remote speech-language therapy. (B14, B31)
118. On March 18, COTA emailed Student's Mother to explain the home OT program that was created for Student during school closure and to offer support via email, Skype, and/or phone calls. Student's Mother expressed desire to keep Student stimulated during the day and requested activity suggestions to follow at home. COTA sent Student's Mother sensory activities, easy recipes to try, and suggestions on how to support Student with the recipes. Student's Mother requested reminders and suggestions to keep her motivated as it "is so tempting to fall into a routine that lacks real variety, though I am trying." They continued to communicate via email and planned to connect via video as well. (B31; Testimony of Occupational Therapist, COTA)
119. During the pandemic school facilities closure, BOE opened up several online resources to students for free. The resources were not specific to Student; any student could use the resources. Fifth Grade Special Education Teacher adjusted the learning level for Student. Student's Mother selected activities from the online resources; some of which were too high level. Fifth Grade Special Education Teacher also provided Student's Mother with sample schedules/routines, suggestions and pictures of modification/strategies for math issues, online resources, and behavioral strategies to assist with problem behavior. Fifth Grade Special Education Teacher, Middle School SLP, and COTA conducted distance learning via Zoom with Student beginning in late March. Student's Mother sent daily reports of the programs she ran. (S1, S89, B16, B31; Testimony of Student's Mother, Fifth Grade Special Education Teacher, Middle School SLP, COTA)
120. Student's Mother had a rough crash course in distance learning; it felt like everything shut down on them. She worked to build structure and implement distance learning. Student did not understand the pandemic and struggled with the transition to distance learning; it was a big disruption in that it was an environmental and emotional change for Student. Student had a spike in behavioral problems at home during distance learning. She had several meltdowns during Zoom sessions. Fifth Grade Special Education Teacher, Middle School SLP, and COTA offered encouragement and provided additional strategies, supports, and

activities. Student's Mother requested that 15 minutes of the scheduled hourly distance learning session be used to work with Student and the remaining 45 minutes be used as a consult for her. (B16, B31; Testimony of Student's Mother)

121. BOE implemented the Service Record form provided by the State Department of Education to track students' continued education opportunity plans. Everyone who provided direct service to Student was required to complete the form. (B16; Testimony of Assistant Superintendent, Middle School SLP).
122. Student occasionally had difficulty during distance learning. She did not always login on time, Student's Mother frequently had to bring Student to the table, some days Student's Mother took the computer to Student in the bedroom where she was not at a table, Student was not always compliant during sessions. Student's Mother worked to facilitate the sessions. During distance learning, Student would request the title of the activity she wanted to do. (B16; Testimony of Middle School SLP, COTA)
123. Student's January 6, 2020 IEP provides for academic instruction in the resource room five times per week for 3 hours 56 minutes. During distance learning this was implemented as Zoom sessions twice a week for 60 minutes each with Fifth Grade Special Education Teach and Paraprofessional and provision of an instructional packet. Fifth Grade Special Education Teacher started distance learning via Zoom the week of March 30 after receiving signed consent for the sessions. Student was scheduled for sessions on Tuesdays and Thursdays. In the first session, Student threw the computer.²³ Fifth Grade Special Education Teacher suggested turning the camera off for the next session so that she could observe Student doing her daily work. The following week, Fifth Grade Special Education Teacher introduced Student to video meetings with Paraprofessional. Student was hesitant to use the new tool. They were able to observe Student doing her work. Student's Mother expressed discontent about the Zoom sessions. BOE BCBA was present on Zoom for the weekly sessions. Fifth Grade Special Education Teacher scheduled time to work with Student's Mother and BOE BCBA on strategies to help in the home. Student's Mother expressed concern about Student's behaviors. Fifth Grade Special Education Teacher and BOE BCBA suggested strategies to address the behavior. In the third week of distance learning, Student's Mother requested that instructional sessions be limited to 15 minutes instead of 60 minutes and declined a second weekly session. Fifth Grade Special Education Teacher then provided 15 minutes of instruction to Student and 45 minutes of consult to Student's Mother once per week. Fifth Grade Special Education Teacher requested that Student be at a table during instruction instead of in her bedroom on the floor. In late May, Student's Mother agreed to having a second weekly session for 30 minutes. Student engaged in problem behaviors during some sessions. Fifth Grade Special Education Teacher provided additional sessions when requested by Student's Mother, accommodated Student's Mother's requests to reschedule certain sessions, and continued to provide a variety of materials, resources, and suggestions to Student's Mother. Student resisted her reading program during distance learning and has not consistently received the instruction she would have in school. Fifth Grade Special Education Teacher and BOE BCBA expressed concern that Student was not required to do her work if she protested. They suggested that Student earn her break with compliance instead of noncompliance. Thirty minutes is the longest that Fifth Grade Special

²³ BOE later provided Student with a school computer to use since she was not safe with the home computer and because Student's siblings also needed to use the computer for distance learning. (Testimony of Student's Mother, Fifth Grade Special Education Teacher)

Education Teacher has gotten Student to do her work due to limits placed by Student's Mother. In school, Student will work on tasks compliantly for more than 30 minutes. Student's Mother has been resistant to some strategies and reinforcement. Student's Mother has used certain behavior as a reinforcer when they are trying to decrease that behavior in school. Fifth Grade Special Education Teacher acknowledges that remote learning is particularly difficult for Student given her disabilities. (B16; Testimony of Student's Mother, Fifth Grade Special Education Teacher)

124. Student's January 6, 2020 IEP provides for 5 hours 20 minutes of speech-language therapy over a 20-day cycle. This is implemented as 20 minutes of direct service four times per week. On March 13, Middle School SLP sent a letter and therapy materials to Student's Mother. During the week of March 16, Middle School SLP and Student's Mother communicated regularly via email regarding the distance learning plan. Middle School SLP began providing direct service to Student via Zoom beginning on March 24. Middle School SLP provided sessions ranging from 20 minutes to 40 minutes (with most sessions lasting 20-30 minutes) four days per week from March 24 through the end of the school year. Student was unavailable for some sessions; Student's Mother cancelled a few sessions; Middle School SLP accommodated Student's Mother request to change dates/times for several sessions. During some sessions, Student was laying on her bedroom floor and was distracted. Student participated in 83% of the speech-language therapy sessions offered through distance learning and had a parent facilitator present during the sessions. For sessions that she did not attend, Student's Mother requested 'homework' for them to work on later in the day. Student demonstrated flexibility regarding the new activities and engaged in a variety of presentations of the activities. (B13, B16, B30, B31; Testimony of Middle School SLP)
125. Student's January 6, 2020 IEP provides for 2 hours of group OT over a 20-day cycle. During distance learning, this was implemented as at least 30 minutes of direct service a week and additional activities to work on at home. COTA communicated regularly with Student's Mother during distance learning and provided her support and activities for Student. COTA began Zoom sessions with Student on March 27 and scheduled her for a 30-minute session every Friday at 12:45. Some sessions were rescheduled; Student logged in late to a session and ended a session early. COTA continued to provide activities and materials for distance learning, including activities for her to engage in during spring vacation. During distance learning, COTA tried to simulate school-based objectives in the home environment with Student's Mother's assistance. Occupational Therapist observed one of Student's distance learning sessions. After the last day of the school year, COTA sent Student's Mother a list of summer activity ideas and suggested that she create daily themes with predictable activities to keep a routine over the summer. (B13, B16, B30, B31; Testimony of COTA)
126. Student's June 2020 progress report²⁴ indicates that she made satisfactory progress on goal 3. All other goals (1, 2, 4, 5, 6) were rated as "other" "due to the marking period being disrupted because of COVID-19... and some objectives could not be measured with the same evaluation procedures. During distance learning, Student's Mother facilitated Student's academic programs at home based on guidance and consultation from Fifth Grade Special Education Teacher. Student's Mother provided daily progress reports. Fifth Grade Special Education Teacher graded Student's work and progress based on Student's Mother's reports

²⁴ This progress report covers the period from mid-April through the end of the school year in June. School facilities were entirely closed during this period. (Testimony of Fifth Grade Special Education Teacher, Middle School SLP)

and taking into consideration that with the differences between home-based learning and school-based learning, data is not collected or reported the same way. (S2, S88, S90, B17; Testimony of Student's Mother)

127. Progress report notes indicate: Student answered a variety of WH questions after reading a preferred book with 78% accuracy with parent support and assistance; currently averages typing 6.3 WPM and has typed up to 9 WPM this quarter; answered 2 digit by 2 digit addition problems without visual stimuli and with a sum under 100 with at least 80 accuracy; increased independence with adding to 3-digit sum with 50% accuracy; answered single digit subtraction problems with visual stimuli and without visual stimuli by counting backwards; accurately identified coins and their values using flash cards; performance was inconsistent when identifying coins over Zoom screen; required verbal and/or gestural prompts to add quantities of coins up to ten cents; continues to require prompts to complete errands and activities in the home; maintained some previously mastered associations and functions and for other she required additional verbal prompts. (B17)
128. Overall, Student's performance on her speech-language goal (#3) was satisfactory. With regard to the goal, Middle School SLP noted that Student "demonstrated flexibility regarding new activities and engaged in a variety of presentations of the activities." Objectives 3.3 (safety signs), 3.4 (identifying emotions), and 3.6 (expressing how feeling) were new to Student this marking period. Objectives 3.4 and 3.6 were added because they were important to Student's Mother. Progress notes on this goal include: made some progress in ability to follow directions involving linguistic concepts; during distance learning sessions, some activities provided written directions, verbal directions, or a combination – she completed these with 52% accuracy; in contrast to the previous reporting period, she did not require a model demonstrating the targeted position; increased accuracy answering "where" questions; used pronouns in sentences with 100% accuracy during a specific tracked activity; continues to benefit from visual supports; has demonstrated ability to create sentences of 10 words using visual supports; has completed a variety of activities regarding reading, matching, and identifying safety signs with 91% accuracy; accurately matched meaning to the signs in 5/12 opportunities; increased accuracy in identifying pictured emotions; has varied her responses to "how are you feeling today" and been exposed to several novel feeling words and physical feeling concepts. Student demonstrated limited progress on objective 3.5 (will participate in reciprocal conversations for minimum of 2 turns). She continues to require prompts to participate in reciprocal conversations and respond to questions about her day. She has made comments such as "that was so much fun," "come on," and "I found it"; which are likely echolalic in nature. (B17; Testimony of Middle School SLP)
129. Student participated in weekly OT sessions during distance learning. She was provided with written directions on PowerPoint slides to participate in activities. She required adult prompts to direct her attention to the screen and to guide her through the tasks. Student's OT objectives are 5.1 and 5.10. Objective 5.1 states that she will demonstrate ability to complete a simple errand within the school building with distant supervision and no more than 2 prompts from adults to follow through min 4/5 opportunities. Prior to distance learning, Student was able to locate items and places within the school building with a simple prompt and required more than 2 prompts from an adult to follow through. During distance learning, Student was asked to run simple errands in the home. She required reminders from both her mother and COTA and was able to complete the activities with adult support. Objective 5.10 states that, using familiar and developmentally appropriate language, Student will

demonstrate the ability to follow a written 3-step direction within a group setting with fading adult prompts in 4/5 observations. Prior to distance learning, Student required adult assistance to follow written directions within a large group and relied on verbal and gestural prompts from adults to follow step-by-step directions. During distance learning, Student had the opportunity to follow written directions to complete a task (although not in large group). She required adult prompts to direct her attention to the screens as well as to guide her through the tasks. (B17; Testimony of COTA)

130. A PPT meeting was scheduled for May 1, 2020. Student's Parents and BOE mutually agreed to cancel the PPT meeting and instead participate in a resolution session. (B31).

Private Schools

131. Student's Parents investigated several private schools, including the May Center, Gengras, Speech Academy, and IPPI. (Testimony of Student's Mother)
132. IPPI is a special education school certified by the State Department of Education. IPPI's Naugatuck Learning Academy is an ABA-based program with approximately 24 students. Half of the students are higher functioning with average intelligence and a variety of behavioral problems that interfere with their access to education. The other half are severely limited with more intensive needs surrounding life skills, language and verbal abilities, and independent living skills. This lower functioning group is primarily students with ASD. (Testimony of IPPI Director, Student's Mother, Student's Stepfather)
133. IPPI Director met with other members of IPPI's team to decide whether to accept Student into the program. IPPI Director has never met Student; she reviewed Student's 2017 triennial evaluation, Private SLP's evaluation report, Private Psychologist's evaluation report, and Student's current IEP that were provided by Student's Parents. IPPI Director did not speak with any BOE staff about Student. (Testimony of IPPI Director)
134. IPPI Director believes that Student is an appropriate fit, that she will fit in with the cohort working on increasing language ability and life skills. The program will be functional, not just academic in nature. Student will not interact with nondisabled students if enrolled at IPPI's Naugatuck Academy. IPPI instituted distance learning in March 2020 due to the COVID-19 pandemic. As of the date of the hearing, IPPI had not confirmed plans for how the fall semester will be conducted. (Testimony of IPPI Director)

Conclusions of Law

1. Student is eligible for special education and related services as defined in the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401, et seq.; CGS § 10-76a, et seq.
2. The Hearing Officer has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ("FAPE") to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the PPT, or (C) to prescribe alternate special educational programs for the child. CGS § 10-76h(d)(1).
3. Student has the burden of production in a special education due process hearing. Conn. Regs. § 10-76h-14.
4. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Conn. Regs. § 10-76h-14.
5. The PPT includes the parents of a child with a disability. 34 CFR § 300.321.

6. The free appropriate public education (“FAPE”) mandated by federal law must include "special education and related services" tailored to meet the unique needs of a particular child, 20 U.S.C. § 1401(a)(18), and be "reasonably calculated to enable the child to receive educational benefits," Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 207; Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119 (2d Cir. 1998).
7. The standard for determining whether FAPE has been provided is a two-pronged inquiry: first, whether the procedural requirements of IDEA have been met, and second, whether the IEP is reasonably calculated to enable the child to receive educational benefits. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).
8. Where parents allege a procedural violation under the IDEA, a Hearing Officer may find a denial of FAPE if the violation 1) impeded the child's right to FAPE; 2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE; or 3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E); 34 CFR § 300.513(a); Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2001 (2007).
9. In developing an IEP, the PPT shall, “in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior” 20 U.S.C. § 1414(d)(3)(B)(i).
10. Failure to conduct an FBA does not render an IEP legally inadequate under the IDEA so long as the IEP adequately identifies a student's behavioral impediments and implements strategies to address that behavior. M.W. v. NYC Department of Education, 725 F.3d 131 (2nd Cir. 2013); A.C. ex rel. M.C. v. Bd. of Educ. of Chappaqua Cent. Sch. Dist., 533 F.3d 165(2nd Cir. 2009).
11. “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.” Andrew F. v. Douglas County School District RE-1, 580 U.S. ___, 137 S.Ct. 988, 999 (2017).
12. An appropriate public education under IDEA is one that is “likely to produce progress, not regression.” Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 (2d Cir. 1998). The IDEA does not require that the school district provide the best available educational program or one that maximizes a student's educational potential. Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1121 (2d Cir. 1997).
13. The proper gauge for determining educational progress is “whether the educational program provided for a child is reasonably calculated to allow the child to receive ‘meaningful’ educational benefits.” Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2d Cir. 1997).
14. Factors to be considered in determining whether an IEP is reasonably calculated to provide a meaningful educational benefit is whether the proposed program is individualized on the basis of the student's assessment and performance and whether it is administered in the least restrictive environment. 20 U.S.C. §1412(a)(5)(A); 34 CFR § 300.114(a); A.S. v. Board of Education of West Hartford, 35 IDELR 179 (D. Conn. 2001), aff’d, 47 Fed. Appx. 615 (2d Cir. 2002); M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., 122 F.Supp.2d 289, 292 n.6 (D.Conn. 2000).
15. A student’s IEP must be reviewed not less than annually and revised as appropriate. 34 CFR § 300.324(b).

16. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEP was developed. B. L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 537 (D. Conn. 2005).
17. Because the law expresses a strong preference for children with disabilities to be educated, "to the maximum extent appropriate," together with their non-disabled peers, 20 U.S.C. § 1412(5), special education and related services must be provided in the least restrictive setting consistent with a child's needs.
18. If a student's parents obtain an independent educational evaluation at private expense and shares that evaluation with BOE, the results of the evaluation must be considered, if it meets agency criteria, in any decision made with respect to the provision of FAPE. 34 CFR § 300.502(c).
19. Compensatory education is an equitable award of educational services designed to remedy denials of FAPE. Compensatory education must be reasonably calculated to provide a student the educational benefits that likely would have accrued absent the denial of FAPE. Doe v. East Lyme Board of Education, 790 F.3d 440 (2nd Cir. 2015).

Discussion

Each of the issues identified in this case is addressed in this Discussion section. All of the parties' arguments and evidence have been thoroughly reviewed and considered by the Hearing Officer.

Positions of the Parties

Student, by and through her Parents, makes the following claims: Student's IEPs were not appropriate and provided only de minimis educational benefit; BOE failed to propose a program to enable Student to make academic, social, emotional and behavioral progress; BOE failed to set the bar high enough to allow Student to learn and master skills needed to make progress; Student's progress reports show little progress; Student received minimal instruction or support from related service providers after the March 2020 pandemic shutdown; Student's Parents communicated their concerns to and worked collaboratively with BOE; Student has not made meaningful progress; BOE teaches Student rote, not functionally, so she doesn't understand the world; Student's Mother is concerned about Student's inability to communicate and meet her basic needs and eventually be able to live independently and has grave concerns about Student's future; Student's Parents obtained private evaluations to determine Student's current level of functioning and the type of program that Student needs; an out of district placement is appropriate; Student's Parents seek reimbursement for the private evaluations and services not covered by insurance as well as compensatory education (HO1; Student's Attorney's opening statement at hearing). Student's Mother's testimony was primarily focused on her concerns about Student's communication skills and generalizing skills from the school setting to home (Testimony of Student's Mother).

BOE argues that their educational professionals have many years of experience and have worked tirelessly with Student, who has made progress; Student's progress is greater than that of some other students with a similar profile; Student's IEPs are appropriate and she has made the progress one would expect; Student is severely disabled with an extremely low IQ of 50 and will not be able to live independently; Student's Parent's private evaluators paint a picture of a child with greater ability than Student has; the private program requested by Student's Parents is not in

the least restrictive environment (“LRE”); and BOE’s program is similar to the IPPI program with the added advantage of providing an opportunity for mainstream experience with nondisabled students (BOE’s Attorney’s opening statement at hearing).

I. Did the Board of Education provide Student with a free appropriate public education during the period April 8, 2018 through the end of the 2017-18 school year?

Evidence of Student’s program and progress during this period is limited to the IEP and progress report (S22, S31, B7). Student’s Mother did not testify to specific concerns about Student’s program during this time-period. She testified generally that, while attending BOE schools, Student was not making the progress that she should be making or is capable of making.

Student’s Request for Due Process alleges, generally with regard to all time periods, that BOE “failed to propose an appropriate program to enable [Student] to make academic, social, emotional, and behavioral progress in light of her unique needs and failed to set the bar high enough to provide an opportunity for [Student] to learn and master needed skills to be able to make progress.” (HO1)

The January 9, 2018 IEP, which was in place for the period April 8, 2018 through the end of the 2017-18 school year, included special education and related services that were tailored to her unique needs as identified in the November and December 2017 evaluations and her present levels of performance (FOF 20-39). The IEP included 18 measurable annual goals addressing the deficits identified in the triennial evaluation, including social/behavioral, academic/cognitive, communication, gross/fine motor, and independent living skills (FOF 30-34).

Looking at the IEP in light of the information available to the PPT at the time it was developed, the IEP was reasonably calculated to enable Student to receive educational benefits and make progress in light of her circumstances (FOF 1-7, 20-39).

Student made satisfactory progress on her goals from the April to June marking period; and mastered three math objectives (FOF 38-39). Her progress was slow while showing improvement and was sometimes impacted by her motivation or interest (FOF 22, 38). The progress may not have been as quick as Student’s Mother would like, which does not render the program inappropriate.

Student’s Request for Due Process focuses on the fact that Student did not master her IEP goals and objectives as of the end of the school year. The IEP covers the period January 2018 to January 2019. It is not reasonable to expect Student, given her unique needs and circumstances, to master 18 annual goals with 33 objectives in the first six months of a 12-month IEP. The IEP is not required to maximize Student’s potential; it must allow Student to receive meaningful educational benefit, which is demonstrated by Student’s progress report (FOF 38-39).

The Board of Education provided Student with a free appropriate public education during the period April 8, 2018 through the end of the 2017-18 school year.

II. Did the Board of Education provide Student with a free appropriate public education during the 2018 extended school year?

Evidence of Student’s program and progress during 2018 ESY is limited to the IEP and progress report (S22, S31, B7). Student’s Mother did not testify to specific concerns about Student’s program during this time-period. She testified generally that, while attending BOE

schools, Student was not making the progress that she should be making or is capable of making. Student's Request for Due Process alleges, generally with regard to all time periods, that BOE "failed to propose an appropriate program to enable [Student] to make academic, social, emotional, and behavioral progress in light of her unique needs and failed to set the bar high enough to provide an opportunity for [Student] to learn and master needed skills to be able to make progress." (HO1)

The January 2018 IEP was in place for 2018 ESY (July-August). The IEP included special education and related services that were tailored to her unique needs as identified in the November and December 2017 evaluations and her present levels of performance (FOF 21-34, 40-41).

As shown by Student's progress report, Student mastered her time-telling goal and made satisfactory progress during 2018 ESY. For example, Objective 1.1 stated that Student will sit and attend to small group activities for 10 minutes with no more than 4 prompts. During 2018 ESY, Student "attended to the circle for 15 minutes with an average of 3 prompts." Objective 7.2 states that Student will demonstrate ability to read at the C level with no more than 4 prompts by January 2019. Student began reading at that level by August 2018 (S22).

Objective 12.1 (label 10 two-dimensional objects as "same" or "different" than other objects) was modified to work with comparing "same" because Student was not able to identify "different" at the start of ESY. The August progress report indicates that Student was showing progress with 75% accuracy (S22). This demonstrates that BOE took an individualized approach to Student's program based on her progress and abilities. The IEP allowed Student to maintain skills acquired during the school year, to progress on some objectives, and to not regress (FOF 40-41).

There is no evidence as to why goal 8 was not rated in the progress report for the August marking period²⁵ – whether the goal was implemented and not rated or whether the goal was not implemented due to purposeful planning or neglect (FOF 41). The failure to either rate Student's progress or to implement goal 8 during 2018 ESY is not found to be a material failure to implement the IEP. The record shows that significant portions of Student's IEP (17 of 18 goals and 30 of 33 objectives) were implemented during 2018 ESY and that Student made satisfactory progress and even mastered one goal during the four-week session that provided 4.5 hours per day of instruction.

The Board of Education provided Student with a free appropriate public education during the 2018 extended school year.

III. Did the Board of Education provide Student with a free appropriate public education during the 2018-19 school year?

Substantive Claims

Student's Mother testified about her concerns which were primarily focused on Student's communication skills, challenging behaviors, and generalizing skills from the school setting to home. Student's Mother has clearly indicated her concern for Student to be able to express herself, participate appropriately in both the school and home environments, and develop independent living skills.

²⁵ Goal 8, which states "given visuals and prompting as needed, [Student] will communicate using functional language and different word combinations for the purpose of requesting, commenting, questioning, and protesting," was rated for all other marking periods.

The January 9, 2018 IEP, which was in effect for the first half of her fourth grade year; included special education and related services that were tailored to her unique needs as identified in the November and December 2017 evaluations and her present levels of performance (FOF 21-34, 41). The IEP included 18 measurable annual goals addressing the deficits identified in the triennial evaluation, including social/behavioral, academic/cognitive, communication, gross/fine motor, and independent living skills (FOF 30-34). Looking at the IEP in light of the information available to the PPT at the time it was developed, the IEP was reasonably calculated to enable Student to receive educational benefits and make progress in light of her circumstances (FOF 1-7, 20-39, 42-78).

A comparison of Student's progress reports for the first half of fourth grade (August to November 2018 to January 2019) indicate that with repeated practice, Student made progress and mastered some goals and objectives. Student's behaviors and intellectual ability interfered with her progress. Student's November 2018 progress report indicates that she mastered goals 7 and 18 and made satisfactory progress on goals 2, 3, 4, 5, 6, 8, 9, 10, 14, 15, 16, and 17. Goals 1, 11, and 12 were rated as "other"; goal 13 was not rated (it was previously mastered). Student's January 2019 progress report indicates that she mastered goals 5, 6, 7, 9, and 18 and made satisfactory progress on goals 2, 3, 4, 8, 14, 15, 16, and 17. Goals 1, 10, 11, 12, and 13 were rated as "other". Progress reports were based on a review of data collected daily throughout Student's program which included introduction of new material alternated with maintenance of previously mastered material (FOF 41, 49-59, 75, 78).

Fourth Grade Special Education Teacher introduced TouchMath in September 2018 to try to improve Student's addition and subtraction skills in response to her limited progress. This was continued in her December 20, 2018 IEP, which was developed to be in effect for the second half of fourth grade and the first half of fifth grade. Certain goals and objectives were carried over with expectations for Student to perform at a higher level (i.e. reading); while others were carried over to continue working toward mastery. Student's goal to maintain low levels of challenging behaviors was broken into additional objectives to be able to track different behaviors with separate measures. New objectives were developed to use mastered skills to generalize them to other environments; while some objectives were developed as an intervention because Student was not progressing satisfactorily (i.e. subtraction) (FOF 49-55).

A comparison of Student's progress reports for the second half of fourth grade (January to April to June 2019) indicate that she made satisfactory progress on all of her IEP goals and mastered 7 of her 28 objectives, including academic and behavioral objectives. Student's progress was determined based on collected data and comparing to previous reporting periods (FOF 51-59, 75, 78). BOE staff credibly testified that during the second half of the year, Student demonstrated overall improved ability to attend to small group and work independently and showed an increased tolerance to unexpected activities.

The PPT reconvened in March 2019 to understand and respond to Student's Parent's concerns (Student's lack of expressive communication and outbursts) which led them to request an IEE. Student attended the PPT meeting where she demonstrated ability to sit quietly, attend to her work, and respond appropriately; which Student's Mother indicated was not behavior they see at home. There is a difference in Student's behaviors at home and at school. BOE staff conducted a home visit to share strategies that work in school to help Student's Parents manage her behavior at home. Student's Parents did not follow up on the strategies at home (FOF 67-71).

Although she withdrew the request for an IEE, Student's Mother asked that no changes be made to Student's IEP until she got an outside evaluation. Student's Mother continued to feel

that Student was capable of more communication, behavior management, and generalization of skills. Student's Mother very credibly testified as to the impact of Student's disability and intellectual ability on the family, their frustration about her progress, and their desire for Student to improve her communication and generalization of skills from school to home.

All BOE staff who have experience working with Student credibly testified that Student's ASD diagnosis and very low IQ seriously impact her education and prognosis for independent living. Private BCBA's report indicates that Student's main deficits are in communication, that she has learned within very structured routines, she uses expressive communication when questioned but less so independently, she needs time to process, and that repetition and consistency over months are required for her to learn, retain, and independently use a skill (FOF 60).

Private BCBA's observations are fundamentally similar to those of BOE staff who have worked with Student. Despite Student's Mother's desire for quicker results, Student needs repetition and consistency to progress. Student's IEPs did repeat some objective year to year. In some cases, those objectives provided repetition and consistency to allow her to work toward mastery and some set expectations for higher levels of performance on the same skills. Student's IEPs also incorporated different strategies (i.e. TouchMath) or interventions to address Student's limited progress.

Student's Mother expressed concern that Student was not mastering all of her goals and objectives annually as evidence that her program was not appropriate. Fifth Grade Special Education Teacher credibly testified that they do not expect Student to master every goal and objective within a year; that the goals and objectives are written to provide challenges so that they don't cap Student's performance or progress. BOE staff credibly testified that they are happy with Student's progress given her unique circumstances.

Procedural Claims

BOE created a BIP in November 2018, without conducting an FBA, to decrease Student's challenging behaviors. Fourth Grade Special Education Teacher and BOE BCBA testified that it was effective. Multiple BOE staff testified as to Student's progress in decreasing challenging behaviors and increasing appropriate behaviors. The BIP was not specifically referenced in Student's IEPs that were in effect in fourth grade. The IEPs did include goals and objectives targeted at decreasing specifically identified challenging behaviors and increasing appropriate behaviors (FOF 30-34, 47-48, 51-55).

Student's IEPs continued to include goals and objectives targeted at the identified behaviors and strategies to address those behaviors. BOE staff credibly testified that overall Student's challenging behaviors decreased over the course of the year, as supported by her progress reports (FOF 47-48, 51-55). Student's behaviors and progress were documented in data collection, present levels of performance in her IEPs, and progress reports; as well as discussed with Student's Parents in PPT meetings and consultations. BOE staff even made a home visit to help Student's Parents and their Private BCBA generalize the success of the school based BIP/DRO to the home environment (FOF 70, 73, 76, 77).

BOE's failure to conduct a formal FBA prior to developing the BIP and/or failure to cite the BIP in the IEPs did not render the IEPs legally inadequate. Nor did these failures impede Student's right to FAPE, significantly impede Student's Parents' opportunity to participate in the decision-making process regarding the provision of FAPE or cause a deprivation of educational benefits. The IEPs adequately identify Student's behavioral impediments and implement

strategies and objectives to address that behavior. Student's Parents participate in PPT meetings where goals, objectives, progress, and present levels of performance are discussed and recommendations are made.

Testimony was not clear as to when the BIP was discontinued. Fifth Grade Special Education Teacher testified that the BIP was effective in Elementary School and that it did not transition to Middle School.²⁶ There is no evidence that BOE communicated to Student's Parents that the BIP was discontinued. The related behavioral goals and objectives in Student's IEP were not discontinued; they carried over to fifth grade in Middle School. Although not a best practice, given these facts, failure to notify parents that the BIP was not continuing did not deprive them of the opportunity to participate in the decision-making process regarding the provision of FAPE or cause a deprivation of educational benefits.

Student's fourth grade IEPs included specific goals and objectives to increase expressive communication, decrease challenging behaviors, and allow Student to function throughout the school environment. Student continued to make progress and increased independent skills. She still requires varying levels of prompting and demonstrates limited progress in subtraction. BOE staff credibly testified that Student has made very good progress for a student with her disability diagnosis and intellectual capability and that varied levels of progress across different skills is common. The IEP must allow Student to receive meaningful educational benefit, which is demonstrated by Student's progress reports and credible testimony by BOE staff.

The Board of Education provided Student with a free appropriate public education during the 2018-19 school year.

IV. Did the Board of Education provide Student with a free appropriate public education during the 2019 extended school year?

Evidence of Student's program and progress during 2019 ESY is primarily limited to the IEP and progress report (S3, S10, B11). Student's Mother testified that she did not remember whether Student participated in 2019 ESY.

The March 14, 2019 IEP was in place for 2019 ESY (July-August). The IEP included special education and related services that were tailored to her unique needs as identified based on progress reports and her present levels of performance (FOF 67-71). The PPT made no changes to Student's goals and objectives for this IEP at Student's Mother's request (FOF 71).

Student's progress report indicates that she made satisfactory progress on all goals implemented during 2019 ESY. She mastered three objectives; made satisfactory progress on 18 objectives (including one that was newly introduced); made limited progress on one objective; and received a rating of "other" on one objective (noted as progressing and need some adult reminders; accuracy increased from 68% in June progress report to 74% in August progress report) (FOF 83-85). The IEP allowed Student to maintain skills acquired during the school year, to progress on some objectives, and to not regress.

The Board of Education provided Student with a free appropriate public education during the 2019 extended school year.

²⁶ Fifth Grade Special Education Teacher testified that a BIP was not necessary or in place for Student in Middle School because her behaviors were manageable through collection and analysis of data on behaviors of safety and social significance as addressed in her IEPs.

V. Did the Board of Education provide Student with a free appropriate public education during the 2019-20 school year?

This issue is addressed as two sub-issues: first for the period from August 2019 to March 13, 2020 when school facilities were open for in-person education and second for the period from March 16, 2020 until the end of the 2019-20 school year when school facilities were closed to in-person education due to the COVID-19 pandemic.

Period of In-Person Education (August 2019 to March 13, 2020)

Student's Mother testified about her continued concerns about Student's communication skills, challenging behaviors, and generalizing skills from the school setting to home. Student's Mother also expressed concern that changes were not made to Student's IEP based on the results of the two private evaluations.

The private evaluations obtained by Student's Parents were reviewed in the September 11, 2019 PPT meeting. Prior to that meeting, Assistant Superintendent asked Student's school-based teams to review the evaluations and provide him with any questions or comments. With Student's Parents authorization, he then spoke to the two private evaluators. He shared their comments with the school-based team for discussion prior to the PPT meeting (FOF 79-82, 86-93, 96-98)

BOE staff raised several concerns about the private evaluations, including that the private evaluators did not speak to any school staff or observe Student in the classroom;²⁷ lack of a diagnostic tool in the speech-language evaluation made it hard to replicate what she did to be able to compare progress; the psychological evaluation evoked emotions rather than data measures; the psychological evaluation says it can't be used as a predictive measure then makes predictions without data for support; the evaluations did not highlight Student's strengths; the evaluations did not contain enough data to support a change in Student's goals and objectives; the matrix referenced in Private Speech Evaluation was not appropriate for Student; the referenced attachments were not provided; and BOE would program at a much lower level based on these reports if they did not know Student. BOE staff were not surprised by some of the behaviors that Student demonstrated in the evaluations which were held in a novel setting for her. Overall, BOE staff did not feel that changes to Student's IEP were warranted based on the evaluation results. BOE's consideration of the private evaluations was sufficient.

Student's Mother credibly testified that training provided through Private SLP and her implementation of some recommendations at home helped. The fact that Private SLP's training and recommendations helped Student's Mother understand Student's needs and helped her with Student's behavior at home does not render Student's IEPs or BOE's strategies inappropriate. Private SLP did not review Student's IEP or BOE's program, do a school observation, or talk to BOE to be able to opine on their program in comparison to her proposal. Private Psychologist's assessment results were consistent with the 2017 triennial evaluation conducted by BOE.

²⁷ Private SLP testified that Student's Mother did not provide her with any reports about Student and that Student's Mother wanted a "very independent evaluation which was a little unusual." Private Psychologist testified that Student's Mother wanted the evaluation completed quickly in July 2019 without taking time to include information from BOE or a school observation. Interestingly, lack of "any observation in the classroom or general education setting" was one of Student's Mother's complaints about BOE's 2017 psychological evaluation of Student when she requested an IEE in January 2019 (B33).

Deference is given to the strategies adopted by BOE if the IEP is shown to be appropriate and provide meaningful educational benefit to Student.

The March 14, 2019 IEP, which was in effect for the first half of her fourth grade year; included special education and related services that were tailored to her unique needs as identified in her triennial evaluations, her progress reports based on data collection and observation, and her present levels of performance (FOF 67-71). The IEP included 8 measurable annual goals and 28 objectives addressing deficits in social/behavioral, academic/cognitive, communication, and independent living skills (FOF 67-71). Looking at the IEP in light of the information available to the PPT at the time it was developed, the IEP was reasonably calculated to enable Student to receive educational benefits and make progress in light of her circumstances.

A comparison of Student's progress reports for the first half of fifth grade (August to November 2019 to January 2020) indicate that Student made satisfactory progress on seven of her eight goals and mastered one goal. She mastered eight of her objectives, made unsatisfactory progress on one (subtraction) and limited progress on one (able to demonstrate greater than and less than with 80% accuracy for one day but not yet demonstrated consistency). Progress report notes indicate that she is demonstrating emergent problem-solving skills, states what she doesn't want and gestures to what she does want, and has had fewer maladaptive behaviors. (FOF 85, 101, 103).

As an example of Student's progress, Middle School SLP testified that earlier in fifth grade, Student was not asking for what she wants. In January, Student was gesturing for or taking what she wants. Those forms of communication are consistent with her goal to use all modalities for communication (FOF 101, 103).

During her annual review on January 6, 2020, Student's IEP was modified to increase the amount of time for speech-language services in a show of good faith and cooperation with Student's Parents. Student's revised IEP included six IEP goals (with 34 total objectives) and a variety of accommodations and modifications and supports for Student's Parents (FOF 104-109).

A comparison of Student's progress reports for the second half of fifth grade until the time of the facilities closure (January to April) indicate that she made satisfactory progress on all of her IEP goals, with satisfactory or limited progress on her objectives. Progress report notes on her speech-language goals and social/behavioral goals (two specific areas of concern for Student's Mother) indicate that Student has demonstrated advocacy in way of requesting preferred activities and following several turns of preferred activity is willing to transition to novel activity. Student demonstrated fewer instances of noncompliance, crying, and aggression; and had no instances of grounding during this marking period (FOF 103, 112-115).

She made satisfactory progress on an objective requested to be included in the IEP by Student's Mother (identify depicted emotions). Student made limited progress on participating in reciprocal conversations; independently requesting a walk or headphones prior to engaging in targeted behaviors when upset by another person's behavior; following directions to "go to X person" when that person is not in sight; requesting additional information when given a direction with partial information; consistently identify pronoun "she"; and answering WH questions about home, school, and environment (FOF 112-115).

BOE staff credibly testified that Student made satisfactory progress in the more structured Middle School environment that includes more complex functions and expectations; and that her progress was better than expected based on her profile. Her progress was rated based on data and performance so that it is not subjective.

Student's Mother expressed concern for this year as well as last year that Student was not mastering all of her goals and objectives annually as evidence that her program was not appropriate. Fifth Grade Special Education Teacher credibly testified that a satisfactory rating means that Student is going in the right direction; they do not expect Student to master every goal and objective within a year; that the goals and objectives are written to provide challenges so that they don't cap Student's performance or progress; and that it is rare to rate a goal or objective as mastered unless there is no further place to go with that skill. BOE staff credibly testified that they are happy with Student's progress given her unique circumstances.

Fifth Grade Special Education Teacher credibly testified that, prior to facility closure, she was satisfied with Student's progress; Student made more progress in the previous six months that they expected of someone with Student's cognitive and intellectual ability; that she made "tremendous" progress from September to mid-March; that progress reports do not reflect the progress Student made on prevocational tasks such as filing documents by last name, folding materials, hanging up clothes, and other job skills that may help her transition to work in the community.

The Board of Education provided Student with a free appropriate public education during the period of in-person education from August 2019 to March 13, 2020.

Period of Distance Learning (March 16 to June 18, 2020)

Student's January 6, 2020 IEP remained in effect and Student continued to receive special education and related services during the period of distance learning. BOE developed a Continued Education Opportunity Plan to document BOE's effort to implement Student's current IEP to the greatest extent possible during facility closure.

The facility closures due to COVID-19 do not relieve BOE of the obligation to provide Student with FAPE. School districts are granted some flexibility in determining how to meet the individual needs of students with disabilities during the period of facility closures. "The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency." *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, U.S. Department of Education, Office for Civil Rights Office of Special Education and Rehabilitative Services, March 21, 2020.

As compared to the IEP, BOE reduced the amount of teacher-led time that Student received special education classes during distance learning. They did not change the amount of time that Student received related services during distance learning. BOE used alternative delivery methods to continue Student's services, including videoconference sessions, instructional packets with directions and guidance for implementing throughout Student's distance learning day, feedback, and parent consults.²⁸

Student's Mother was an active participant in Student's distance learning plan. She worked collaboratively with Middle School SLP and COTA to implement Student's related service goals and objectives (Testimony of Student's Mother, Middle School SLP). She made changes to the frequency, duration, and activities in Student's distance learning plan (FOF 118-120, 123-125).

²⁸ BOE is not required to convene a PPT to revise Student's IEP to reflect this alternate method of delivery since all students are receiving an alternate mode of instruction during the facilities closure.

Student's Mother testified that the transition to distance learning was a "rough crash course" and "it felt like everything shut down" on them.²⁹ She was not always able to get Student to the computer or a worktable for her sessions. Student had some meltdowns and behavioral issues. BOE staff provided behavioral supports and direction (FOF 116-125).

A significant and material portion of Student's speech-language services and OT services, as identified in her IEP, were implemented during distance learning (FOF 124-129). Prior to distance learning, Student was making progress on objective 5.1. She continued to be able to follow instructions with prompts when COTA and Student's Mother simulated the activity in the home environment. Objective 5.10 was written to occur in a group setting in school. COTA modified the activity for the home environment so that Student could read and follow written directions for tasks in that environment. Student continued to need adult prompts while completing the tasks (FOF 129). During distance learning, Student demonstrated progress on her speech-language goal (#3) and demonstrated flexibility regarding the new activities and variety of presentations (FOF 126, 128). This is of particular note since previous reports mentioned Student's inflexibility with novel circumstances (FOF 76, 78).

BOE offered Student a distance learning plan that provided a significant and material portion of her IEP's academic/cognitive and social/behavioral program. BOE has not met its burden of proving that this portion of Student's offered program was significantly or materially implemented during distance learning.

Student's Service Record includes entries for special education sessions conducted by Fifth Grade Special Education Teacher only for the period March 30 through the week of May 26. Most of those sessions were parent consult. The Service Record indicates just six direct service sessions with Student during that period.

Fifth Grade Special Education Teacher testified that she was met with a lot of resistance from Student's Mother and that she argued about strategies or interventions that were suggested. For example, Student's Mother reduced the frequency and duration of Student's distance learning sessions and discontinued TouchMath. Student's Mother indicated that it was challenging to implement Student's program at home when she also had other children at home to attend to.

Despite the difficulties in getting Student consistently engaged in distance learning, as of June 10 (the date of her testimony), Student's Mother was beginning to see changes starting to occur. Student was beginning to make eye contact and seek out communications. Language was "clicking on" and Student was making connections that Student's Mother hadn't seen her make. Student's Mother testified that Student surprised her "with nuggets of things like how to spell elephant", showing humor, making eye contact, and starting to talk to her. Student's Mother attributes a slow increase in changes since she received additional training and worked with Private SLP. Student's Mother works with Student every day during distance learning and is her "teacher, therapist, mom."

Student's progress report provides minimal information about Student's progress or activities during that period (FOF 126). Fifth Grade Special Education Teacher testified that Student can work independently at school but not at home. BOE staff and Student's Mother consistently testified that Student has difficulty with novel situations and is resistant to nonpreferred activities, which is also reflected in some of her progress reports. When faced with

²⁹ On the first morning of distance learning and before picking up the instructional packet from BOE, Student's Mother emailed Fifth Grade Special Education Teacher stating that Student was having a difficult start. Fifth Grade Special Education Teacher provided suggestions for a routine, feedback and support (S89).

Student's resistance to distance learning for her special education goals and objectives, BOE did not convene the PPT to consider other alternatives, changes in Student's program or delivery method or to develop a BIP to address those behaviors.

The Board of Education failed to provide Student with a free appropriate public education during the period of distance learning from March 16 to June 18, 2020.

VI. If the Board of Education did not provide Student with a free appropriate public education, is Institute of Professional Practice, Inc. Learning Academy an appropriate placement?

IPPI's program is presented as being similar to BOE's program as a language-based program utilizing ABA to increase student's language skills, adaptive behaviors, and functional skills (FOF 132-134). Unlike BOE's program, IPPI does not provide an opportunity for students to engage with nondisabled peers. Student benefits from interaction with nondisabled peers (FOF 44). IPPI does not offer Student LRE and is not an appropriate placement.

VII. If the answer to Issue Six above is in the affirmative, should Student be placed at Institute of Professional Practice, Inc. Learning Academy at Board of Education's expense?

This issue is moot in light of the finding in Issue Six, above.

VIII. If the answer to any one of the Issues One through Five above is in the negative, what shall be the remedy?

The answer to Issue Five is in the negative, finding that BOE failed to provide Student with a free appropriate public education during the period of distance learning from March 16 to June 18, 2020. In weighing the equities, it is noted that the denial of FAPE is not found to be in bad faith or a gross denial of Student's IEP. It is also found that Student's Mother was resistant to BOE's efforts to implement Student's distance learning plan. Her resistance is not found to be in bad faith but to be due her disagreement as to strategy as well as her struggle to serve as Student's home-based teacher while managing other children during the unique circumstances of the pandemic.

In light of Student's difficulties with novel situations, her resistance to non-preferred activities and distance learning, the level of support that Student's Mother needed to implement distance learning, and the limited information available to rate Student's progress on her academic/cognitive and social/behavioral goals, BOE should have convened a PPT to consider other alternatives, changes in Student's program or delivery method or to develop a BIP to address the behaviors that were interfering with Student's ability to access her distance learning.

The remedy shall be: If Student continues to receive services pursuant to a distance learning plan and if BOE has not already convened a PPT between June 18, 2020 and the date of this decision to review Student's distance learning plan, BOE will convene a PPT within 10 school days of receipt of this Final Decision and Order to review Student's distance learning plan and determine whether an amendment to her IEP and/or distance learning plan is appropriate. If BOE has convened a PPT between June 18, 2020 and the date of this decision to review Student's distance learning plan, no further action is necessary.

If Student's Mother declines services offered, BOE shall request the declination in writing and note it in the PPT meeting minutes.

FINAL DECISION AND ORDER

1. The Board of Education provided Student with a free appropriate public education during the period April 8, 2018 through the end of the 2017-18 school year.
2. The Board of Education provided Student with a free appropriate public education during the 2018 extended school year.
3. The Board of Education provided Student with a free appropriate public education during the 2018-19 school year.
4. The Board of Education provided Student with a free appropriate public education during the 2019 extended school year.
5. The Board of Education provided Student with a free appropriate public education during the period of in-person education from August 2019 to March 13, 2020. The Board of Education failed to provide Student with a free appropriate public education during the period of distance learning from March 16 to June 18, 2020.
6. Institute of Professional Practice, Inc. Learning Academy is not an appropriate placement.
7. This issue is moot in light of the finding in Issue 6, above.
8. The remedy shall be: If Student continues to receive services pursuant to a distance learning plan and if BOE has not already convened a PPT between June 18, 2020 and the date of this decision to review Student's distance learning plan, BOE will convene a PPT within 10 school days of receipt of this Final Decision and Order to review Student's distance learning plan and determine whether an amendment to her IEP and/or distance learning plan is appropriate. If BOE has convened a PPT between June 18, 2020 and the date of this decision to review Student's distance learning plan, no further action is necessary.

APPENDIX A: Exhibit List

HEARING OFFICER EXHIBITS			
Exh #	Description	Date	# Pages
HO1	Request for Impartial Special Education Hearing	4/7/20	22
STUDENT'S EXHIBITS ADMITTED AS FULL EXHIBITS			
Exh #	Description	Date	# Pages
S1	Brain Pop Quiz: Mood and Tone	3/27/20	2
S2	School Work Since Schools Closed	5/20	76
S3	Progress Report for 2019-20	1/6/20	14
S4	IEP	1/6/20	29
S5	School Work	12/19	2
S6	Special Education PPT Reporting Sheet 2018-19	9/11/19	4
S7	Reading A-Z Level Correlation Chart	9/11/19	1
S8	Private Psychologist Psychological Evaluation	Undated	20
S9	Academic Program Graphs for 2019-20	9/10/19- 12/10/19	6
S10	Progress Report School Year 2019-20	1/14/19- 1/13/20	14
S11	Memo to File by Assistant Superintendent for Student Services	5/30/19	1
S12	Contact Log	9/24/18- 5/9/19	3
S15	Speech & Language Evaluation by Private SLP	4/19	17
S16	Email communications between Parents and BOE	3/15/19	3
S19	Token Board	2/6/19	1
S20	Letter from Pediatrician	1/29/19	1
S21	District Narrative Report	1/28/19	1
S22	Progress Report for School Year 2018-19	1/24/18- 1/23/19	18
S23	Pediatrics Follow Up Visit	1/16/19	4
S23A	Innovative Autism Services Letter	1/30/19	1
S24	IEP	12/20/18	40
S27	Edmark Reading Program Certificate of Completion	11/8/18	1
S29	CCMC Audiology Department Report	4/5/18	6
S30	Progress Report for 2016-17 School Year	3/23/17- 3/22/18	12
S31	IEP & Checklists for SLD and LRE	1/9/18	42
S36	2018 Grade 3 CSDE Alternate Testing Results	2018	4
S37	District Psychological Examination	12/17	12
S38	District Contact Log	9/5/17- 6/20/18	1
S39	District Assessment of Basic Language and Learning Skills	12/17	7
S41	Fax from CCMC to District	12/22/17	1
S42	CCMC Paperwork	12/21/17	5

S43	NICHQ Vanderbilt Assessment Scale – TEACHER Informant	12/21/17	2
S43A	Parent Authorization to Release Information	12/20/17	1
S44	CTAA & Alternate Science Paperwork	12/13/17	7
S45	District Educational Evaluation	12/17	7
S49	District Mobile Computing Device Acceptable Use Policy	8/17/17	1
S50	Updated District Mobile Computing Device Acceptable Use Policy	8/15/17	2
S51	District IEP Review Sheets	2016-17 2017-18	2
S52	3 rd Grade Report Card	2017-18	3
S52A	District Contact Log	9/9/16- 6/16/17	1
S52B	Progress Report	4/6/16- 4/5/17	14
S53	CCMC Summary of Assessment Results	3/28/17	8
S54	PDD Behavior Inventory Parent Score Report	3/28/17	8
S55	Communicare LLC Assessment Intake Questionnaire	3/16/17	8
S56	IEP	3/20/17	31
S57	Communicare LLC Augmentative and Alternative Communication Evaluation	3/16/17	8
S57A	IEP	3/9/17	56
S58	Authorization for Release of Information with Communicare	1/23/17	1
S59	IEP	12/1/16	5
S60	Parental Authorization to Disclose Protected Health Information	10/7/16	1
S61	CCMC Audiology Evaluation	8/29/16	3
S62	IEP & Consent to Conduct Reevaluation	6/6/16	5
S64	2 nd Grade Report Card	2016-17	3
S65	IEP Review for 2016-17	9/7/16- 9/26/16	1
S68	District Contact Log	8/31/15- 5/31/16	2
S69	IEP	3/22/16	30
S70	District Special Education Reporting Sheet 2015-16	3/21/16	2
S71	District PPT/504 Sheet	3/18/16	4
S72	IEP	11/13/15	26
S73	Parental Authorization for Release of Information	10/23/15	1
S74	District Occupational Therapy Evaluation	10/15	7
S75	IEP	10/1/15	31
S76	1 st Grade Report Card	2015-16	4
S79	Edmark Reading Program Information		1
S80	Private Psychologist's Resume	6/20	11
S81	Private Speech Language Pathologist Resume		4
S82	IPPI Director's Resume		3
S83	IMG 8525: Student Counting Money	2020	
S84	IMG 8500: Student Working on Time	2020	

S85	IMG_8585: Student Working on Subtraction	2020	
S86	Video of Functional Science	2020	
S87	Video of Reading	2020	
S88	Email Communication between Parent and Special Education Teacher	3/16/20	3
S89	Email Communication between Special Education Teacher and Parent	3/16/20	3
S90	Email Communication between Parent, Special Education Teacher, and BOE BCBA	5/5/20	2
S91	Email Communication between Parent and BOE Teacher	3/13/19	2
S92	Email from Parent to BOE Teacher	3/1/19	2
	BOE'S EXHIBITS ADMITTED AS FULL EXHIBITS		
Exh #	Description	Date	# Pages
B1	Augmentative and Alternative Communication Evaluation	3/16/17	8
B2	PPT Summary	3/20/17	27
B3	Educational Evaluation	12/5/17- 12/6/17	7
B4	ABLIS	12/17	6
B5	Speech and Occupational Therapy Evaluation	11/27/17 12/7/17	6
B6	Psychological Evaluation	12/4/17	4
B7	PPT Summary	1/9/18	34
B8	Audiological Assessment	4/5/18	3
B9	Behavior Intervention Plan	11/11/18	4
B10	PPT Summary	12/20/18	25
B11	PPT Summary	3/14/19	29
B12	PPT Summary	9/11/19	29
B13	PPT Summary	1/6/20	30
B14	Consent for Telepractice	3/22/20	1
B15	IEP Progress Report	5/27/20	15
B16	Service Record	3/13/20	13
B17	Progress Report for IEP Goals and Objectives 2019-20	6/18/20	19
B18	Fourth Grade Special Education Teacher resume		1
B19	BOE COTA resume		1
B20	BOE Fifth Grade Special Education Teacher resume		3
B21	Elementary School Speech Language Pathologist resume		1
B22	Occupational Therapist resume		2
B24	Middle School Speech Language Pathologist resume		2
B25	ABLIS-R Report	3/17, 12/17, 12/18	1
B26	Data sheets		91
B27	Data sheets		4
B28	Data sheets		19

B30	Student Continued Education Opportunity Plan	3/13/20	2
B31	Contact Log	7/1/19- 7/8/20	8
B32	BOE BCBA resume		2
B33	Emails between Student's Mother and Assistant Superintendent for Student Services	2/1/19	3
B34	Email between Private Psychologist and Assistant Superintendent for Student Services and Authorization for Release of Information	9/5/19- 9/6/19	2
B35	Email from Assistant Superintendent for Student Services	9/5/19	1
B36	Email from Assistant Superintendent for Student Services to Student's Mother, with attachments	9/30/19	13
B37	Account Detail Report	FY15-16 to FY19- 20	21
B38	Assistant Superintendent for Student Services resume		4

NOTE: The parties exhibit binders did not include any exhibits with these numbers: S13, S18, S25, S32, S33, S34, S35, S40, S46, S48, S63, S66, S67; B23, B29.

EXHIBITS NOT ADMITTED			
Exh #	Description	Date	# Pages
S4A	Progress Report 2019-20 (duplicate of S3)	1/6/20	18
S14	Parent's FERPA Request	5/3/19	1
S17	IEP & District Reporting Sheets (duplicate of B11)	3/14/19	46
S26	Behavior Intervention Plan (duplicate of B9)	11/11/18	6
S28	Progress Reports for 2018-19 School Year (duplicate of S22)	1/22/19	30
S47	District Occupational & Speech Therapy Evaluation (duplicate of B5)	11/17 & 12/17	6
S77	Kindergarten Report Card	2014-15	2
S78	Parental Chart Regarding Data from IEPs		4

NOTE: During the hearing, the parties may have referred to a duplicate exhibit that was not admitted instead of to the version that was admitted. Any such reference to a duplicate exhibit is deemed to refer to the exhibit that was admitted.