

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF:THE)	FINAL ORDER
EDUCATION OF)	
)	
STUDENT AND SPRINGFIELD)	OAH Case No. 2018-ABC-02118
SCHOOL DISTRICT 19)	Agency Case No. DP 18-126

HISTORY OF THE CASE

On October 15, 2018, Parent filed a request for a due process hearing (due process complaint or complaint)¹ on behalf of Student with the Oregon Department of Education (ODE or Department). In the complaint, Parent alleges substantive and procedural violations of the Individuals with Disabilities Education Act (IDEA) 20 U.S.C §1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (§504), 29 U.S.C. §701 *et seq.* constituting a denial of a free appropriate public education (FAPE) to Student during the 2016-2017 and 2017-2018 school years (the period in issue) based in part on the alleged failure of the District to meet its “child find” obligation, failure to properly evaluate Student in all suspected areas of disability, denial of requested accommodations, and inappropriate placement of Student based on his/her alleged mental health needs.

Senior Administrative Law Judge (ALJ) Joe L. Allen conducted a prehearing conference (PHC), by telephone, on November 19, 2018. Kelly Noor, attorney at law, appeared on behalf of the Springfield School District 19 (the District). Kim Sherman, attorney at law, appeared for Student/Parent. At the conference, the parties agreed to the issues to be resolved at hearing. The parties also agreed to a schedule for all prehearing activities including the filing of discovery motions. The parties also agreed to hearing dates of January 22 through 25, January 28 through February 1, February 4 through 8, and February 11, 2019. The parties also agreed to extend the final order due date in this matter to April 26, 2019.

ALJ Allen convened an in-person hearing on January 22, 2019 at the District’s offices in Springfield, Oregon. Ms. Noor appeared and represented the District at hearing. Brian Megert, Special Programs Director for the District, also appeared. Ms. Sherman appeared on behalf of Parent and Student. Parent also appeared. The following individuals testified at the hearing:

Parents;
Brian Megert, Ed. D., Special Programs Director for the District;

¹ Pinpoint citations to the due process complaint identify the printed page numbers included in the narrative portion of the complaint. Preceding the narrative portion, Parent included a two-page form titled Request for Due Process Hearing provided by ODE (Form 581-1184-E). Those pages are not numbered.

Kelly Murray, Ph. D., Licensed Clinical Psychologist and Student's treating therapist;
Kathleen Pannicione, Ed. D., Student's expert witness;
Rene Cobb, former special education teacher and case manager for the District;
Kira Fee, former special education teacher for the District;
Calli Dean, Assistant Principal at Springfield High School;
Angela Gonzalez, Certified Special Education Teacher for the District;
Susan Choppy, school psychologist (ret.);
Amanda Bottimore, general education teacher and volleyball coach for the District;
Amanda Greene-Chacon, general education teacher for the District;
Ryan McClintick, general education teacher for the District;
James March, general education teacher for the District;
Sean Himmelman, general education teacher for the District;
Sue Ann Shih-Rangeloff, Licensed School Counselor for the District;
Clark Morberg, general education teacher for the District;
Stacey Whaley, general and special education teacher and case manager for the District;
Gretchen Scheidel, Ph.D., Licensed Clinical Psychologist;
Alissa (Wisely)² Dayton, therapist intern and former behavior support specialist with South Lane Mental Health Services;
Kristin Rush, school psychologist for the District; and
Suzanne Teutschel, Licensed School Counselor (ret.) formerly with the District.

ISSUES

IDEA claims raised in Student's due process complaint.

1. Whether the District failed to evaluate Student in all suspected areas of disability.
2. Whether the District refused to approve an Independent Educational Evaluation (IEE) for Student and, if so, failed to provide prior written notice of that refusal to Parent.
3. Whether the District failed to develop and/or implement an Individualized Education Plan (IEP) that was appropriately ambitious and reasonably calculated to enable Student to receive educational benefits in light of his/her unique needs and circumstances.
4. Whether the District failed to provide education to Student in the least restrictive environment.
5. Whether the District denied Student a FAPE by failing to provide specially designed instruction and related services reasonably calculated to confer meaningful benefit.
6. Whether the District failed to provide prior written notice (PWN) of its refusal to approve an independent educational evaluation for Student.
7. Whether the District failed to provide PWN of its refusal to approve a residential

² Mrs. Dayton was recently changed her last name from Wisely to Dayton. In the exhibits and much of the testimony, Mrs. Dayton is referred to by her former name of Alissa Wisely.

placement for Student.

Section 504 claims raised in Student's due process complaint.

8. Whether the District discriminated against Student when it failed to evaluate his/her mental health condition.

9. Whether the District discriminated against Student by failing to provide him/her with educational aids and services to meet his/her educational needs to allow Student to access a full day of school.

10. Whether the District discriminated against Student when it failed to provide residential placement to address his/her mental health needs.

11. Whether Student is entitled to remedies requested in his/her due process complaint including (A) compensatory education to address the purported failure to provide FAPE, (B) reimbursement for educational and mental health expenses as well as lost wages incurred by Parent, (C) compensation for alleged mental and emotional harm suffered by Parent and Student, (D) prospective placement in a residential therapeutic and educational facility at District expense, and (E) attorney's fees and costs associated with bringing this action.

EVIDENTIARY RULING³

Exhibits D1 through D520, offered by the District, were admitted into the record without objection. Exhibits S1 through S157 were admitted into the record without objection. Exhibits S158 through S162 and S166 through S169 were admitted into the record over the District's relevance objection. Exhibits S164, S165, and S170 were excluded as unreliable.

FINDINGS OF FACT

1. Student was born September 28, 2001, in Eugene Oregon. (Tr. Vol. I at 83:15-17; see also Complaint at 1.) At the time of hearing, Student was a 17 year-old high school senior enrolled at Springfield High School (SHS) within the District.

2. In 2006, when Student was approximately five years old, Parent separated from Student's father and moved Student and his/her siblings to Louisiana where Student's maternal grandparents lived. Sometime before the 2012-2013 school year, Parent moved back to Oregon with Student and his/her siblings. (Tr. Vol I at 83:18-84:12 and 111:25-112:11.)

3. Student's biological parents were divorced in 2010. At the time of hearing,

³ To eliminate duplicative exhibits offered by both parties, the District removed certain exhibits from their initial list of proposed exhibits. Accordingly, the District did not offer exhibits marked as D30, D36, D46, D86, D159, D173, D175, D181, D251, D236, D256 through D258, D262, D294, D299, D300, D333, D340, D375, and D393. Likewise, Student did not offer exhibits marked as S22, S23, S95, S151, and S163.

Student's mother was the custodial parent with full decision making authority pertaining to Student's educational and medical needs. (Tr. Vol. I at 80:17-81:13 and 105:2-10.)

4. Student attended Roosevelt Middle School in Eugene, Oregon for sixth grade during the 2012-2013 school year. During all times prior to 2013, Student was enrolled and attended school full time, performed well in school, made good progress, and rarely missed school. (Tr. Vol. I at 86:9-87:2 and 124:25-125:3.)

5. In 2013, Parent moved Student and his/her siblings back to Louisiana to help care for Student's grandfather. Student attended seventh grade in Louisiana for the 2013-2014 school year. (Tr. Vol. I at 112:12-25.)

6. During Student's seventh grade year, a female student at school began harassing him/her on a regular basis. This treatment resulted in Student having nightmares about school attendance. While at school, Student would avoid the cafeteria and restrooms due to fear of being targeted by the harassing student. (Tr. Vol. I at 115:7-24.)

7. While in Louisiana, Parent began taking Student to see a psychologist for regular therapy after Student developed suicidal ideations and made several threats of self-harm. Student's suicidal ideations centered on school attendance. Student repeatedly refused to attend school because of fears and anxiety associated with harassment from another student. In December 2013, Parent called the local police department and requested an officer escort Student to school to ensure he/she actually arrived on campus. Student attempted suicide for the first time that evening by taking several antidepressant pills prescribed to him/her. (Tr. Vol. I at 116:4-118:3.)

8. Following the December 2013 suicide attempt, Student was hospitalized for several days. During that time, Parent learned that Student was also being harassed by the same student via social media. (Tr. Vol. I at 118:9-13 and 119:21-120:12.)

9. In April or May 2014, Student attempted suicide for the second time. At that time, Parent had Student admitted to a juvenile psychiatric facility for treatment. (Tr. Vol. I at 120:13-19.)

10. While admitted to the psychiatric facility in Louisiana, Student had an altercation with staff after he/she refused to allow a nurse to perform a physical examination of all areas of his/her person, including genitalia. Student was restrained by multiple staff members after he/she pushed a nurse. (Tr. Vol. I at 121:1- 14.)

11. Inside the psychiatric facility, Student learned, from other patients, to engage in "cutting," a form of self-harm. Student had not engaged in this type of self-harm prior to being admitted to the psychiatric facility. (Tr. Vol. I at 121: 20-122:15.)

12. Student remained in the psychiatric facility for approximately one week. Upon Student's release, his/her treating psychiatrist informed Parent that Student required constant

supervision. (Tr. Vol. I at 122:16-123:7; Ex. S159 at 1.)

13. Parent and Student returned to Springfield, Oregon from Louisiana in July 2014. At that time, Student's father noted differences in Student's behavior. Student was easily angered and would become violent with his/her siblings. (Tr. Vol. I at 85:15-86:3 and 123:10-124:4.)

14. Upon returning to Oregon, Student began therapy with Kelly Murray, Ph.D., a licensed psychologist. Student continued to receive treatment from Dr. Murray through November 2018. (Tr. Vol. III at 501:6-13.) Over the course of Student's treatment with Dr. Murray, his/her level of functioning varied, sometimes month-to-month or week-to-week. (Tr. Vol. III at 507:9-18.)

15. In summer 2014, Dr. Murray diagnosed Student with Major Depressive Disorder, single episode, moderate severity.⁴ The symptoms exhibited by Student at that time were depressed mood, suicidality, self-care issues, anger, dichotomous thinking, overgeneralizing, and personalizing. (Tr. Vol. III at 502:22-23 and 504:23-505:5; see also Ex. D24.) Student also experienced anxiety, which Dr. Murray considered a component of depression rather than an independent condition for Student. (Tr. Vol. III at 602:10-14.)

2014-2015 School Year: Eighth Grade.

16. In August or September 2014, Parent enrolled Student at Hamlin Middle School (HMS) in the District. Prior to enrollment, Dr. Murray advised Parent that Student would not do well in a public school setting due to the increased potential for Student to experience triggering events or conditions. Parent conveyed this information to the staff at HMS. Eventually, Parent and the District agreed that an offsite educational program offered by the District would be most appropriate. That program was offered at the Gateway Memorial Building and provided an online program with supervision by a teacher. (Tr. Vol. I at 124:5-25 and 126:5-11.)

17. Student displayed behavioral concerns almost immediately while attending the program at the Gateway Memorial Building. Student would engage in distracting conversations with other students and quickly developed an attachment to an 18 year-old student. At that time, Student was 13 years of age. Parent learned that Student and the other student would sometimes leave the program early and go to the park or to the other student's residence. Parent was concerned about the relationship and informed the District of her concerns. (Tr. Vol. I at 130:20-133:8.)

18. Within a few months of Student starting the online program, Parent and District

⁴ Dr. Murray's treatment notes indicate that she also added a rule-out (R/O) for Attention Deficit Hyperactivity Disorder (ADHD) to Student's diagnosis sometime around October 2017 and confirmed Student's ADHD diagnosis sometime before November 5, 2014. (See Exs. S108 and S109.) Nonetheless, Dr. Murray failed to include that diagnosis in the Medical Statement provided to the District as part of Student's initial evaluation. (See Ex. D24.) Further, according to the record before me, it appears the District was not made aware of Student's ADHD diagnosis until sometime in early 2018. (Tr. Vol. V at 942:5-943:5; see also Ex. D263.)

personnel met again to find a new placement option for Student. Parent and the District agreed on a one-on-one tutoring option for Student at the Springfield Public Library. At that time, Parent and the District implemented a “hand-off” process for Student whereby Parent would physically escort Student into the building where he/she would be met by the teacher delivering tutoring services. At the end of the tutoring session, the process would repeat in reverse to ensure an adult was supervising Student at all times. (Tr. Vol. I at 133:9-21.)

19. Student was referred for an evaluation in or about March 2015 to determine whether he/she was eligible for specially designed instruction and/or related services based on a qualifying disability. The evaluation was prompted by Student’s emotional and behavioral concerns that interfered with his/her access to instruction. The evaluation team proposed the Behavior Assessment Systems for Children-2-Adolescent (BASC-2), including ratings by teachers, Parent, and Student. Parent consented to the evaluation during a conference call with District personnel on March 16, 2015. (Exs. D6 and D7.)

20. On April 10, 2015, Dr. Murray sent an email to Nan Minchow, Student’s special education teacher, asking for a team meeting to discuss the possibility of Student taking one or two classes in the regular classroom setting during the next school year. This request was based on progress Student had made over the previous few weeks. (Ex. S115.)

21. Between March and May 2015, Susan Choppy, Licensed School Psychologist, completed a Psycho-Educational Report that was based on: a review of Student’s academic file; results of the BASC-2; observations of Student; interviews with teachers, Student, and Parent; and a Medical Statement or Health Assessment Statement, provided by Dr. Murray. (Ex. D26 at 1.) Dr. Murray’s medical statement indicated Student had a health impairment expected to last more than 60 days and diagnosed as Major Depressive Disorder, single episode, moderate severity. (Ex. D24.)

22. At the time of Ms. Choppy’s report, a review of Student’s academic records indicated that he/she was at or above grade level in most areas. The report also indicated that a recent decline in Student’s math skills was likely attributable to a reduction in instructional time due to limited attendance. (Ex. D26 at 1 and 2.)

23. On May 21, 2015, the District convened an eligibility determination meeting. Student, Parent, Student’s father, and Dr. Murray attended the meeting and participated as part of the team. At that time, the eligibility team determined Student was eligible for special education under the category of Other Health Impairment. (Tr. Vol. I at 152:7-153:4 and 155:21-156:19; Ex. D20.) At that time, the team also drafted an Individual Education Program (IEP) intended to serve Student through May 20, 2016.⁵ Ms. Minchow was designated as Student’s special education teacher at that time. (Ex. D21.) Both parents signed the IEP. (*Id.* at 11.)

24.

2015-2016 School Year: Ninth Grade.

⁵ Because this IEP falls outside the statutory two-year review period, the document is not addressed in detail.

25. Student began his/her ninth-grade year at Springfield High School (SHS) in fall 2015. At that time, Student was enrolled in two classes, Algebra and English, on campus, as previously suggested by his/her treating therapist. Student's presence on campus was initially limited due to concerns that the campus setting would trigger Student's depressive symptoms. (Tr. Vol. I at 175:13-21; see also Tr. Vol I at 162:21-163:5.) At the beginning of the 2015-2016 school year, Parent and the District were no longer using the "hand-off" process implemented during eighth grade. Instead, Parent or Student's father would drop Student off at SHS in the morning and pick him/her up at the end of his/her scheduled day. (Tr. Vol. I at 176:13-18.)

26. Sometime in September 2015, Dr. Murray met with Student's tutor at SHS and conveyed behaviors of concern for Student. At that time, Dr. Murray advised Student's tutor that he/she was prone to running away, exhibited boundary issues, and demonstrated sexualized behaviors with members of the opposite sex. (Tr. Vol. III at 535:2-536:4.)

27. On April 14, 2016, Parent emailed Ms. Choppy and Ms. Minchow and informed them that Student had attempted suicide during the prior week by taking a large dose of his/her father's blood pressure medication. Parent conveyed her concerns about Student's struggles with loneliness and lack of friends. Parent also informed the District that two of Student's friends, one in Louisiana and one in Springfield, had committed suicide in months preceding Student's most recent attempt. At the time of Parent's email, Student was confined to an in-patient hospital psychiatric unit. (Ex. S46; Tr. Vol. I at 89:5-90:6 and 173:13-174:4.)

28. Student's father believed Student was on social media just prior to Student's suicide attempt. Father recollects that, each time Student has attempted suicide or self-harm, he/she had a negative experience on social media immediately preceding the incident. Student's parents have tried removing Student's access to social media, but ultimately gave in and returned access to him/her. (Tr. Vol. I at 90:19-91:5.)

29. In the April 14, 2016 email, Parent informed the District that she and Dr. Murray were looking into therapeutic day programs for Student. Because the public school environment continued to present numerous opportunities for Student to experience triggering events, neither Parent nor Dr. Murray believed it was safe for Student to return to a public school campus. (Ex. S46; Tr. Vol. I at 174:1-12 and 174:21-175:2.)

30. On April 19, 2016, the District issued a Notice of Team Meeting setting an IEP meeting for Student on April 27, 2016. The notice indicates Parent waived the 10-day advanced notice requirement. (Ex. D58.)

31. The District convened an IEP meeting on April 27, 2016. Student's parent both attended that meeting. In addition, Student's school counselor, Suzanne Teutschel, a special education teacher, Lisa Dillon,⁶ and two general education teachers attended the meeting. The IEP developed on that date was intended to serve Student's needs through April 26, 2017. (Ex.

⁶ Student's then-current special education teacher, Rene Cobb, did not attend the IEP meeting on April 27, 2016 due to family leave. (Tr. Vol. I at 178:14-179:6; Ex. D65 at 1.)

D65 at 1 and 2.)

32. Student's April 2016 IEP includes the following summary of Student's strengths:

[Student] is a very bright, hard-working young [person]. [He/She] has made a great transition to high school and loves [his/her] classes and teachers. [He/She] is a very conscientious student who is motivated to do well and catches on to concepts quickly. [He/She] has made tremendous improvement since last year in [his/her] behavior and study habits. This year, [he/she] has participated in the SHS swim team and track team, which has been very beneficial for [him/her].

(Ex. D65 at 3.)

33. In addition, Student's April 2016 IEP contains the following summary of parents' concerns:

[Student's] parents expressed great concern about [Student's] safety while at school, and requested that a plan be put in place to keep them informed when [Student's] whereabouts cannot be accounted for and/or [he/she] has an emotional incident. They shared information about [Student's] recent attempt to harm [him/herself] as well as [his/her] difficulties in regulating [his/her] emotions constructively. They also expressed concern about [Student's] missing work due to extended absences and want to see [him/her] get the support [he/she] needs to get caught up. Several of [Student's] absences for counseling appointments have been recorded as unexcused even though they were cleared through the attendance office in advance.

They also mentioned that [Student] loves SHS and [his/her] teachers, and really feels "at home" here. They would like to attempt a full day schedule next year as long as things continue to go well.

(Ex. D65 at 3.)

34. Student's April 2016 IEP also includes information regarding [his/her] social, emotional, and behavioral aspects as well as organizational and study skills that reads as follows:

Social/Emotional/Behavioral: [Student] has a difficult time regulating [his/her] emotions and reacting appropriately when [he/she] is frustrated or upset. [Student] tends to overreact to any perceived slight, mostly related to "friend drama", by leaving class or "disappearing" for long periods of time, engaging in dramatic emotional displays, and threatening to hurt [him/herself]. Social media is a particularly dangerous venue for [Student] as this has been a source of bullying and harassment in the past. [Student] is currently not allowed to access social media at home or at school. [Student] had a recent suicide attempt which resulted in an extended hospital stay. The IEP team created a safety plan (see attached) for [Student] to facilitate [his/her] return as well as to set up protocols to

make sure [he/she] is safe when [he/she] is at school. The goal of the safety plan was to ensure that [Student] has a support system here at school for when [he/she] is having an emotional episode, make sure [his/her] whereabouts is [sic] known at all times and that [his/her] parents are immediately notified if/when [he/she] cannot be found, and to alert [his/her] teachers and support team when [Student] might be at risk of having an emotional episode or attempting to harm [him/herself].

Organizational/study skills: [Student] has shown a lot of improvement in [his/her] organizational and study habits since [he/she] has transitioned to high school. It was reported on [his/her] previous IEP that [Student] demonstrated frequent work avoidance behaviors and even defiance when presented with classwork in middle school. Since [he/she] has started high school, [Student] has been very compliant and hard-working. [Student] is motivated and wants to do well in school. Frequent medically -related absences have made it difficult for [Student] to stay caught up in [his/her] classes. [He/She] is currently very behind in both math and English, but is working hard to get caught up. [He/She] has been working one-on-one with a math tutor during algebra to get [him/her] up to speed with the rest of the class, and [his/her] parents have hired a tutor to help [him/her] with [his/her] work outside of school. The team also decided to add an Individual Study period to [his/her] schedule so [he/she] can work specifically on getting caught up in English. The 9th grade teaming [sic] counselor will start checking in with [Student] weekly to discuss grades, goal-setting, self-advocacy, and organizational strategies.

(Ex. D65 at 3.)

35. Student's April 2016 IEP also contains summaries of present levels of developmental and functional performance in the form of reports from Student's teachers and reads as follows:

Algebra - [Student] is very quiet, hard-working, and is generally on-task. Sometimes [he/she] seems a bit sullen and has a hard time focusing on concepts. With regular attendance and emotional support, [Student] is very capable. [He/She] has great participation and seems to pick up math very quickly; however, [he/she] has low confidence in [him/herself] and doesn't believe [he/she] is good at math. [Student] has been working one-on-one with a math tutor to get caught up on assignments, which really seems to be helping [him/her]. [Student] benefits from having extra time on assignments and tests.

Choir - [Student] sometimes seems unhappy and chooses not to participate, but [he/she] seems to love singing!

English - When [Student] is in class, [he/she] is a hard worker and shows great potential. [His/Her] work quality is very good, and [he/she] asks questions if [he/she] is confused. [He/she] generally catches on to new concepts quickly.

[He/she] is also very creative, and [his/her] handwriting is beautiful. However, [he/she] can become distracted by peers at times. [His/her] absences and tardies are affecting [his/her] progress, and [he/she] has several missing assignments to complete and get caught up. If [Student] can attend class consistently, [he/she] will be successful. [He/She] benefits from having extended time on assignments.

(Ex. D65 at 3.)

36. Student's April 2016 IEP also contains a statement describing how his/her disability affects his/her involvement and progress in the general education curriculum that reads:

[Student's] difficulties with emotional regulation, self-management, and study/organizational skills related to [his/her] disability impact [his/her] ability to function appropriately in school settings and make adequate progress in the general curriculum without additional supports.

(Ex. D65 at 3.)

37. The Measurable Annual Goals section of Student's April 2016 IEP identifies the following goals:

Category: Social/Emotional/Behavioral

Goal:

When feeling frustrated or anxious, [Student] will seek out one of [his/her] staff contact people to help [him/her] process [his/her] emotions and problem-solve. By April 2017, [Student] will reduce [his/her] need to do this to no more than one time per month.

Category: Organizational/Study Skills

Goal:

By April 2017, [Student] will independently access resources available to [him/her] (daily check-in's, [i]ndependent study time, math tutor) and demonstrate self-advocacy skills and organizational strategies (writing down assignments, asking for help, using accommodations, etc.) To maintain a C or better in all [his/her] classes.

(Ex. D65 at 7, bold original.)

38. The service summary for Student's April 2016 IEP provides for specially designed instruction (SDI) in two areas, Social Skills and Study/Organizational Skills. According to the service summary, Student's SDI would be provided in the general education

classroom at 30 minutes per week per category. (Ex. D65 at 8.)

39. At the time of the April 2016 IEP meeting, Parent's primary concern centered on keeping Student safe and ensuring his/her location was known to District staff while on campus. Parent was also concerned about Student's organizational and study skills because Student refused to turn in assignments until he/she believed they were perfect. Student would become anxious or stressed about falling behind on work he/she had not turned in. Parent was less concerned about Student's academic progress and focused primarily on methods to reduce Student's self-harm behaviors and suicidal ideations. (Tr. Vol. I at 194:20-195:18.)

40. The final page of Student's April 2016 IEP contains a statement that reads, "I have had the opportunity to participate in the development of this individualized education program (IEP). I have received a copy of 'Parent Rights for Special Education (K – 18).'" Both parents initialed the statement. (Ex. D65 at 10.)

41. During the April 2016 IEP meeting, Parent and Dr. Murray informed the District that they were looking into options for the residential placement to address Student's safety needs. At a minimum, Dr. Murray believed student needed to be in a day treatment program to address his/her social, emotional, and behavioral issues. (Tr. Vol. I at 202:3-9.)

42. At the April 2016 IEP meeting, the District issued a Special Education Placement Determination memorializing the team's decision as to placement options. The first placement option put Student in the regular classroom with no pullout for services. According to the placement determination, the team determined this option would provide maximum integration for Student with his/her regular education peers. The team also considered the possibility that this placement lacked adequate structure and behavioral support. In the alternative, the team also considered hospital placement for Student. According to the placement determination, the team considered the opportunity for more intensive individualized instruction and more specific behavior monitoring in this environment. The team also determined that the hospital environment would provide limited social interaction with typically developing peers and limited exposure to the general education curriculum. The team ultimately determined the regular education classroom with no pullout to be the most appropriate placement for Student. That determination considered, at least in part, Student's preference to be at SHS with teachers and peers he/she was familiar with. (Ex. D 68 at 3.)

43. At the April 27, 2016 IEP meeting, the team also developed a safety plan for Student which outlined a check-in/check-out procedure for Student to ensure Parent and District staff knew where Student was at all times. (Tr. Vol. I at 190:6-17.) The safety plan, signed by Parent and several District staff members on April 29, 2016, reads as follows:

In the Morning:

[Student] will be dropped off for school by [his/her] mother[Parent]* * * in the morning. If [Student] has a difficult morning, although will stop by the counseling office and relay that information to the counseling secretary. The secretary will contact Sue Teutschel via phone or email regarding this

information. Sue will [obscured] check in with [Student's] teachers. If necessary, Sue will check in with [Student]. If [Student] is ill will or will not be attending, [Parent] will call Lisa Knowles, Attendance Secretary, about [his/her] absence for the day. Lisa will email [Student's] team about [his/her] absence.

If [Student] needs to leave class, [his/her] check-in people will be:

Sue Teutschel
Leslie Taubenfeld
Lisa Knowles
SueAnn Shih-Rangeloff
Tamara Hume
Rene Cobb
Gene Chism

At the end of classes (11:10):

At 11:10 [Student] will check out with Sue Teutschel. If Sue is not available, [Student] check out with one of [his/her] team members listed above. If [Student] does not check out with [his/her] team, a team member will call [Parent] at [] (cell) or [his/her] father, Marco, at [] (cell).

(Ex. D 70, bold in original.)

44. On June 9, 2016, Parent and Student met with District personnel to develop an academic schedule for the 2016-2017 school year. At that time, Student and his/her academic counselor developed a full schedule of classes for the first and second semesters of Student's 10th grade year. The District worked with Student to ensure he/she obtained classes with preferred teachers. Each semester included an Individual Study period. The purpose of the individual study was to allow Student time to meet with a special education teacher who would support him/her in completing work assignments for other courses, checking in with Student to ensure he/she was on track, and providing additional academic and emotional support to Student as needed. (Ex. D79; Tr. Vol. VII at 1480:24-1485:24.)

45. Following the academic planning meeting June 9, 2016, Tamara Hume sent an email to Ms. Shih-Rangeloff and other team members, including Parent, memorializing what was addressed to at the meeting. In addition to outlining the schedule developed, Ms. Hume included the following:

We also discussed [Student] having [his/her] own pass that [he/she] can set on a teacher's desk if [he/she] needs to step out for a break. You, Renee, and Sue will be [his/her] go-to people next year when [he/she] needs to check-in with someone. We also discussed the possibility of [him/her] joining HOSA at some point since [he/she] wants to be a veterinarian when [he/she] grows up, but that will wait until the team feels [he/she] is ready.

We also decided that [he/she] will do the summer school math class as opposed to English. [He/She] will continue to get counseling with Kelly [Murray] over the summer, and Kelly will advocate for [Student] to be able to have access to a behavior support specialist next year to support his/her transition to being a full-time student.

(Ex. D79.)

46. On June 13, 2016, Ms. Shih-Rangeloff sent an email notifying Parent that Student would be enrolled in two summer courses, math and Global 9, rather than just the math course originally anticipated at the June 9, 2016 meeting. In that email, Ms. Shih-Rangeloff clarified that Student was not taking Algebra for credit recovery, as he/she had always performed well in math, but to maintain skills and provide structure over the summer. (Ex. D81.)

47. During the 2015-2016 school year, Student was absent from school approximately 45 days. The vast majority of Student's absences were unexcused. (Ex. D38.)

48. Student completed and passed both courses he/she was enrolled in during his/her ninth grade year. (Ex. D76.)

2016-2017 School Year: Tenth Grade.

49. In August or September 2016, Student began working with Alissa Dayton, then a Behavioral Support Specialist with South Lane Mental Health (SLMH). Mrs. Dayton worked with Student providing skills training for emotional regulation, executive functioning, language processing, cognitive flexibility, and social skills. In addition, Mrs. Dayton provided family skills training to Parent and Student together. (Tr. Vol. IX at 1722:22-1724:2.) Mrs. Dayton worked with Student until approximately June 2018 when she accepted a new position and Parent closed Student's case with SLMH. (Tr. Vol. IX at 1737:25-1738:13.)

50. Mrs. Dayton also attended IEP meetings for Student during the time she worked with Student. When Mrs. Dayton attended IEP meetings, her role was to support the family, gather information to use in her work with Student, and to provide input regarding the skills work she performed with Student and the efficacy of that work. (Tr. Vol. IX at 1726:13-1728:4.)

51. During the time she worked with Student, Mrs. Dayton regularly picked Student up from school at lunch time to work on skills out in the community. (Tr. Vol. IX at 1728:11-1729:2.)

52. Rene Cobb, special education teacher and case manager, was assigned as Student's case manager for the 2016-2017 school year and continued in that position until June 2018 (through 2017-2018 school year). Ms. Cobb served as a case manager for the District for more than 15 years and had previous experience working with students with behavioral and emotional difficulties. (Tr. Vol. V at 906:8-907:6 and 908:22-24.) During the 2016-2017 school year, Ms. Cobb monitored Student's attendance and grades, communicated with teachers regarding Student's needs, and made herself available to Student for check-ins whenever he/she

needed, but not less than once per day. (Tr. Vol. V at 910:14-24 and 911:22-912:2.)

53. Sometime in early Fall 2016, Student participated in a school-sponsored volleyball game. During the game, Student had an altercation with some parents sitting in the stands. Student became upset, began crying, and fled the building on foot. At that time, Student began to experience thoughts of suicide and/or self-harm. Student was able to calm him/herself and asked a stranger to use their phone. That individual offered Student a ride to the police station, which Student accepted. Student was able to contact the local police and was returned to the auditorium and reunited with his/her team. (Ex. D438 at 22; Tr. Vol. III at 543:2-544:13.)

54. On November 22, 2016, Ms. Cobb circulated an email plan for substitute teachers. This plan identified the class educational assistant (EA) and also gave specific instructions regarding Student and the need to monitor his/her whereabouts. These instructions included a requirement that Student be escorted to the counselor's office and back to class should the need to visit the counselor arise. (Tr. Vol. V at 912:8-913:10; Ex. D93.)

55. Student's original or revised safety plan(s) regarding check-in/check-out and Student monitoring remained in place during the entirety of the 2016-2017 school year. (Tr. Vol. V at 914:1-6; see, Exs. D70 and D138.)

56. On April 3, 2017, the District sent out a Notice of Team Meeting notifying Parent and other team members that an IEP team meeting would be held April 26, 2017. Mrs. Dayton and Dr. Murray were listed as invitees on the notice. (Ex. D125.)

57. On April 10, 2017, the District issued an IEP Progress Report for each Student's annual goals. The progress report utilized the following rating scale to measure Student's progress towards each goal or short-term objective:

1- Your child did not work on this goal during the reporting period (see explanation below).

2- Progress is not sufficient to meet this goal by the time the IEP is reviewed. An IEP review will be held immediately.

3- Progress has been made towards the goal, but the goal may not be met. Instructional strategies may need to be changed.

4- Progress has been made towards the goal. It appears that the goal will be met by the next IEP review.

5- Performance is at or above what is required to meet the goal by the next review.

(Ex. D127 at 1.)

58. The April 2017 progress report listed Student's long-term or annual goals (AG)

and short term goals or objectives (STO) for the Social/Emotional/Behavioral category as follows:

Long Term Goal:

By April 2018, [Student] will be able to initiate, maintain, and end a social conversation, with the same gender peer on a mutually agreed-upon topic, on 4 out of 5 opportunities as measured by student's report and adult observation. ([E]xamples of conversation topics: animals, health occupations, sports, school, art.)

Short term goals:

By 11/10/17, [Student] will be able to have more positive conversations with peers [his/her] age measured by observation in school and sports. [He/she] will improve difficulties with peers from 3 times a month to 1 time a month.

By 2/10/18, [Student] will be able to differentiate between positive vs. negative peer relationships as measured by observation in school and sports.

Long Term Goal:

By April 2018, [Student] will successfully advocate for [him/herself] by using I statements, be assertive, set boundaries with peers, and increase positive self-talk as measured by student's report and adult observation.

Short term goals:

By 11/10/17, [Student] will be able to report to adults when [he/she] is having difficulties interacting with other students and/or feeling anxious, overwhelmed and/or depressed.

By 2/10/18, [Student] will be able to use an I statement when [he/she] believes that [his/her] feelings are being hurt.

By April 2018, [Student] will be able to use more positive self-talk in all settings.

Long Term Goal [:]

[Student] will follow protocol⁷ when [he/she] needs to access supports on 4/5 opportunities.

Short term goals:

⁷ Parent understood the "protocol" to refer to the safety plan in place for Student. (Tr. Vol. II at 247:17-22.)

By 11/10/17, [Student] will have no more than [] incidents of not following protocol.

By 2/10/18, [Student] will have no more than 2 incidents of not following protocol.

By April 2018, [Student] will have no more than 1 incident of not following protocol.

Long Term Goal [:]

By April 2018, [Student] will decrease [his/her] need for adult assistance.

Short term goals:

By 11/10/17, [Student] will decrease [his/her] need for adult assistance to once every two months.

By 2/10/18, [Student] will reduce [his/her] need for adult assistance to no more than once a quarter.

(Ex. D127 at 2.)⁸

59. The April 2017 progress report indicates mastery levels for goals within the category of Social/Emotional/Behavioral by date reference. The progress report lists those dates as 11/10/2016, 02/10/2017, and 04/10/2017.⁹ The mastery level identified each goal within this category was “4.” (Ex. D127 at 3-5.) In addition, the progress report contains the following note: “Please note that this progress report is for 6-17 IEP goal which is different from IEP goal from 4/17 IEP. This report covers Quarters 1, 2, 3 of 16-17.” (*Id.* at 3.)

60. The April 2017 progress report indicates student’s attendance at 97.5 percent for the first quarter, 79.17 percent for the second quarter, and 86.36 percent for the third quarter. (Ex. D127 at 3.)

61. The April 2017 progress report also includes the following information pertaining to the Social/Emotional/Behavioral AGs and STOs:

During 1st quarter 16/17, [Student] participated in Volleyball. [He/She] dropped

⁸ At hearing, no witness offered an explanation of why the progress on goals listed in Student’s April 10, 2017 progress report were written as forward-looking rather than reporting progress attained during the effective period of the then-current IEP (i.e., April 27, 2016 through April 26, 2017.). In addition, the STOs in the progress report do not correspond to any STOs in the previous IEP because the April 27, 2016 IEP is devoid of any reference to STOs. (See, Ex. D65.)

⁹ These dates appear to correspond to quarterly grading periods used by the District. (See, Ex. D127 at 9.)

off the team in part due to same gender peer conflict that resulted in [Student] calling the student a racial slur. [Student] expressed remorse over the use of inappropriate language. [Student] reports that [he/she] sleeps better when active physically. In November, [Student] sought out Sue T, 9th grade counselor. Sue T was not in her library office and [Student] fell asleep on the couch in the office. In December, [Student's] mother reported concerns with [Student's] increasing depression.

During 2nd quarter 16-17, [Student] did participate in Swim practices with the SHS Swim Team. In the middle of January, Individual Study teacher developed a priority list for [Student's] work completion to assist [him/her] in finishing semester 1.

During 3rd quarter 16/17, [Student] did not participate in any school sport activities. [He/she] continue to meet weekly with Psychologist, work with Skills Builder and take medication. Medication options were being explored as reported by Mother. [Student] continue to seek support from trusted adults including counselor, Mrs. S, Mrs. Sue T, Mrs. Cobb, Mr. Chism, Ms. Vicky. [Student] did skip a class with a young man. [He/She] was located at SHS Soccer Field.

(Ex. D127 at 3-5.

62. The April 2017 progress report listed one AG and no STOs for the Organizational Skills category which read as follows:

By April 2018, [Student] will independently access resources available to [him/her] (daily check-ins, independent study time, math tutor) and demonstrate self-advocacy skills and organizational strategies (writing down assignments, asking for help, using accommodations, etc.) to maintain a C or better in all [his/her] classes.

(Ex. D127 at 6.)

63. The April 2017 progress report indicates a mastery level and progress for the Organizational/Study Skills goal by three date references listed as 11/10/2016, 02/10/2017, and 04/10/2017.¹⁰ The mastery level identified each goal within this category was 4. (Ex. D127 at 7-8.) In addition, the progress report contains the following note: "This includes progress report information for Quarters 1, 2, 3 of 16-17." (*Id.* at 7.)

64. The April 2017 progress report also includes the following information pertaining to the Organizational/Study Skills AG:

¹⁰ All substantive information regarding Student's progress during this period was reported under the date 11/10/2016. For the date 02/10/2017, the progress report contains a note that reads, "See report dated 11/10/2016 for entire 16-17 progress reports. All included in one report." (Ex. D127 at 8.) The progress report contains a similar note for the date 04/10/2017 which reads, "See Progress Report dated 11/10/2016 for 16-17 progress reports. All included in one report." (*Id.*)

[Student] has accessed 1:1 times with teachers, completed some PE makeups, worked with UO tutors, [and] used [his/her] time in Individual Study productively. At 1st quarter, [he/she] had an overall GPA of 2.5. [He/She] took an incomplete in ART instead of dropping the class. [He/She] was unable to complete the art assignments prior to the incomplete deadline. [He/She] earned credit in all other classes at [1st] semester. [His/Her] GPA at end of 1st semester was 2.29 and [he/she] earned 3.5 credits. Overall GPA was 2.17. At quarter 3, [his/her] GPA was 3.37 with the following grades: Integrated Science = A, Individual Study = A, Spanish 1 = A, Team Games = C, English 10 = B, Individual Study = A, US History = B, Geometry B = B.

(Ex. D127 at 8.)

65. Finally, the April 2017 progress report listed one AG and no STOs for the Transition category which read as follows:

By April 2018, [Student] will participate in, at least, 5 transition activities, designed to assist [Student] in making progress towards [his/her] post high school goals and desired outcomes as measured by a student interview and adult observation.

(Ex. D127 at 8.)¹¹

66. All notations in the progress report, with regard to the Transition goal, indicated that this goal would be monitored when Student reached the age of 16 on September 28, 2017. (Ex. D127 at 8.)

67. On April 26, 2017, the District convened an annual IEP meeting for Student. Both parents attended this meeting as well as Ms. Shih-Rangeloff, Ms. Cobb, Ms. Taubenfeld, the school nurse, and two regular education teachers. Ms. Cobb, Student's case manager, was designated as the District representative for this meeting. Mrs. Dayton, Student's Behavior Support Specialist, and Dr. Murray, Student's treating psychologist, also attended this meeting. Eugene Chism, the designated special education teacher, was consulted but did not attend the meeting. (Ex. D129 at 1 and 2; Tr. Vol. I at 209:16-210:12.)

68. Student's April 2017 IEP includes the following summary of Student's strengths:

[Student] is a very bright, hard-working young [person]. [He/she] is a very conscientious student who is motivated to do well and catches on to concepts quickly, especially math. [He/she] is ambitious, and plans to study Veterinary Medicine. This year, again, [he/she] has participated on the SHS swim team which has been very beneficial for [him/her]. [Student] is an artistic, friendly, artistic [*sic*] young [person] who loves animals.

¹¹ The April 2016 IEP contains no reference to Transition goals. (Ex. D65.)

(Ex. D129 at 3.)

69. In addition, Student's April 2017 IEP contains the following summary of parents' concerns:

[Student's] mother is very happy with how well [Student] has done academically the issue with a full schedule. Another concern has recently arisen. [Student] has been hanging out with a young man. This concerns [his/her] mother as the boy's guardian told [Student's] mother that the boy was on probation. During the IEP meeting, [Student] was asked to sit outside while adult spoke. [Student's] psychologist requested that Mom find out about the reason the young man is on probation, and to set limits with his involvement with [Student] as [he/she] is very vulnerable. [Student's] mother would like to see [him/her] stay involved in sports, especially swimming as the regular exercise helps [Student] fight depression, and sleep better. [Student's] mother is most concerned with, and adamant that [Student] be afforded 30 minutes weekly of direct social skills instruction in a one-on-one setting. Specific goals, long-term and short-term, were requested. Those goals/service[s] have been added to [Student's] IEP at Mom's request.

(Ex. D129 at 3.)

70. In response to Parent's concerns about Student interacting with the young man at school who was on probation, Ms. Cobb informed the team and school staff to monitor interactions between the two and report to her if they noticed anything concerning. (Tr. Vol. V at 919:15-920:14.)

71. The April 2017 IEP also contains information pertaining to Student's present levels of academic performance including district-wide and state assessments. This information indicates that student met the state standard for science assessments in 10th grade. The reading and math scores reported are from 6th grade. (Ex. D129 at 3.)

72. Student's April 2017 IEP also includes information regarding [his/her] organizational and study skills that reads as follows:

[Student] continues to show a lot of improvement in [his/her] organizational and study habits. This year, [Student] been very compliant and hard-working. [He/She] is motivated and wants to do well. [He/She] has accessed one-on-one tutoring during individual study to get help in Geometry. [Student's] dedication is paying off in great math test scores. On more than one occasion, [he/she] has scored a 100% on tests. Currently, [Student] is passing all of [his/her] classes, and maintaining good grades. When caught up on her schoolwork, [Student] feels more relaxed, positive and accomplished. [His/Her] attendance this year is also a noted improvement.

(Ex. D129 at 3.)

73. Student's April 2016 IEP also contains summaries of present levels of developmental and functional performance in the form of reports from Student's teachers and reads as follows:

[Student] has improved quite a bit in [his/her] ability to maintain emotional regulation at school. [He/she] is observed to be able to bounce back after a setback and recover stability to maintain [his/her] school success. At times, [he/she] continues to show some difficulty responding to difficulties with peers when things do not work out as expected. [He/she] perceives the difficulties as a way to engage in self-criticism. Setting limits and boundaries with [his/her] feelings and associates is not sufficiently developed as a strong social skill, though improvement is noted. Once physically active and engaged in sports, [he/she] shows an enhanced ability to relax, sleep better and respond positively to challenges. [His/her] safety plan is being updated and support system identified. Its purpose is to ensure that [Student] has a support system at school for when [he/she] is having an emotional episode, make sure [his/her] whereabouts is [sic] known at all times and that [his/her] parents are immediately notified if/when [he/she] cannot be found, and to alert [his/her] teachers and support team when [Student] might be at risk of having an emotional episode or attempting to harm [his/herself].

Individual study teacher, Mr. Chism, writes that [Student] works hard to complete [his/her] work. [He/she] can be social, but [he/she] gets right to task when asked. [His/her] grade is a B+ with only 1 absence.

Integrated Science teacher reports an overall grade of A-/90.8%. [Student] benefits from extended time to finish assignments. [Student's] test average is 80.5%, and [his/her] classwork average is 95.7%. [He/she] has no missing assignments.

Geometry B teacher notes that [Student's] grade is an A- with no tardies and only 1 absence. The teacher writes that [Student] has very high expectations of [him/herself], and at times may be a bit too hard on [him/herself] when [he/she] makes a mistake. On Chapter 7 Test taken 3/13/17 [Student] scored 44/46 (A).

English 10 teacher reports [Student's] great to be a B+. [Student] is observed to regularly participate in class, and has shown improvement in limiting distractions. On occasion, [he/she] need some help with organization [he/she] also benefits from check-ins.

(Ex. D129 at 3 and 4.)

74. Student's April 2017 IEP also contains a statement, identical to that included in the 2016 IEP, describing how Student's disability affects his/her involvement and progress in the general education curriculum that reads:

[Student's] difficulties with emotional regulation, self-management, and study/organizational skills related to [his/her] disability impact [his/her] ability to function appropriately in school settings and make adequate progress in the general curriculum without additional supports.

(Ex. D129 at 4.)

75. The AGs and STOs for the Social/Emotional/Behavioral category in the April 26, 2017 IEP are identical to the AGs and STOs identified on the April 10, 2017 progress report. (Exs. D129 at 9 and D127 at 2.)

76. The April 26, 2017 IEP reports present level information for the Social/Emotional/Behavioral category as follows:

[Student] has difficult time regulating [his/her] emotions and reacting appropriately when [he/she] is frustrated or upset. The IEP team also updated a safety plan [and] set up protocols to make sure [he/she] is safe when [he/she] is at school. The goal of the safety plan is to ensure that [Student] has a support system here at school for when [he/she] is having an emotional episode, make sure [his/her] whereabouts is [*sic*] known at all times and that [his/her] parents are immediately notified if/when [he/she] cannot be found, and to alert [his/her] teachers and support team when [Student] might be at risk of having an emotional episode or attempting to harm [his/herself].

(Ex. D129 at 9.)

77. The AG for the Organizational/Study Skills category in the April 26, 2017 IEP is identical to the AG identified on the April 10, 2017 progress report. (Exs. D129 at 9-10 and D127 at 6.)

78. The April 26, 2017 IEP reports present level information for the organizational/study skills category as follows:

[Student], at times, access[ed] UO math tutor during [his/her] Individual Study class. At the time of the IEP meeting in April 2017, [Student] was passing all of [his/her] classes. First semester of [his/her] 10th grade year, [Student] earned full credit in all but [his/her] Art class with a GPA of 2.29. At the end of the first semester, [Student] found [him/herself] behind in work, but with assistance from [his/her] mother and a priority list developed by specialist, [Student] cooperated and followed [his/her] list to end the semester, taking and incomplete in Art. [Student] was given 3 weeks to complete art assignments but [he/she] was unable to do so in part [because] of [his/her] desire to stay current in [his/her] new 2nd semester classes.

(Ex. D129 at 10.)

79. The April 2017 IEP, contains an AG in the Transition category. This AG reads identical to the transition goal identified in the April 10, 2017 progress report. (Exs. D129 at 10 and D127 at 8.) In addition, present level information for this goal is reported as follows:

[Student's] transition services begin when [he/she] reaches the age of 16 in September 2017. [Student] was interviewed by the SHS Transition Specialist. [Student] aspires to be a Veterinarian *[sic]*. This year, [he/she] participated in the SHS Swim Program. In [his/her] Individual Study class, [he/she] is working on activities in the Oregon CAREERS Booklet regarding job searches, post high school education and other opportunities for adulthood. [Student] accesses math tutors from the UO. [He/she] takes care of [his/her] pet chicken. [He/she] receives services of a skills builder and accesses counseling services in the community. [He/She] will be exploring the HOSA program at SHS for future health occupations students.

(Ex. D129 at 10.)

80. The service summary for Student's April 2017 IEP provides for SDI in three areas, Social Skills, Transition Services, and Study/Organizational Skills. According to the service summary, Student's SDI would be provided in the general education and/or resource classroom at 30 minutes per week for social skills, 60 minutes per semester in transition services, and 150 minutes per week in organizational/study skills. (Ex. D129 at 11.)

81. The supplementary aids and service listed in the April 2017 IEP reflect the following accommodations: daily check-in/checkout with trusted adult for emotional and organizational support; safety plan distributed to all teachers and adults that work with [Student]; extra testing time (time and a half) for tests involving grade-level academic skills; extra 2 days for assignment deadline when work involves grade-level academic skills, and/or Art skills; provide encouragement and positive attention for functional work skills and appropriate topics of conversation; access to trusted adult for 1:1 support during class time with notification of teacher. (Ex. D129 at 11.)

82. In addition, the April 2017 IEP contains a statement of nonparticipation justification identifying that Student requires removal from the general education classroom and reads, "For two periods weekly, [Student] is in a Resource Room setting. [He/she] is in a Gen Ed setting for 80% of [his/her] week. [Student] needs individualized instruction to make progress towards [his/her] IEP goals." (Ex. D129 at 13.)

83. The AGs and STOs listed in the April 2017 IEP for the Social/ Emotional/ Behavioral category were added at Parent request. The AGs and STOs were developed by Parent and Dr. Murray before being provided to the District. (Tr. Vol. I at 216:12-217:3.) Parent understood that Dr. Murray and Mrs. Dayton were working with Student on the stated AGs and STOs outside the school setting. (Tr. Vol. II at 256:4-24

84. During the 2016-2017 school year, Student experienced difficulties responding to

peers and was often met with rejection from same gender peers. Student was also easily manipulated into engaging in negative behaviors in order to win the approval of peers. These experiences sometimes triggered emotional responses from Student that included, on one occasion, seeking out a secluded place within the school building to hide. (Tr. Vol. II at 227:23-229:12 and 230:10-21.)

85. At the April 2017 IEP meeting, Mrs. Dayton and Dr. Murray provided input regarding supports to address Student's behaviors in school. (Tr. Vol. II at 239:13-241:16.)

86. During the April 2017 IEP meeting, the team revised Student's safety plan. The April 2017 safety plan went through several revisions during this process. (Exs. D133 through D138.)

87. Student's April 26, 2017 Safety Plan contained the following protocols and procedures for District staff and Parent:

In the Morning:

[Student] will be dropped off for school by [his/her] mother, [Parent], in the morning. [Parent] [cell phone number omitted] will email Mrs. Cobb at time of drop-off. If [Student] is late or will be absent, [Parent] will contact with Mrs. Cobb and Lisa Knowles, Attendance Secretary. Mrs. Knowles or Mrs. Cobb will email team if [Student] is absent or late for any period. If [Student] is having a difficult morning, [he/she] will visit with Mrs. Cobb or another support staff member (Mrs. Teutschel, Mr. Chism, Mrs. Dean, Mrs. Shih-Rangeloff, or other assigned staff) before going to class.

During the School Day:

If [Student] fails to show up for class on time, and [he/she] is not marked absent in attendance, the teacher will notify Mrs. Knowles and/or Mrs. Cobb. [Student's] mother will be called in this event. Campus Supervision Team (Dean, Wagner, Gonzales, Schroeder) will be notified so they are able to look for [Student].

[Student] may approach a teacher with a pre-made hall pass (Neon Pink color) about a need to talk to a trusted adult during the school day. Teacher will allow [Student] to access [a] member of [his/her] support team (Cobb, Shih-Rangeloff, Teutschel, Dean, Chism). Teacher will call counseling (Mrs. Ellis, 4787) to report [Student] is on [his/her] way to the office, if possible.

At End of Day:

[Student] will check in with Mrs. Cobb during [his/her] Individual Study, Period 8, on B Days. On A Days, [Student] will check-out with Mrs. Cobb or Mrs. Vicki Trapp in room 434 (across the hall from [his/her] Geometry class 7th period). If

[Student] does not check out with a member of the team a team member will call [Parent] to check on safety.

(Ex. D138.)

88. At times during the 2016-2017 school year, Student had not been dropped off at school and Parent forgot to notify the District staff. In these instances, District staff had to contact Parent to ascertain Student's whereabouts. (Tr. Vol. V at 922:20-923:10.)

89. The following individuals signed the April 2017 safety plan: Student; Calli Dean; Rene Cobb; SueAnn Shih-Rangeloff; Sue Teutschel; Parent; Gene Chism; and Vicki Trapp. (Ex. D138.)

90. At the April 2017 IEP meeting, the District issued a Special Education Placement Determination memorializing the team's decision as to placement options. The first placement option considered put Student in the regular classroom greater than or equal to 80 percent of the day with 2 classes in a resource classroom for SDI and related services. According to the placement determination, the team determined this option would provide intensive individualized instruction while still providing exposure to regular education curriculum. The team also considered the possibility that this placement limited social interaction with typically developing peers because Student would not be included in all general education classroom activities. In the alternative, the team also considered placement in the regular classroom 100 percent of the day for Student. According to the placement determination, the team considered the opportunity for Student to be included in all regular education classroom activities. The team also expressed concerns that a regular classroom setting with no pull-out for SDI or related services would not provide sufficient small group or individualized instruction. The team ultimately determined the regular education classroom with up to 20 percent pull-out to be the most appropriate placement for Student. That determination considered, at least in part, Student's progress made toward IEP goals while receiving individual or small group instruction. (Ex. D143 at 3.)

91. According to the District's placement determination, Parent, Student, Mrs. Dayton, and Dr. Murray (as well as other team members) participated in making the determination of placement for Student. (Ex. D143 at 1.)

92. On May 22, 2017, Student failed to show up for Ms. Cobb's class. Ms. Cobb immediately called Parent and sent an email to team members designated on Student's safety plan to inquire into Student's whereabouts. Student was located in less than 10 minutes. Ms. Cobb found that Student had fallen asleep in another teacher's classroom. Ms. Cobb notified the team members by email and called Parent to inform her that Student had been located. (Ex. S49.)

93. On June 1, 2017, Dr. Murray authored a letter and provided it to the District. That letter outlined some additional strategies that Student and Dr. Murray were working on to develop social skills and improve emotional regulation. (Tr. Vol. VI at 1221:10-22.; Exs. D174 and S119.) Student's IEP team reviewed the information provided by Dr. Murray and collaborated with Parent to incorporate Dr. Murray's suggestions into Student's AGs and STOs.

(See Exs. D178 through 180.)

94. During the 2016-2017 school year, Ms. Cobb believed Student was progressing well, had improved attendance, and was earning more credits toward graduation than the previous school year. Ms. Cobb also noted that, during Student's individual study class, he/she was able to stay focused on tasks, perform check-ins, utilize his/her safety plan, and communicate how he/she was feeling to staff members. During that year, Student regularly missed Friday's on campus due to outside therapy appointments. Ms. Cobb does not recall any significant instances on campus related to Student's depression or anxiety during the 2016-2017 school year. (Tr. Vol. V at 915:23-917:11.)

2017-2018 School Year: Eleventh Grade.

95. Student began his/her eleventh grade year at SHS in fall of 2017. (Ex. D216.) For the majority of Student's first semester of eleventh grade, Ms. Cobb was out of school on medical leave. During that period, Stacey Whaley, special education teacher, and Ms. Dean, Assistant Principal at SHS, managed Student's IEP needs. Ms. Cobb returned and resumed her role with Student in November 2017. (Tr. Vol. V at 932:12-23 and 1681:8-15.)

96. On September 29, 2017, Ms. Dean contacted Parent vial email at approximately 9:00 a.m. notifying her that staff were unable to locate Student and inquiring whether Parent had brought Student to school that morning. Shortly thereafter, Parent emailed Ms. Dean and informed her that Student had not made it to school yet because the family had been out late the previous night celebrating Student's 16th birthday. Parent had not notified the school that Student would be absent or late for school that morning. (Ex. D218 at 2-3.)

97. Kira Fee is a licensed special education teacher who served as the Resource/Behavior Support classroom teacher at SHS for the 2017-2018 school year. That classroom focuses on students who require behavior supports mandated through their IEPs. Student was enrolled in Ms. Fee's Independent Study class for two periods during the first semester and one period for the second semester of the 2016-2017 school year. Ms. Fee has extensive experience teaching life skills, social skills, emotional learning, and behavioral support. (Tr. Vol. VI at 1098:22-1099:21 and 1101:5-8.)

98. When Ms. Fee began working at SHS, Ms. Whaley, Student's acting case manager, provided her with a copy of Student's safety plan. Ms. Fee understood that as part of her duties working with Student, she was responsible for implementation of Student's safety plan. During her time working with Student, Ms. Fee never experienced issues with Student's compliance with the safety plan check-in/checkout procedure. (Tr. Vol. VI at 1108:21-1109:13; Ex. D135.)

99. Student's classes with Ms. Fee occurred during seventh and eighth period for each semester. While recording attendance for Student during those periods, Ms. Fee was also able to review attendance for his/her other classes during the day. Ms. Fee noted that, during the first semester, Student was absent more than average students but not more than what was typical for students in Ms. Fee's classroom. During second semester, Ms. Fee noted significantly increased

absences for Student. (Tr. Vol. VI at 1102:1-21.)

100. The students regular routine within Ms. Fee's class involved completing a work plan at the beginning of each class identifying which work needed to be completed for students of various classes. Thereafter Ms. Fee and the classroom instructional assistant would work with the students to assist them in completing and turning in the work identified. During this time Ms. Fee regularly delivered SDI in the area of organizational and study skills. (Tr. Vol. VI at 1101:9-25.)

101. In Ms. Fee's opinion she and Student worked well together and student regularly responded to directions given to him/her. Through this instruction Student was able to remain on task and complete class work and also problem-solve social situations with other peers in the classroom. Ms. Fee believed Student was comfortable seeking help and observed that Student regularly sought out her help. (Tr. Vol. VI at 1103:15-20.)

102. Ms. Fee observed that Student was very particular about his/her work assignments and always sought to ensure his/her work was done accurately and completely before turning it in. Generally, Student was able to remain on task during the entire 90-minute class. On occasion Ms. Fee noted that Student required minor redirection particularly if he/she became overly social in class. (Tr. Vol. VI at 1103:21-1104:10.)

103. By October 26 2017, Student has fallen behind on work. Ms. Whaley sent out an email reminding his/her teachers of IEP accommodations allowing Student to turn in work after the normal due dates/grace periods. That same day, Ms. Fee emailed Parent a detailed plan for Student to catch up on late work. Parent responded on October 30, 2017 informing Ms. Fee that Student had followed the plan and was able to make up three chapters of late work over the weekend. (Ex. D222.)

104. On or about November 2, 2017, the IEP team met to review Student's IEP goals, obtain updates from Student's teachers, and determine what modifications might be necessary. (See, Ex. D232 at 2.) At that time, it was reported that Parent has observed significant improvement in Student's ability to seek out adult supports when he/she experiences difficulties with peer or teachers. Parent also reported that Student was able to complete a full athletic season and that he/she sang the National Anthem at one game. (*Id.*)

105. At the November 2, 2017 meeting, Parent also reported the following concerns:

- Mom is requesting that we are all consistent with a log of classroom observations.
- She has not seen progress in the social aspect.
- [Student] still is not able to handle life stressors.
- [Student] had an incident with Mr. Frost. [He/She] cut [him/herself] after an incident with the teacher.
- Last night, [he/she] tried to commit suicide (took a few pills-cholesterol medicine).
- We are giving [him/her] "mix" directions.

- There was a volleyball game incident.
- [Parent] is requesting a live document ([G]oogle Doc.) To keep track of what [Student] is supposed to work on.
- [Student] continues to see a therapist (Kelly) once a week.
- [Student] is feeling lonely and feels like no one likes [him/her]. Sue tells [him/her] to be [him/herself] but then girls do not like [him/her] when [he/she] is [him/herself].
- Regarding skills training: mom would like for SHS and the skill trainer to work closely together. Sue proposed that the skill trainer comes to the classroom and works with [him/her] in the classroom.

(Ex. D232 at 2.) In response to Parent's request for a log of classroom observations, the District created a Google Doc, accessible to school staff and Parent, for all team members and general education teachers to input relevant information. (Tr. Vol. VI at 1189:1-14.)

106. On November 9, 2017, Parent responded to an email from Ms. Dean memorializing the November 2, 2017 meeting and included an extensive list of additional concerns, which included:

References that appear to be missing from the IEP meeting notes:

- Sue/Leslie not following Kelly recommendations (they forgot agreement and recommendations Kelly sent them) on Social Behavior Therapy sessions being provided by Sue.
- Incidents discussed where Calli [Dean] or school personnel were involved and had a potential to trigger [Student's] mental/behavior stability.
- Sue keep a log of sessions with [Student] and what was covered. Also, note incidents [Student] leaves class for as I am aware of 8 incidents where [Student] had to seek adult assistance and [District] has not documented any of them. Our goal was one incident per month and [Student] has had ~4 incidents per month, including volleyball incidents.
- ADHD seems to be missing from IEP Eligibility and it is causing a lot of stress in terms of falling behind and unable to keep track of missing assignments.
- [Student] is not able to keep track of missing assignments, [he/she] needs advocacy assistance with classes [he/she] is failing in getting extended time and negotiating number of assignments to keep up with classes. Asking [him/her] to go talk to teachers is not sufficient, we need a plan that is central to teachers and case manager assisting with this.
- Sue requested some on[-]site skills training sessions be done by South Lane Mental Health Services
 - We also discussed events leading up to [Student's] attempt to hurt [him/herself] and are working on enabling communication via dynamic, shared documents between parent and internal/external support team (ask).
 - Safety protocol was not always followed. It took school over an

hour to contact me on one occasion when I failed to check [Student] in. Both school [*sic*] needs to notify parent(s) immediately if [Student] cannot be located within 10-15 minutes. Teachers need to notify Support [*sic*] personnel when [Student] leaves class in an unsafe emotional state.

- Positive feedback on Sue handling the case with Mr. Frost with very positive results. Great work team!
- All data is to be kept confidential and not shared outside [Student's] IEP/medical support team.

(Ex. D233 at 1.)

107. On November 14, 2017, on a dare, Student approached a male classmate as he/she was exiting class to go to the restroom. Student whispered a sexually explicit comment to the male student. The male student appeared shocked by the statement and repeated it aloud within the hearing of the rest of the class. Student was embarrassed by the incident. (Ex. D162 at 3.)

108. Ms. Fee and Ms. Dean met with Student following the November 14, 2017 incident and counseled him/her on the difference between appropriate and inappropriate jokes and how Student would want others to perceive him/her at school. Initially, Student was upset at the male student for speaking out. Ms. Fee and Ms. Dean counseled Student on acceptance of responsibility for his/her actions and words. At the end of the counseling session, Student appeared to understand his/her role and the District considered the matter resolved. Thereafter, Ms. Fee notified Parent via email. Ms. Fee also included Ms. Teutschel in the email notification. (Ex. D162 at 3.)

109. On November 15, 2017, Parent sent an email to Ms. Teutschel notifying her of a discussion Parent had with Student regarding the November 14 incident. Parent conveyed that Student was humiliated and could not understand how anyone could think his/her statement was anything other than a joke. Parent reminded Student that one of his/her "trigger" words was being referred to as a "hoe" and that the type of statement he/she made could either be misconstrued or used against him/her by students seeking to harm him/her. (Ex. D162 at 1.) Parent also conveyed that she discussed with Student that hurting other people's feelings and/or self-esteem is nothing to joke about but lamented that she believed Student is desperate to fit in and therefore does not think through these matters before he/she acts. (*Id.* at 2.)

110. Generally, the social issues Ms. Fee helped Student problem solve were simple misunderstandings or overreactions that were resolved quickly within the classroom. The level of coaching and redirection Student required in these instances was no more than a typical student. (Tr. Vol. VI at 1104:11-23 and 1113: 22-1114:18.)

111. During the 2017-2018 school year, Ms. Fee recalls no more than 12 instances where the email notification provisions of Student's safety plan were implemented and inquiries as to Student's whereabouts were sent out to team members. Most of these instances with a result of Student lingering behind with a prior teacher finishing work from another class. In addition Ms. Fee recalls multiple instances where Parent and picked Student up early from

school and failed to notify the team members. (Tr. Vol. VI at 1110:8-1111:9.)

112. Approximately once per week during the 2017-2018 school year, Student would access adults outside of the classroom for support. Student would initiate this adult support unprompted by Ms. Fee or the educational assistant. (Tr. Vol. VI at 1117:16-1118:13.)

113. In December 2017/January 2018, Student's depression appeared to increase and he/she began to refuse to attend school. Student conveyed to Parent that he/she believed that his/her morning class teachers did not like her. Parent speculated to Ms. Dean that Student's perception was likely due to his/her grade(s) in those classes. (Exs. D252 at D253.)

114. Based on Student's morning attendance difficulties, Ms. Dean proposed certain changes to his/her upcoming semester schedule including moving Student's Independent Study periods, where he/she had a trusted adult for check-ins, to the first periods of his/her day. In addition, Ms. Dean proposed hand-picking Student's teachers to ensure he/she was assigned to classes with his/her preferred teachers. Ms. Dean also planned to move Student's academically demanding courses to the latter periods of the day. (Tr. Vol. VI at 1240:9-23; *see* Ex. D253.)

115. On January 10, 2018, parent sent an email to Ms. Cobb, Ms. Dean, Dr. Murray, Ms. Teutschel, and Mrs. Dayton regarding [Student's] progress in school activities. In the email, Parent requested to see a copy of an amended IEP based on a meeting held the last calendar year. (Ex. D246 at 2.)

116. In the January 10, 2018 email, Parent also made a request for an 'official' IEP meeting with the express purpose of amending the current IEP to address certain issues in class. (Ex. D246 at 3.) Parent then proposed two new SDI categories; Alternatives to Conflict and Dealing with Feelings/Self-awareness. Each of these new categories contained two new AGs each with two new STOs. The proposed Alternatives to Conflict category also contained 21 distinct objectives. The proposed Dealing with Feeling/Self-awareness category contained 17 distinct objectives for Student to achieve within the year. Parent also requested feedback on sessions involving Student, Sue [Teutschel], and Alissa [Dayton]. (Ex. D246 at 3-4.)

117. Ms. Cobb had concerns about some of Parent's proposed goal additions because she and other school staff were not seeing the level of difficulty or daily conflict Parent alluded to in her January 10, 2018 email. In addition, many of the proposed goals appeared hard to implement, track, and or measure in the school environment. Further, while Ms. Cobb believed that many of the proposed goals and objectives were appropriate for students with more significant skills deficits than Student, she did not believe that Student suffered significant skills deficits in the target areas. (Tr. Vol. V at 935:3-936:18; Ex. D246 at 3-4.)

118. Also in the January 10, 2018 email, Parent expressed her concern that Student was consistently struggling with peer relationships. Parent also acknowledged that Student was continuing to improve with regard to his/her personal safety. Parent thanked Ms. Cobb for her efforts with Student. Finally, Parent informed the District that Student recently signed up with

Portland DBT Institute.¹² Student's DBT therapy would involve additional absences. (Ex. D246 at 4-5.)

119. On January 23, 2018, the District sent out a Notice of Team Meeting scheduling a meeting for February 1, 2018. The stated purposes of the meeting were to consider transition services, review Student's IEP, and review existing information in preparation for Student's upcoming re-evaluation date. (Ex. D255.)

120. On January 29, 2018, Ms. Taubenfeld, school psychologist, prepared an evaluation report, titled Assessment Summary Form 220B, in preparation for Student's three-year re-evaluation. Ms. Taubenfeld understood that Parent desired an expedited re-evaluation and had agreed to a file review in lieu of a full re-evaluation of Student. As part of the evaluation report, Ms. Taubenfeld obtained an updated Medical Statement from Dr. Murray indicating diagnoses of ADHD and Major Depressive Disorder. (Tr. Vol VII at 1435:16-1437:4; Ex. D292 at 2-3; see also Ex. D266 at 1.)

121. In preparing the Form 220B, Ms. Taubenfeld gathered input from Ms. Cobb, Ms. Shih-Rangeloff, and four of Student's eight general education teachers. Ms. Taubenfeld also reviewed Student's educational records and previous evaluations. In her report, Ms. Taubenfeld opined that she believed Student continued to qualify for special education under the eligibility category of OHI based on Student's previous diagnosis of Major Depressive Disorder and the new diagnosis of ADHD. (Ex. D292 at 4; Tr. Vol VII at 1437:5-1438:5.)

122. A planning meeting was convened on February 1, 2018, the end of the first semester. According to the meeting notes, the following individuals attended the planning meeting:

Parent;
Calli Dean, Administrator;
Rene Cobb, Special Education Teacher;
Kira Fee, Special Education Teacher;
Leslie L. Taubenfeld, School Psychologist;
Amanda Greene-Chacon, General Education Teacher;
Amanda Bottimore, General Education Teacher;
Ryan McClintick, General Education Teacher;
SueAnn Shih-Rangeloff, Academic Counselor; and
Sue Teutschel, Counselor.

(Ex. D263 at 1.)

123. At the planning meeting, teachers and other specialists reported Student's present levels of performance. These individuals reported Student is advocating more for him/herself. Ms. Fee reported that at times Student will discard an assignment that is not fully complete rather than turning it in. Student will also do this with assignments that he/she believes are not up to

¹² DBT (Dialectical Behavioral Therapy) was designed to address symptoms of suicidality and other symptoms associated with borderline personality disorder. (Tr. Vol III at 501:14-19 and 514:23-515:6.)

his/her standards. Student's English teacher reported that he/she appears to have difficulties with homework assignments that are multi step. (Ex. D263 at 1; Tr. Vol. VI at 1123:1-10.) At that meeting, the team also reviewed Student's credit completion and noted that he/she was on-track for graduation with a regular diploma. (Tr. Vol. VI at 1124:16-21.)

124. During the February 1, 2018 planning meeting, Parent reported the following:

- At home, [Student] falls apart. [He/she] sleeps the entire time it is hard for mom to get [him/her] going in the mornings.
- Parent reported that [Student] also has ADHD and this condition is another contributing factor to [his/her] classroom performance [.]
- [Student] continues to get trigger[ed] by social media and seems desperate for friends' approval. However, [he/she] has made progress in this area too[.]
- [Parent] agreed that [Student's] advocate [sic] skills are improving [.]
- [Parent] believes that [Student] needs more structure in Introduction to Health and English class. [He/she] does the work but does not turn it in. [He/she] keeps it in [his/her] backpack and will not turn it in unless it is 100% done.
- [Parent] is requesting that school and parent work together (creating more specific plan) to move [him/her] along with the assignments.
- [Parent] thanked the SHS team for all the hard work. She is very happy with [Student's] improvement.

(Ex. D263 at 1-2.)

125. During the planning meeting, the team noted that Student's workload in the current year (eleventh grade) is markedly more difficult than the previous two years of high school yet Student was demonstrating greater success in eleventh grade than he/she did in ninth grade. (Tr. Vol. VI at 1125:1-9.)

126. At the February 1, 2018 meeting, the team agreed to a plan of action for second semester that included keeping Student off the internet, assisting Student with catching up on English assignments, and arranging an EA to support Student on campus. (Ex. D263 at 2.) Student's safety plan was also updated at that time to add the EA to "accompany [Student] to all classes and remain with [him/her] during all breaks as well. (Ex. D264 at 1.)

127. During the February 1, 2018 meeting, Parent elected not to sign off on Student's three year re-eligibility paperwork and indicated she wanted to review Ms. Taubenfeld's evaluation report with Dr. Murray before signing off. (Tr. Vol. VII at 1458:16-1459:1.)

128. On February 2, 2018, the District issued an IEP Progress Report. The progress report was identical in format to the April 2017 progress report. In addition, the February 2018 progress note contained the same AG and STO language as the April 2017 progress report, for all goals listed, and reproduced the information from all four quarters identified in the April 2017 progress note (11/10/2016, 2/10/2017, and 4/10/2017) as well as two new reporting periods, 11/02/2017 and 2/02/2018. (Exs. D268 at 2-6 and D127.)

129. The February 2018 progress report indicated a mastery level for Student's Social/Emotional/Behavioral AGs and STOs as "4", indicating Student made progress towards the goals during the reporting period and it appeared the goals would be met by the next IEP review. (Ex. D 268 and 1-7.)

130. For the reporting period November 2, 2017, the Social/Emotional/Behavioral AGs and STOs indicate a score of 100%. The progress report contains a note for the reporting period which reads, "50% of [Student's] teachers report that [Student] has appropriate conversations with same gender peers at least weekly. The other 50% report appropriate conversations happen daily or hourly." (Ex. D268 at 6.)

131. For the February 2, 2018 reporting period, the Social/Emotional/Behavioral AGs and STOs contains the following information under the heading of "Score":

Responses from Teachers are as follows:

Appropriate interactions with same gender peers: Weekly (4 Teachers), Hourly (1 Teacher).

Conversation with peers on inappropriate topics in class: Monthly (1), Weekly (2), Never (1), Quarterly (1).

Advocate using "I" statements: Monthly (1), Weekly (4).

Set boundaries with peers: Monthly (4), Daily (1).

Uses positive self-talk: Monthly (2), Weekly (3).

Comes to teacher to report difficulties interacting with other students: Monthly (2), Never (2).

Reports feeling anxious: Monthly (2), Never (3).

Asks to leave class to access adult support for emotions: Quarterly (3), Never (1), Weekly [sic] (1).

Self[-]advocates to access resources such as tutor/retake/extra instruction: Monthly (2), Never (2), Quarterly (1).

Asks for missing work: Quarterly (2), Never (2), Weekly (1).

Requires [sic] additional time to complete assignments up to 2 days: Quarterly (2), Weekly (1), Daily (2).

Requires multiple prompts for class: Quarterly (1), Weekly (2), Daily (2).

(Ex. D268 at 6-7.)

132. The February 2018 progress report indicated a mastery level for Student's Organizational/Study Skills AGs and STOs as "4" for all reporting periods except for the February 2, 2018 reporting period, which indicated a mastery level of "3". (Ex. D 268 and 8-9.)

133. For the reporting period November 2, 2017, the Organizational/Study Skills AGs and STOs indicate a score of 6/8. The progress report contains a note for the reporting period which reads:

At the end of the first quarter, [Student] has a C or better in 6/8 classes, but is not tracking assignments independently. [He/She] still requires prompts to access

resources. [He/She] will start using a planner in Indiv. Study next quarter.

(Ex. D268 at 9.)

134. For the February 2, 2018 reporting period, the Organizational/Study Skills AGs and STOs contains the following information under the heading of “Score”: “[Student] passed 6/8 classes with a C or better. [He/She] received one D+ (Biology) and one Incomplete (English).” (Ex. D268 at 9.)

135. The February 2, 2018 reporting period contains a note for the Organizational/Study Skills goals that reads:

[Student] can complete the missing work in English to improve [his/her] grade from incomplete to a passing grade. Teachers report [Student] has improved [his/her] self-advocacy skills and is more willing to approach teachers for missing assignments, when [he/she] needs help completing an assignment, and for minor problem solving in class. [He/She] attempted to use a daily planner, but was inconsistent with filling out. [His/Her] schedule has been modified and determined by IEP team for best placement to improve success semester.

(Ex. D268 at 9.)

136. Further, the February 2, 2018 progress report included two additional reporting periods for Student’s Transition goal. Student’s mastery level is reported as 4. The November 2, 2017 reporting period reflects a score of 2 and contains the following note, “At least 2 activities are in process already-[Student] is taking an intro to health occupations class to learn about various careers in this field. Also, [Student] accesses community activities and supports such as counseling and extracurricular athletics.” (Ex. D268 at 10.)

137. The February 2, 2018 reporting period indicates a score of 4/5 for transition goal progress. In the “note” section, the District included the following information:

1. HOSA class
 2. HOSA lunch club
 3. Volleyball
 4. Community supports for mental health and skills training.
- Future:
5. Will complete ACT in February [.]

(Ex. D268 at 10.)

138. On February 2, 2018, Ms. Taubenfeld sent Parent an electronic copy of the Form 220B evaluation report because Parent had indicated that she wanted to discuss the report with Dr. Murray. (Ex. D267 at 2-3.)

139. On February 5, 2018, Parent responded to Ms. Taubenfeld’s email, copying Ms.

Dean, advising the District that she had not yet had an opportunity to discuss the evaluation report with Dr. Murray but would do so at an upcoming appointment. At that time, Parent included a request for an “independent comprehensive evaluation¹³ with recommendations for IEP interventions.” (Ex. D267 at 2.)

140. Ms. Dean responded to Parent via email on February 5, 2018 at approximately 8:30 p.m. That response read as follows:

You are more than welcome to do your own independent comprehensive evaluation for [Student]. This is typically done when a parent has concerns with the school’s evaluation where there are questions about the overall diagnosis. If your concerns are about diagnosis we rely on the physician’s statement provided to us (as we are not doctors).

In the meantime, how do you feel about moving forward with the current eligibility until you have the evaluation done? Once you complete the evaluation we can make any changes needed.

(Ex. D270 at 1.)

141. Parent responded to Ms. Dean that same day at approximately 11:15 p.m. indicating that she would research the IEE and the team could decide at the next meeting. Parent also inquired whether or not a date for that meeting had been confirmed. (Ex. D267 at 1.)

142. Sometime in February 2018, the District sent an automated attendance letter to Parent indicating that Student had missed approximately 14 percent of the school year during the first semester (8.75 days). The automated attendance letters are generated for any student with greater than 10 percent absenteeism. (Ex. D271; Tr. Vol. VI at 1187:15-1188:3.)

143. Prior to the start of the second semester, Ms. Cobb sent an email to each of Student’s teachers that would be new for him/her in the upcoming semester. In that email, Ms. Cobb notified each teacher of Student’s special education accommodations and needs. In addition, Ms. Cobb notified the new teachers about Student’s safety plan and the need to be aware of his/her whereabouts at all times. (Ex. D265 at 2; Tr. Vol. V

144. On March 8, 2018, Parent sent an email to Ms. Cobb explaining that Student missed first period, but would likely be at school for second period. In that email, Parent inquired whether Ms. Cobb received a request for an IEE and asked how to get the process started. (Ex. D 283 at 3.) Ms. Dean, SHS Assistant Principal, responded by asking for clarification on exactly what Parent was seeking. Ms. Dean clarified that, based on previous conversations with Parent, it appeared Parent would like another set of eyes to review Student’s IEP accommodations and strategies. (*Id.*)

145. Again on March 8, 2018, Parent responded to Mr. Dean’s email with the

¹³ Parent appeared to be requesting what is typically referred to as an Independent Educational Evaluation (IEE).

following:

What we did for [Student's sibling] was psychological and educational (comprehensive is what we called it) evaluation paid by the school district to determine learning challenges.

I hadn't realized it but reading thru [sic] the DoE [sic] website it says that student's/parents have a right to request an independent evaluation to determine [Student's] needs and make recommendations on the accommodations necessary for [him/her] to succeed and the school pays for it once. Are we on the same page?

I'm assuming that you provide a list of independent providers you wish for me to work with to set up independent evaluation.

Let me know how to proceed, please. Don't forget that we need to have this squared away by the end of this month, per Leslie's instructions.

(Ex. D283 at 2.)

146. Ms. Dean again responded to Parent on March 8, 2018 via email and stated:

From my understanding the evaluation completed on [Student's sibling] was an agreement made during the legal process. You stated that you are considering doing this for [Student] and would not ask the district to pay for it.

From our conversations you wanted support in test serving [Student]. The IEP team is working through that process right now and [Student] is making growth as discussed in the past 2 meetings. Typically an evaluation is conducted once growth is not being made or the parent disagrees with the eligibility/ accommodations/ findings of the IEP team. Since I joined the team you been a part of every decision and led many of the findings included in the IEP. Is there a particular piece of the IEP or eligibility you disagree with? If so, the district should have the opportunity to conduct its own evaluation or corrective action prior to you seeking an independent evaluation. Please let us know what specific information you would like, and we will move forward with collecting that information with our staff members.

(Ex. D283 at 2.)

147. On March 12, 2018, Parent sent an additional reply to Ms. Dean stating, in relevant part:

My biggest concern is that [Student] has made no progress in terms of social behavior. We had many incidents related to safety and reporting does not reflect any constructive insights on how we improve this.

Name specific areas that you see progress on, please.

Again, if I have a right to request an IEE at public cost, I am requesting one. The main reason for needing an IEE is because I have not seen progress nor buy[-]in from school on recommendations made by Kelly or goals and metrics you and I agreed to.

(Ex. D283 at 1.)

148. On March 16, 2018, Ms. Dean replied to Parent's March 12, 2018 email with the following:

At the last two IEP meetings we discussed progress in terms in [*sic*] social behavior with peers* * * *. This progress has been demonstrated through completion of an athletic season (peer conflicts caused [him/her] to quit in the past), sleep over at a friend's house (something that had not previously occurred), and [Student] staying on campus a couple of times for lunch to name a few. It should also be noted that [Student] is on track to graduate which means the IEP and accommodations meeting [his/her] needs (although the team is on board to make any needed adjustments for [his/her] Sr year).

As far as the independent evaluation, which pieces of the evaluation do you disagree with[?] I believe we are on the same page in terms of identification (Other Health Impairment and we can add ADD under the OHI eligibility). All accommodations and services were agreed upon last year and met. So in terms of an evaluation, I need to understand what you disagree with in order to proceed. Depending upon your concerns, the district-based team can complete any evaluations you want (if there is not a current evaluation).

Let me know how you would like to proceed and have a great weekend!

(Ex. D283 at 1.)

149. On March 17, 2018, Parent replied to Ms. Dean with additional information on her request for an IEE which included, in relevant part:

[The] school environment is currently a major source of grief for [him/her] and although you are making some efforts, my [son's/daughter's] health, safety and educational goals continue to be at risk.

If I have a right to ask for an IEE, I am exercising that right. It's my understanding that you have a right to file for due process if you disagree. [The] [s]chool has a right to exercise its legal rights. I totally understand that.

(Ex. D286 at 4.)

150. On March 19, 2018, Ms. Dean again responded to Parent's email. In that response, Ms. Dean clarified that she was seeking specifics regarding which part of the District's evaluation Parent disagreed with so that the District would know how to proceed. (Ex. D286 at 3.) In response to Mr. Dean's March 19 email, Parent replied by pasting an image of Ms. Taubenfeld's Form 220B evaluation report along with our own commentary explaining why she believed the evaluation report was inadequate. That reply contained the following information pertinent from Parent:

This [] report from Leslie is very incomplete, just takes a couple of comments from teachers, mentions Kelly's recommendations but she consistently ignores Kelly's recommendations. We have no documented observations nor does she provide any input on interventions. I have also made it very clear that the recommendations psychologist has made to [Student] go against what school, Kelly and I recommend.

The main reason for requesting an IEE is because I'm concerned that until we know where [Student] is and what specifically is affecting [his/her] present levels of functioning we cannot develop a useful IEP plan with meaningful goals and metrics.

Once we have a comprehensive evaluation by an expert, independent of school district, we can base the IEP on master plan that does not focus on school or parent agenda but strictly on [Student's] educational needs. I understand that school has a lot of students to tend to and it is clear I cannot rely on school district to do a quality evaluation of [Student's] challenges.

I am looking for an independent evaluator that can evaluate [Student's] needs, and help us design a useful educational plan for [him/her] and help us monitor [Student's] progress.

(Ex. D286 at 1-2.)

151. On March 23, 2018, Ms. Dean responded to Parent by thanking her for the additional details regarding her request for an IEE and informing Parent that the information was passed on to the IEP team to begin the process. (Ex. D286 at 1.)

152. In early April 2018, District staff contacted Parent to set up an IEP meeting to finish Student's annual IEP before the due date. Based on other commitments, Parent requested the IEP meeting be pushed into May 2018, even if it meant missing the annual IEP due date. The District agreed to Parent's request and ultimately agreed upon May 21, 2018 for Student's IEP meeting. (Ex. D288.)

153. On April 2, 2018 Parent and Ms. Dean exchanged emails attempting to set up a meeting to discuss an IEE for Student. Ultimately, based on her schedule, Parent asked to forego the meeting and, in lieu of the meeting, agreed to provide whatever data the District needed.

(Ex. D291 at 3-4.)

154. Brian Megert, Special Programs Director for the District, joined the email chain between Parent and Ms. Dean on April 2, 2018. Dr. Megert¹⁴ responded to Parent's request to forego the proposed evaluation planning meeting as follows:

I think that we will need to have at least a brief conversation by phone. The issue at this point, is not what needs to be conducted as an 'independent' evaluation, it is the question about what needs to be assessed to complete an evaluation. I think the SHS folks are wondering what information you are requesting. Once you let us know the specific assessments you are requesting, the school (district) can decide which information should be collected by district staff and which information could be collected by an evaluator outside of the district.

In short, the decision is about what information the team (including you) believes is necessary to better serve [Student]. If you have specific requests for assessments, please send them to us so that we can put together a plan for administering the necessary assessments. If you need further clarification, let me know and we can connect on the phone about this.

(Ex. D291 at 2; Tr. Vol. IV at 887:16-888:4.)

155. On April 3, 2018, Parent responded that she would conduct some research, speak with Dr. Murray, and forward the recommendations to the District by the end of that week. (Ex. D291 at 2.) On April 9, 2018, Parent sent an email to Dr. Megert and Ms. Dean apologizing for not responding earlier and indicating she was still working on obtaining the requested information. (*Id.*)

156. On April 10, 2018, Parent emailed Dr. Megert and Ms. Dean with clarification on what she wanted or hoped to obtain from the IEE and stated, in relevant part:

The most concerning is the safety factor because of suicidal tendency and social issues.

A 2nd concern is that [he/she] may be on the autism spectrum given some of the symptoms.

3rd concern is ADHD and how this is currently affecting [his/her] education.

4th is [his/her] inability to turn and [his/her] work. Either not complete or [he/she] wants to spend more time to make it perfect. [His/her] grades are low yet [he/she] scores high on tests, not clear on what is going on here.

(Ex. D291 at 1.)

¹⁴ Brian Megert holds an Doctorate in Education (EdD) from the University of Oregon. (Tr. Vol. II at 424:5-8.)

157. On April 10, 2018, the District sent out an IEP Progress Report for Student. The AGs and STOs in that progress report remained the same as the previous two reports. In addition, the information from both previous reports was reproduced in the April 10, 2018 progress report. (Ex. D293.)

158. The April 2018 progress report contained no new data for the Social/Emotional/Behavioral AGs and STOs. For the Organizational and Study Skills AG, the progress report indicated a mastery level of '3' for the reporting period and contained a note indicating Student's absences "hurt [his/her] ability to maintain passing grades in all classes." (Ex. D293 at 9.)

159. Student's Transition goal also contained an additional reporting period in the progress report. The updated report indicated student's mastery level at 4 and contained a note indicating, "[t]ransition activities including goalsetting, time management, career exploration, portfolio assembly, and self[-] evaluation or worked on [in] individual studies class." (Ex. D293 at 10.)

160. On May 1, 2018, Parent notified Dr. Megert that she had retained legal counsel to assist her in getting Student "the help [he/she] needs." (Ex. D306 at 2.)

161. On May 2, 2018, the District sent out a Notice of Team Meeting setting an IEP and Evaluation Planning meeting for May 29, 2018 at 3:15p.m. Dr. Murray, Katie Warden, Parent's special education advocate, and Kim Sherman, Parent's legal counsel were included as invitees. (Ex. D311.)

162. On May 4, 2018, Parent emailed Dr. Megert and informed him that Dr. Murray had recently advised her "not to push [Student] to go to school" and, if Student becomes agitated at school, Parent should "pull [him/her] out immediately." (Ex. S-20 at 1.) Parent then stated that, despite her earlier requests for IEE, Student's need had progressed to the degree that Dr. Murray recommended seeking residential placement. Parent informed Dr. Megert that Student was at a "high safety risk and getting triggered frequently in the current [school] setting." (Ex. S-20 at 1-2; Tr. Vol. II at 301:13-302:1.)

163. On May 10, 2018, Parent again emailed Dr. Megert and included Ms. Dean, Ms. Cobb, Dr. Murray, and Parent's attorney reiterating Dr. Murray's recent advice regarding attendance and informing the District that she had contacted Educational Connections in an attempt to find a residential placement for Student. In addition, Parent requested a 1:1 aid to stay with Student at all times for monitoring and conflict resolution. (Ex. S21 at 1.)

164. On May 10, 2018, Parent's attorney forwarded a letter from Dr. Murray dated May 9, 2018. Dr. Murray's letter was addressed to District personnel and stated, in relevant part:

I'm a psychologist working with * * *[Student]. Was asked to writer [sic] a brief description of [Student's] diagnoses and treatment recommendations as they relate to [his/her] school functioning.

I have been working with [Student] for approximately 4 years on issues related to anxiety, depression and attention deficit/hyperactivity disorder. [He/she] has been given the diagnoses related to the symptoms. Due to several recent stressors [Student's] symptoms have significantly exacerbated and present a significant risk of self-harm. As such, I have recommended residential placement for [Student]. The family is in the process of identifying appropriate available residential placement. Unfortunately, this may take several weeks. In the interim I have recommended high levels of supervision to ensure [Student's] safety at home, in school and in the community. [Student] would benefit from having an adult 1:1 aide at school to assist [him/her] in transitioning from class to class, identify and manage triggers in the classroom and school environment[,] and help [him/her] complete work assignments.

(Ex. D321.)

165. In response to Parent's concerns and Dr. Murray's recommendations, the District assigned a 1:1 EA to accompany Student at all times while on the SHS campus. Student was uncomfortable having an older adult follow him/her around campus and complained to Dr. Murray about the EA. (Tr. Vol. III at 2-15; Ex. D439 at 72.)

166. On or about May 21, 2018, Parent emailed a Treatment Summary and Updated Treatment Plan to the District. The treatment summary was prepared by Dr. Murray and outlined what she believed were Student's current level of functioning and the current treatment approach. In that document, Dr. Murray identified several recent stressors for Student that included:

1. Termination from club volleyball program
2. Rejection from two romantic partners with whom [he/she] was engaging sexually
3. Intermittent conflict with [siblings] which included verbal and physical altercations
4. Loss of pet chicken
5. Changes in mental health care team (i.e., less contact with behavior support specialist and change in prescriber)
6. Family stressors including [sibling] with high levels of academic and social support needs, inconsistent paternal involvement, estrangement from family members, financial stressors.

(Ex. D260 at 1; Tr. Vol. II at 282:11-283:14.)

167. The May 21, 2018 treatment summary also identified several past suicide attempts for Student and conveyed a current suicidal ideation held by Student which involved jumping from the second floor balcony of the school. The treatment summary also included a list of triggers for Student including: rejection; loss of relationship; perceived failure; disconnected from peers; conflict with family members; unsafe boundaries with others; engaging sexually with

acquaintances; high levels of emotional distress. (Ex. D260.)

168. Dr. Murray also reported on several of Student's treatment goals and progress toward those goals in the May 21, 2018 treatment summary. For each goal, Dr. Murray acknowledged that Student has had periods lasting months where he/she met certain goals and had not threatened to engage in self-harm or experienced suicidal ideations. At the time of the treatment summary, Dr. Murray reported that Student was experiencing suicidal thoughts several times per week. Dr. Murray reported similar progress and regression with Student's ability to manage his/her emotions, set safe and appropriate boundaries with others, and increasing his/her self-esteem. (Ex. D260 at 3-4.)

169. In the treatment summary, Dr. Murray indicated that she had also added a new goal for Student stated as:

Initiate a more intensive treatment approach to include residential treatment focused on emotional self-regulation, skills and interpersonal effectiveness, distress tolerance, value driven action and developing skills to maintain a healthy relationship with peers, family and romantic partners.

(Ex. D260 at 4.)

170. On May 23, 2018, Parent's attorney notified the District that Student had confided in his/her therapist that he/she was having recurring dreams of jumping from a second floor window of SHS. Student admitted to Dr. Murray that Student was concerned that he/she would not be able to stop him/herself if he/she felt overly stressed at school. For that reason, Parent would not be sending Student to school while he/she was in that emotional state. Parent's counsel asked for the District's assistance in finding and funding a placement for Student to adequately address his/her mental health concerns. (Ex. D338 at 2.)

171. On May 24, 2018, Parent sent an email to the SHS notifying staff that she had determined it was "not safe for [Student] to return to school anymore." (Ex. D337 at 2.) After that email, Student did not return to class on the SHS campus during the remainder of the 2017-2018 school year. (Tr. Vol. VI at 1260:8-18.)

172. The District convened an IEP and evaluation planning meeting on May 29, 2018 to develop an IEP meant to serve Student through the 2018-2019 school year. The following individuals attended the meeting:

Parent;
Calli Dean, Administrator;
Rene Cobb, Special Education Teacher/Case Manager;
Kira Fee, Special Education Teacher;
Leslie Taubenfeld, School Psychologist;
Ryan McClintick, Regular Education Teacher;
Sue Teutschel, Counselor;
Brian Megert, Special Programs Director;

Kelly D. Noor, SPS Attorney;
Kelly Murray, Psychologist;
Kim Sherman, Parent's Attorney.

(Ex. D343 at 1.) The stated purposes of the meeting were completing Student's annual IEP and evaluation planning for Student's three year re-evaluation. In addition, Parent's attorney proposed that the primary goals for the meeting should be finding a safe place for Student to finish the school year and discussing residential placement. (*Id.*)

173. At the May 29, 2018 meeting, Parent and her attorney presented an extensive list of safety concerns for Student that was surprising to District staff as those concerns did not mirror what they observed in the school setting. Parent indicated Student's unsafe behaviors and thoughts were escalating, while District staff observed progress and growth by Student in the school environment. Ms. Fee was particularly surprised by Parent's choice to keep Student out of school as well as her request for residential placement. (Tr. Vol. VI at 1135:4-22; Ex. D343 at 1-3.)

174. At the meeting, Parent proposed adding a section to Student's IEP describing his/her mental health and social skills deficits by listing behaviors and concerns that District staff had not observed in Student. During the 2017-2018 school year, District staff were not aware of any instances of Student eloping from school grounds, engaging in or receiving hazing behaviors, or spending significant time in the restroom crying as was reported by Parent. (Ex. D343 at 1-2; Tr. Vol. VI at 1136:2-24.)

175. During the meeting, the team discussed options for addressing Student's credit recovery and make-up work. The team also discussed revisions to Student's IEP goals to bring them in line with recommendations by Parent's legal counsel. Based on Parent's concerns for Student's safety in school, Dr. Megert proposed obtaining input from outside agencies. Dr. Megert indicated his belief that the District could provide FAPE with proper supervision at one of the District buildings. (Ex. D343 at 1-2; Tr. Vol. V at 1056:6-14.)

176. Ryan McClintick, Student's Algebra II teacher, indicated that Student did good work and earned high grades when he/she was in class, but opined that Student's overall grade was low due to poor attendance and missed tests/assignments. Mr. McClintick reported that, at the time of the meeting, he had not seen Student in class for over a month. (Ex. D343 at 1.) Mr. McClintick was unable to stay for the entire meeting due to a misunderstanding about the length of the meeting and a prior commitment that interfered with his participation past 4:00 p.m. (Tr. Vol. VIII at 1565:19-1566:5.)

177. Because the regular education teacher was unable to remain past 4:00 p.m., the team decided to continue the meeting to a date when Mr. McClintick or another regular education teacher could remain for the entire meeting. (Ex. D343 at 1; Tr. Vol. VIII at 1565:21-1566:5.)

178. Before adjourning the meeting on May 29, 2018, the team agreed to continue the meeting on June 13, 2018. The team also agreed to certain dates by which the District and

Parent would exchange certain information. Parent's attorney agreed to deliver a list of additional Parent concerns to the District by June 4, 2018. The District agreed to have a draft of the IEP to Parent and her attorney by June 6, 2018. At that time, Parent's attorney also made a request for an evaluation of Student under the eligibility category of Emotional Disturbance (ED). (Ex. D343 at 2-3.) A Notice of Team Meeting was issued on that day for the June 13, 2018 continuation meeting. (Ex. D341.)

179. Ms. Dean, Ms. Cobb, Ms. Fee, and Dr. Megert utilized information provided by Parent on May 29, 2018 to revise Student's safety plan. A full-time 1:1 EA was added to accompany Student from the time Parent dropped him/her off at school. The revised safety plan also added additional contact standards for Parent and school staff any time Student's whereabouts could not be ascertained. A lunch time check-out protocol was also added to the safety plan. A detailed protocol for the EA was also added to the safety plan. According to the revised safety plan, Student would never be unaccompanied by an adult while on the SHS campus. (Tr. Vol. VI at 1262:4-1263:1; Ex. D341 at 20-21.)

180. On June 5, 2018, the District provided Parent's attorney with a written plan to assist Student with work completion and proposed a tutor from the District to supervise and assist Student with his/her make-up work. The District proposed having Student work with a tutor at the District offices, rather than the SHS campus. The District also proposed allowing Student time during the Summer to complete the work and still get credit for the 2017-2018 school year. (Ex. D348 at 23.)

181. On June 7, 2018, Christine Grose, tutor with the District, contacted Parent via email hoping to set up a start date for Student to begin tutoring at the District offices. Ms. Grose indicated that she was in possession of all assignments Student needed to complete to obtain credit for the remainder of the school year. Parent responded the following day indicating that Student was available to start the following Monday. (Ex. D352 at 1.)

182. On June 13, 2018, the District reconvened Student's IEP and evaluation planning meeting. All previous attendants from the May 29, 2018 meeting participated with the exception of Mr. McClintick. In his place, Clark Morberg, Student's regular education U.S. History teacher, attended the meeting. (Ex. D359 at 1; Tr. Vol. VIII at 1663:11-15.)

183. According to the meeting minutes, the participants agreed that the purpose of the June 13, 2018 meeting was to obtain an update on Student's progress toward graduation and tutoring, finish revisions Student's IEP and safety plan, and to plan for the requested ED evaluation. (Ex. D359 at 1.)

184. At the meeting, Parent indicated that Student seemed to like the tutor and Parent was pleased with the work the tutor was doing with Student. In addition, the team determined that Student would increase his/her tutoring time from one hour per day to two hours per day beginning at the end of June. Ms. Dean shared graduation credit information indicating that Student would only need 5.75 credits during the 2018-2019 school year in order to graduate with a regular diploma. (Ex. D539 at 1.)

185. At the June 13, 2018 meeting, the District presented a detailed evaluation plan identifying numerous assessment tools to be used in evaluating Student under the eligibility category of ED. (Exs. D341 at 26-27 and D361 at 1-2.) Parent indicated that she would withhold her consent to evaluate Student under the category of ED until September, more than 60 calendar days from the date of the meeting. (Ex. D359 at 2.)

186. At the June 13, 2018 meeting, the team reviewed a draft IEP developed by the District based on input at prior team meetings. (Tr. Vol. II at 300:1-14; Ex. D341 at 3-16.) The draft IEP contained the following concerns of Parent:

[Student's] mother is most concerned with [Student's] safety and depressive mood. Also of concern is keeping [Student] on track to graduate with a Traditional High School Diploma and prepare [him/her] for college after high school graduation. (rc)

Parent and Student's private therapist of serious concern over [Student's] safety while at school. [Student] has challenges in maintaining [his/her] emotions, in making friends, and understanding the difference between hazing-type behaviors by others and friendship behaviors. [Student] has difficulties in setting boundaries with friends, and in setting sexual and romantic boundaries with [others].

Events in [Student's] school and personal life may trigger serious depressive and suicidal thoughts. Stressors include being rebuffed by romantic interests, being rebuffed by "friend" groups, falling behind in class work, feeling stupid or ill-prepared.

Sports activities (volleyball, track) or a positive outlook for [Student].

Primary current concerns are:

1. [He/she] had several suicide attempts in the past.
2. [He/she] is currently experiencing suicidal ideation that includes a plan (jumping from the 2nd floor balcony at school, jumping in front of speeding car).
3. [He/she] reported that [he/she] is unsure if [he/she] can always commit to keeping [him/herself] safe.
4. [He/she] reported desire to die to escape and punish [him/herself].
5. [He/she] is hopeless about [his/her] future.
6. [He/she] is impulsive.
7. [He/she] is engaging in unsafe behaviors with others that apply to suicide attempts in the past.
8. [He/she] experiences high levels of self-loathing.
9. Numerous triggers related to past attempts are present: rejection, loss of relationship, perceived failure, disconnected from peers, conflict with family members, unsafe boundaries with others, high levels of emotional

distress.

(Ex. D341 at 5.)

187. In addition, the draft IEP contained the following additional information regarding Student:

[Student] took the ACT test with extended time. [Student] did very well on the math section, scoring a 24. A score of 19 or more indicates that student has met the essential skills in math for the state of Oregon. A score of 24 and math places [Student] at the 74th percentile in math compared to grade level peers in the US. [He/she] scored a 25 and English, which places [him/her] in the 79th percentile of grade level peers. [He/she] was unable to complete some of the ACT resulting in a lack of some scores. Family was provided with a fee waiver so [Student] can retake the ACT at another time and place.

Organizational/Study Skills: [Student's] attendance has been a barrier to [him/her] making progress on this goal. During 1st semester [he/she] made substantial progress with maintaining passing grades in 8/8 classes, with 2 class periods as support classes. At the beginning of the 2nd semester 2018 [Student] was maintaining passing grades in all classes. However, [his/her] attendance became inconsistent and several of [his/her] grades dropped below the C threshold. As of 6/6/18, [Student] has missed over 33 days of school in 2nd semester (41% missed), per parent decision. [He/she] currently has a grade lower than a C in 5/7 classes. [Student] has a large number of absences and as a result has missing assignments. [He/she] is unable to use [his/her] self-advocacy skills due to [his/her] low attendance rate.

HISTORICAL EDUCATIONAL INFORMATION:

8th grade [HMS]/ITP

9th grade [SHS]: 1st semester = passed 2 classes with 2.0 GPA
2nd semester = passed 2 classes with 2.0 GPA

10th grade [SHS] [:] 1st semester = passed 7 classes with 2.0 GPA
2nd semester = passed 8 classes with 2.75 GPA

11th grade [SHS] [:] 1st semester = passed a classes with a 2.43 GPA

(Ex. D341 at 6.)

188. Student's relevant present levels of developmental and functional performance are reported in the draft IEP as:

DEVELOPMENTAL and FUNCTIONAL PERFORMANCE with Teacher Reports:

Safety plan: A safety plan has been in place for [Student] since April 26, 2017.

This plan was distributed the beginning of each semester to each classroom teacher. It specified procedures to follow during the morning, during the school day, and at the end of the day. Additional support (Educational Assistant-EA) was added May 11, 2018. [Student] has only attended 4 1/2 periods since adding the new one-on-one EA. The safety plan was revised (5/29/18) and includes direct supervision during all supervised and unsupervised times in the school day. A hands-off [*sic*] to an Educational Assistant during all transitions to and from school in the attendance office from parent to the Educational Assistant. See attached safety plan for specific details.

The English 11 teacher observes that [Student] works well with a friend in class and is becoming more comfortable asking the teacher questions. The teacher thinks that [he/she] can easily earn an A or B in the class when work is completed. [Student], at times, is rude to other students, and sometimes blurts out inappropriate/disrespectful comments. Although [Student] is missing assignments, [he/she] is still able to turn them in and [Student] scored 100% on a pop quiz and 13/16 on writing assignment.

Algebra 2 teacher reports that [Student] scored 24.5/26 on Chapter 5 Quiz. Math teacher reports that [Student] does work and completes [his/her] math work at a higher than average level. [He/she] is very capable when [he/she] is attending class on a regular basis. On Chapter 8 quiz, [Student] scored 23.5/26.

Prep for Adult Living Health Class: Health teacher observes [Student] to be respectful in class and completes very nice work. [He/she] is attentive and appears to be interested in most topics as well. When [Student] is in class, [he/she] does a good job and uses [his/her] time wisely for the most part. [He/she] seems happy when [he/she] completes [his/her] work and likes to turn it into [*sic*] me, sometimes at a later period in the day, and almost always I see a smile when I tell [him/her] thank you, I am proud of you. * * * Unit 3 quiz = 18/20 (A-), Real Life Project Presentation or Paper = 36/50 (C), Unit 3 Vocabulary = 55/56 (A).

Spanish 2: summative average is an A. 48/48 on Chap 10 Exam. [Student] is observed in Spanish to be social at time and gets along well with others. [He/she] is also very capable of getting work done in class. [Student] has expressed being anxious of sitting near certain people. [He/she] is to come to class as this is affecting [his/her] grades and learning overall.

[Student] has advocated for [him/herself] in terms of meeting to talk to trusted people and being allowed to turn in assignments past due dates. [He/she] continues to need work on using "I" statements with peers when expressing [him/herself]. [He/she] has a tendency to see fault in others. At times, [he/she] has put [his/her] hands on others/or their items to resolve conflict, once in a testing situation, and another time waiting for the class period to end. On occasion [he/she] has violated protocol concerning [his/her] safety plan, once by

asking to see a trusted adult but instead going to the library to look for a peer. Positive self-talk is difficult for [him/her]. Case manager has modeled positive self-talk in problem-solving with [Student]. In the moment [he/she] can provide examples of positive self-talk but needs lots of prompts and positive examples.

Based on school records, there have been [a] couple of documented incidents this school year at school, in which [Student] was out of class due to social emotional issues. None of these incidents included crying in the bathroom or running out of class. One incident happened when [he/she] was upset about what another student said to [him/her], [he/she] called Mom, Mom notified Ms. Cobb, Ms. Cobb talked with [him/her], and [Student] and Mom decided it was best for [him/her] to go home. The other incident happened when [Student] was pursuing [another] student.

Teacher Survey Responses:

Appropriate interactions with same gender peers: Weekly (3) Never (2)
Conversation with peers on inappropriate topics in class: Weekly (3) Never (2)
Advocate using “I” statements: Quarterly (1) Weekly (3) Daily (1)
Sets boundaries with peers: Weekly (1) Daily (2) Never (1)
Uses positive self-talk: Monthly (1) Weekly (3) Never (1)
Comes to teacher to report difficulties interacting with other students: Quarterly (1) Weekly (2) Daily (1)
Asks to leave class to access adult support for emotions: Monthly (2) Weekly (1) Never (2)
Self-advocates to access resources such as tutor/retake/extra instruction: Quarterly (1) Monthly (1) Weekly (2) Never (1)
Self-reports feeling anxious: Quarterly (1) Monthly (2) Weekly (1) Daily (1) [.]

(Ex. D341 at 6-7.)

189. The June 2018 IEP also includes special factors considered for development of Student’s IEP that read. “Behavioral concerns addressed in the IEP goals, accommodations, and supports. Safety plan in place. Functional behavior assessment to be conducted as part of emotional disturbance eligibility evaluation, to be used in developing a behavior support plan.” (Ex.D341 at 9.)

190. The June 2018 includes AGs and STOs for the same three categories included on the previous IEP, which are stated as follows:

Social/Emotional/Behavioral

Goal:

By February 2019, [Student] will have safe and appropriate personal boundaries with others 85% of the time as measured by observation of data collected by educational assistant.

Present Level:

* * *[Student] has a difficult time regulating [his/her] emotions and reacting appropriately when [he/she] is frustrated or upset. The IEP team also updated a safety plan and set up protocols to make sure [he/she] is safe when [he/she] is at school. The goal of the safety plan is to ensure that [Student] has a support system here at school for when [he/she] is having an emotional episode, make sure [his/her] whereabouts is known at all times and that [his/her] parents are immediately notified if/when [he/she] cannot be found, and to alert [his/her] teachers and support team when [Student] might be at risk of having an emotional episode or attempting to harm [him/herself].

Mastery Criteria or Short-Term Objective[:]

[Student] will have cognitive and behavioral strategies to manage strong emotions.

[Student] will establish a healthy friendship with at least one female peer.

[Student] will have strategies to solve social problems with peers.

[Student] will have increased self-esteem is measured by decreasing acceptance-seeking behavior from others* * *.

Organizational/Study Skills

Goal:

By February 2019, [Student] will independently access resources available to [him/her] (daily check-ins, independent study time, educational assistant support) and demonstrate self-advocacy skills and organizational strategies (writing down assignments, asking for help, using accommodations, etc.) to maintain a C or better in all of [his/her] classes at the end of each grading period.

Present Level:

[Student's] attendance has been a barrier to [him/her] making progress on this goal. During first semester [he/she] made substantial progress with maintaining passing grades in 8/8 classes, with two class periods as support classes. At the beginning of the 2nd semester 2018 [Student] was maintaining passing grades in all classes. However, [his/her] attendance became inconsistent and several of [his/her] grades dropped below the C threshold. As of 6/6/18, [Student] has missed over 33 days of school in 2nd semester (41% missed), per parent decision. [He/she] currently has a grade lower than a C and 5/7 classes. [Student] has a large number of absences and as a result has missing assignments. [He/she] is

unable to use [his/her] self-advocacy skills due to [his/her] low attendance rate.

Transition

Goal:

By February 2019, [Student] will participate in, at least, 5 Transition Activities, designed to assist [Student] in making progress towards [his/her] post high school goals and desired outcomes as measured by a student interview and adult observations.

Present Level:

(1) [Student] updated [his/her] interview with the SHS Transition Specialist. (2) [He/she] passed an Introductions to Health Occupations class and completed a poster project explaining the job of a Vet., (3) [He/she] takes care of [his/her] pet chicken., (4) [He/she] receives services of a skills builder and accesses counseling services in the community., (5) [He/she] attended the HOSA lunch meeting a couple of times at SHS for future Health Occupations students., (6) [He/she] has participated in Club Volleyball. [He/she] is making adequate progress towards [his/her] transition goals.

(Ex. D341 at 11-12.)

191. The June 2018 IEP identified SDI to be delivered to Student in the following areas and quantities: Social Skills, 60 minutes per week; Transition Services, 60 minutes per semester; Study/Organizational Skills, 150 minutes per week. (Ex. D341 at 13.)

192. In addition the June 2018 IEP identified supplementary aids and services as well as accommodations available to Student as follows: daily check-in/checkout with trusted adult for emotional and organizational support, 60 minutes per week; access to trusted adult for 1:1 support during class time with notification of teacher, 20 minutes per week; test retakes in core classes when scores below 60%, 45 minutes per month; pass/no pass option for grade D in core classes, 5 minutes per quarter; safety plan distributed to all teachers and adults that work with [Student], 450 minutes per day; computers and Internet to academic use only, supervised at all times, 90 minutes per class; pass/no pass option for core classes, 3 minutes per class; extra 2 days for assignment deadline when work involves grade level academic skills, and/or Art skills, 5 minutes per week; extra testing time (time and a half) for tests involving grade level academic skills, 45 minutes per test; provide encouragement and positive attention for functional work skills and appropriate topics of conversation, 60 minutes per week; test retakes when [Student] scores below 70% in core classes. Test can be taken in a quiet setting with no distractions, 45 minutes per month; special education consultation 45 minutes per month; facilities/safety risk assessment, identifying potential risk to [Student's] safety, used to inform safety plan, 60 minutes per year. (Ex. D341 at 13-14.)

193. Parent's goal at the June 13, 2018 meeting was to get the District to assist her in

placing Student in a residential treatment facility. During the meeting, Parent indicated her preference for Student to be evaluated by Educational Connections (EC), an organization aimed at finding appropriate therapeutic placements for students with difficulties. (Tr. Vol. III at 303:18-305:2.) The cost of the EC evaluation was approximately \$5,000. (Tr. Vol. III at 306:4-18.)

194. Parent remained dissatisfied with the draft IEP and elected to write her own recollection of certain events and Student's present levels of functioning to be added to the IEP. (Ex. D359 at 2.)

195. On June 13, 2018, the District proposed an educational placement option for Student to be in the regular education classroom less than 80 percent of the day with learning center supports. The description of that placement option read:

1/8 class periods in special education for individual studies period. Specially designed instruction for social skills will be pullout services provided during the individual studies class period.

To address safety concerns: Conduct facilities/safety risk assessment in any district [] school building [Student] attends. Use risk assessment to inform school safety plan, with an emphasis on minimizing potential risks to [Student's] safety. Implement school safety plan, and provide training to teachers and staff. Use FBA to develop behavior support plan. Implement behavior support plan, and provide training to teachers and staff. Retrain teachers and staff at beginning of each semester, or as [Student] changes classes. Train new teachers and staff assigned to work with [Student]. Update risk assessment, safety plan and behavior plan if [Student] and roles in a different District building.

(Ex. D353 at 18.) The stated benefits of this placement option included small group/individualized instruction, exposure to the regular education curriculum, and specific behavior monitoring. The stated rationale for selecting this placement option read, "Student needs individualized instruction in smaller classroom setting to make progress toward IEP goals." (*Id.*) the only other placement option considered at that time was 100 percent general education class with no pullout. (Ex. D353 at 18.)

196. On June 22, 2018, Dr. Megert responded to Parent's counsel via email regarding, *inter alia*, Parent's request for an evaluation by Educational Connections. In this email, Dr. Megert addressed Parent's safety concerns and identified steps the District was willing to take in order to keep Student safe while on District property. Dr. Megert also proposed several options for Student to attend school at facilities other than the SHS campus. With regard to Parent's requested evaluation, Dr. Megert wrote, in relevant part:

At the end of the IEP meeting for [Student], you and your client* * * requested that the District pay for a \$5000 'evaluation' by a company, Educational Connections. You indicated this was an organization specializing in assessing the needs of students in order to identify placement options, and you wanted this to be

done at the District's cost for [Student]. Based on [the] discussion with you on parent, this was about the Student's safety based on mental health concerns identified by parent and by Student's private psychologist, Kelly Murray.

* * * * *

While the district does not plan on offering payment and/or arrangement for an evaluation conducted by an outside entity a suggested by the parent, the district is fully prepared to conduct an evaluation to consider the special education eligibility of Emotional Disturbance (ED). Previous IEP meeting on May 29, 2018, the family requested an evaluation consider this eligibility. The district developed a plan of action that included testing over the summer and into the fall. The proposed assessments were beyond the scope of a typical ED evaluation in order to gather as much pertinent information that would be helpful in planning for the most effective supports for the student. While the timeline of the evaluation will need to be adjusted based on if/when parent provides consent, the spirit of the evaluation and proposed assessments are a standing offer of an evaluation.

(Ex. D366 at 2-3.)

197. Ms. Cobb, Ms. Fee, and Ms. Teutschel delivered Student's SDI during the 2017-2018 school year while Student was attending SHS. Ms. Fee delivered SDI during Student's Independent Study classes. Ms. Teutschel and Ms. Cobb delivered SDI outside the classroom. Each worked with Student on his/her Social/Emotional/Behavioral and Organization/Study Skills goals during that year. (Tr. Vol. V at 950:1-951:6.)

198. During the 2017-2018 school year, Student demonstrated he/she was capable of grasping concepts and performing the assigned work for each class. Nonetheless, as Student's attendance began to decline during the year, he/she fell further behind and became increasingly frustrated with trying to catch up on late work. (Tr. Vol. V at 941:5-23.)

199. During the 2017-2018 school year, Student was absent from class, for non-school-related reasons, five days in September, seven days in October, two days in November, six days in December, nine days in January, seven days in February, nine days in March, twelve days in April, and three days in May 2018, for a total of approximately 60 days before Parent stopped sending Student to school on the SHS campus. (Ex. D243 at 1-7.)

2018-2019 School Year: Twelfth Grade.

200. On September 13, 2018, the District convened an additional meeting to plan for educational options for Student. Parent attended with her attorney. At the meeting, the team decided the most appropriate course of action would be to enroll Student in an SPS Online option with tutoring for two hours per day, to be conducted on all days Student was available at either a District building or the public library. Parent noted that Student did very well with tutoring the previous spring and summer. The District expressed concerns that Student's IEP could not be

finalized without completing the ED evaluation requested by Parent but not yet consented to. (Tr. Vol. V at 1063:17-1064:15; Ex. D376 at 1-3.)

201. On September 13, 2018, Parent written gave consent for the ED evaluation plan proposed by the District in June 2018. (Ex. D362.)

202. As of September 2018, the placement option selected for Student was SPS Online with tutoring. SPS Online offers general education courses that any enrolled student can take. While participating in online classes, Student had the opportunity for interactions with non-disabled peers who were also enrolled in those online courses. (Tr. Vol. III at 447:13-448:7 and Vol. V at 1066:4-10; *see also* Exs. D379 and D380.)

203. On October 8, 2018, Student's IEP team met again and finalized Student's IEP from June 2018. Parent, Dr. Murray, Ms. Sherman, Dr. Megert, Ms. Noor, Dennis Gray (online program administrator), Hai Ngyuen, and Kristin Rush (school psychologist) attended the meeting. At the meeting, the District proposed introducing a peer interaction opportunity into Student's SPS Online/tutoring program once or twice per week for approximately 30 minutes. The District also proposed the option of having Student continue in the current program while adding one class on the SHS campus to allow Student peer interaction opportunities. The District proposed purchasing some of Dr. Murray's time to allow for debriefs with Student after scheduled peer interactions. (Ex. D388 at 1-3.)

204. During the October 8, 2018 meeting, Parent proposed having another psychologist, Gretchen Scheidel, Ph.D., conduct a psychological evaluation of Student. Parent's counsel proposed sending Student to a District funded residential placement. (Ex. D388 at 1.)

205. At the meeting, Dr. Megert indicated that the team has been focusing on evaluations for ED rather than safety planning because Student is currently enrolled in the SPS Online program with tutoring and has constant supervision while in the District building. During this meeting, Parent's counsel opined that Student's social/emotional needs were not being met in the online/tutoring program and again brought up residential placement for Student. In response, counsel for the District pointed out that, over summer break, Student was able to participate in volleyball practice with the SHS team on the school campus without incident. Dr. Murray shared that Student had experienced a significant drop in suicidal ideations since being off the SHS campus. Dr. Murray also reiterated that Student does not possess the skill set necessary to navigate the peer challenges on campus and would continue to get triggered without significant mental health supports in the classroom. (Ex. D388 at 2-3.)

206. At the time of the October 2018 meeting, Dr. Murray believed that Student's then-current placement (SPS Online w/tutoring) was the safest option for Student. Dr. Murray also believed that placement was better suited to allow Student to make progress in the general education curriculum. (Tr. Vol. III at 633:6-15.) Dr. Murray believed the implemented practice of having an adult with Student at all times during his/her online coursework and tutoring presented the lowest opportunity for social triggers and therefore Student's suicidal tendencies and elopement behaviors were significantly reduced. (Tr. Vol. III at 633:24-634:11.)

207. At the time of the October 2018 meeting, Student had begun attending a partial DBT program in Portland. Student continued to experience significant struggles in with peer interactions in that structured therapeutic setting. (Tr. Vol. III at 635:4-14.)

208. At the October 2018 meeting, Parent informed the team that Student was scheduled to have a psychological evaluation conducted by Dr. Scheidel, with Eugene Psychological Assessments, on October 23, 2018 at 1:30 p.m. Dr. Megert indicated that Dr. Scheidel could invoice the District for the cost of the evaluation and requested permission to share information from that evaluation so the District was not duplicating work in the ED evaluations. Parent agreed. (Ex. D388 at 3; see Ex. D435.)

209. During the October 2018 meeting, Dr. Megert suggested designating additional work time at home for Student to complete his/her coursework. Parent refused stating that she and Student were “trying to work on our relationship at home.” Parent also rejected a proposal to have Student do some of the course reading (from printouts provided by the District) because whenever Parent reminded Student to do such reading he/she did not want to do it. (Ex. D388 at 3.)

210. At the conclusion of the meeting, the team agreed to meet again on November 5, 2018 to review evaluation and eligibility information for the ED evaluation requested by Parent. (Ex. D388 at 4.)

211. On October 10, 2018, Parent sent an email to Ms. Sherman indicating her opinion that Student’s IEP was inadequate because it did not document every incident where Student may have had an emotional incident or difficult peer interaction. Parent included an extensive list of incidents that she had recorded during the school year and indicated she had documented additional issues that she would bring to the next meeting. Parent’s email appeared to indicate Student’s IEP needed to document every issue Student experienced in the school environment. (Ex. D453.)

212. Parent filed the current due process complaint on October 15, 2018. (Complaint.)

213. On October 31, 2018, Dr. Murray informed Student’s IEP team that she would be unable to accept the offer of payment from the District due to concerns regarding the potential for conflicts to arise. (Ex. S129 at 1.)

214. On November 5, 2018, Student’s IEP team met again to discuss the results of the ED evaluation and assessments conducted by the District. At that time, Student continued to attend the District’s online program with tutoring at a District building. The District had a safety/behavior support plan for Student in his/her current educational environment that included a hand-off between Parent and District staff when Student was dropped off or picked up from the District building. In addition, Student was escorted to and from breaks and restroom visits. The plan noted Student’s current environment limited contact with peers and triggering events. In addition, the District had strategies in place to deal with frustrations and mental health issues Student might experience in the educational setting. Dr. Murray believed this safety/behavior support plan was appropriate for Student. (Ex. D410 at 2; Tr. Vol. 642:24-643:12.)

215. At that meeting, it was noted that Student was only using about 15 of the 20 tutoring hours available to him/her each week. Student had reported that he/she found the tutoring hours to be exhausting after driving to and from Portland on certain days for his/her DBT program. (Ex. D410 at 2.)

216. At that time, the team reviewed a psychoeducational report prepared by three school psychologists, Ms. Taubenfeld, Ms. Rush, and Shannon Kelly. That report, dated November 5, 2018, indicates the eligibility categories under consideration were ED and OHI. The report identifies several sources of information used including:

- Review of Record
- Non-Standardized Assessment
 - Developmental History
 - Observations
 - Medical Statement (5/25/2015; 1/29/2018)
 - Teacher Input
 - Student Input (FACTS Interview)
- CBM assessments in Reading, Math, Written Language
- Teacher Rating Scales
 - Behavior Assessment Systems for Children – 3 (BASC-3)
 - Social Skills Improvement System (SSIS)
 - Behavior Rating Inventory of Executive Functioning (BRIEF)
 - Vineland Adaptive Behavior- Social Subtest
- Student Rating Scales
 - Behavior Assessment System for Children – 3
 - Social Skills Improvement System (SSIS)
 - Behavior Rating Inventory of Executive Functioning (BRIEF)
- Standardized Assessments
 - Kaufman test of Educational Achievement (KTEA)
 - Wechsler Audit Intelligence Scale – Fourth Edition (WAIS IV)

(Ex. D412 at 1-2.)

217. The November 5, 2018 report contains detailed analysis of the identified assessments and rating scales. (Ex. D412 at 3-18.) The report also contains a risk assessment which reads, in relevant part:

Dr. Gretchen Scheidel provided preliminary findings from a risk assessment conducted on 10/30/2018 (see attached). Several rating scales were conducted assessing depression and anxiety symptoms, which concluded a moderate level of depressive concerns and elevated symptoms of panic. Clinical interview was also conducted by Dr. Scheidel. During the interview, [Student] reported 5-10 previous suicide attempts, though the only times where [he/she] was actually trying to kill [him/herself] the 2 attempted overdoses that resulted in hospitalization. [He/she] reported that the other attempts were founded in trying to call attention to [him/herself]. [Student] identified overdosing is the most

likely way that [he/she] would follow-through on suicidal ideation, and home was the most likely location for follow-through.

* * * * *

In the school setting, [Student] identified confusing work is one barrier to returning to school. [He/she] reported that [he/she] would be open to attending if someone could explain the material in a way that [he/she] but understand, and if [he/she] had an EA to supervise [him/her] that was “younger, faster, and stronger than [his/her] previous EA.” [He/she] reported liking online schooling because there is less drama and [he/she] can take fewer classes. Dr. Scheidel noted that while [Student] appears more stable at this point than in previous reports, [he/she] seems to be emotionally volatile overall and may be easily triggered by [his/her] reaction to situations (particularly being bullied or losing [his/her] [romantic partner]).

(Ex. D412 at 19-20.)

218. The November 5, 2018 report also contains a summary of the findings as recommendations for Student’s education. With regard to Student’s safety within the school environment, the report states:

Regarding suicidal ideation risk, both external and internal assessments indicate that [Student] has many risk and protective factors that influence [his/her] ability to maintain safety in a school setting the primary school-based risk factor seems to be negative social interactions. Currently, both [Student] and [his/her] therapist, Dr. Kelly Murray, indicate that the current placement with SPS online and tutoring are mediating suicidal ideation safety plan has been developed for [his/her] current educational setting. The safety plan also includes a proposal for a guided, structured reintegration back into a high school setting at the point the team believes [he/she] is ready for that. The plan outlines the additional safety considerations involved with a transition to a high school campus. Using information from Dr. Gretchen Scheidel’s risk assessment, along with data obtained through this evaluation, the reintegration plan includes supervision and supports aimed to limit negative social interactions.

* * * * *

During this assessment, the team was tasked with looking at whether emotional disturbance is a more appropriate eligibility category than other health impairment to reflect [student’s] level of functioning at this time. From the results of this assessment following characteristics have been exhibited over a long period of time and to a marked degree, adversely affecting [student’s] educational performance:

- ✓ An inability to build and maintain satisfactory interpersonal relationships with peers and teachers[;]

- ✓ Inappropriate types of behavior or feelings under normal circumstances [;]
- ✓ A general pervasive mood of unhappiness or depression [;]
- ✓ A tendency to develop physical symptoms or fears associated with personal or school problems [.]

(Ex. D412 at 20-21.)

219. In addition, the psychoeducational report provides the following recommendations:

- Continue to provide individualized and supervised instruction at [Student's] academic level [;]
- Consider altering [Student's] assigned academic work so [he/she] is able to demonstrate competency without unnecessary repetition [;]
- Ensure that [Student] has appropriate opportunity to interact with same-age peers in a thoughtful and structured way [;]
- Provide access to a school building that has a secure indirect entrance and exit to avoid non-preferred peers [;]
- Provide a quiet and separate learning environment when [Student] needs space [;]
- Provide all staff working with [Student] copies of language being used to meet [Student's] social/emotional goals [.]

(Ex. D421 at 21.)

220. At the November 5, 2018 meeting, the team also reviewed a Medical Statement, provided by Anita Geisler that same day, indicating Student “[h]as been diagnosed with other physical, medical, sensory or mental health condition(s) that may affect his/her educational performance” and included a diagnosis of “mood disorder/depression.” (Ex. D409 at 1.)

221. After reviewing the medical documentation and assessment information related to the most recent evaluation of Student, the team determined that Student was eligible for special education under the categories of ED and OHI. Parent agreed with this determination of eligibility for Student. (Ex. D408.)

222. On November 5, 2018, the District issued a PWN regarding student’s eligibility determination. (Ex. D414.)

223. Also in November 5, 2018, the team revised student’s safety plan. In that revision, the team included Student’s strengths, a list of current team members, Student’s current behavioral functioning, Student’s treatment goals, his/her current school schedule, the goals and purpose of the safety plan, Student’s supervision needs, environmental supports for Student, a list of Student’s current routines, and a step up proposal for reintroducing peer interactions and reintegrating Student into the high school environment. These revisions to Student’s safety plan increased the length of the document from three pages to eleven pages. (Ex. D417.)

224. In addition, the District issued a Special Education Placement Determination on

November 5, 2018. That document identified 4 separate placement options considered by the team including, regular classroom with no pullout, regular classroom with learning center supports, learning center supports with 40% – 79% of the day in regular classroom, and a private placement. Ultimately, the district selected regular classroom with no pullout identified as follows:

SPS Online with tutoring at the Tech Services Computer Lab for 15 hours per week to support SPS Online class and provide specially designed instruction for study/organizational goals and transition goals. [Student] will be removed from the regular education curriculum for 60 minutes per week to meet [his/her] social skills needs. Study/organizational skills and transition skills will be met within the regular SPS online curriculum. [Student] will be removed from regular education for 0.06% of [his/her] week.

(Ex. D416 at 3.) The District determined that this option would provide Student with exposure to the general education curriculum while providing for specific behavior monitoring. The District also determined that this option provided limited exposure to social triggers that impacts Student's overall emotional stability and well-being. This determination was based on input from Student and his/her therapist. (*Id.*)

225. In the placement determination, the District provided the following rationale for its selection:

This option was selected based on team decision (with parent disagreement) that this best meets [Student's] need for access to regular education content and classes, but with tutoring support in a quiet location. This addresses the need for supervision related to safety, and provides a setting for delivering specially designed instruction towards study/organizational goals, transition goals, as well as social skills instruction. Twenty hours per week of tutoring time was offered by the parent declined based on concerned that [Student] is becoming too tired with the longer day, has conflicts with some afternoon times, and also has difficulty getting up earlier for tutoring sessions.

(Ex. D416 at 3.)

226. The District also analyzed two alternative proposals for placement and provided a rationale for rejecting each. With regard to Parent's proposed private placement in a residential mental health treatment center, the team (with the exception of Parent) determined that such a placement would provide limited exposure to the general education curriculum, failed to provide the necessary transition /generalized skills for community success, and provided for limited social interaction with typically developing peers. The team determined this option was too restrictive based on Student's current needs and functioning. (Ex. D416 at 5.)

227. On November 5, 2018, the District issued a PWN and relating to student's placement determination. (Ex. D413.)

228. During the November 5, 2018 meeting, Parent voiced disagreement with the

District's placement determination and read a prepared statement to the team. That statement included the following nine points of disagreement:

- In my opinion, the placement of one-on-one tutoring with online coursework is NOT the least restrictive environment because [Student] does not have an opportunity to interact with same age peers where a trained adult can supervise and provide “in the moment” coaching and instruction in social skills, emotional regulation, and behavioral self-control, which are primary and essential skills in [Student's] IEP. Even if this is technically within the legal definition, it is not the best placement option for [Student] and does not address [his/her] actual disability and needs.
- Though the district asserts that the online program involves a student-to-student interaction, and therefore qualifies as “regular education setting” I have worked with my [other child] on the online program and the “interaction” is limited to one or more students commenting on another student's online classwork submission. There is no give and take interaction between students.
- [Student] has had several years of SLMHS skills trainers to work on social skills and other strategies. These services have not solved the issues related to [Student's] disability and/or [his/her] suicidal ideation.
- [Student's] private psychologist recommends private, residential, therapeutic placement with a rigorous academic program in order for [Student] to have the opportunity to interact with same age peers with a trained adult to supervise and provide “in the moment” coaching and instruction in social skills, emotional regulation, and behavioral self-control, and to develop effective coping skills.
- Dr. Murray further asserts that [Student] requires DBT (Dialectical Behavioral Therapy) in order to develop the skills that will allow [Student] overcome [his/her] suicide ideation and develop effective and healthy social responses to triggers. None of the staff employed by SPS are trained in DBT, and Dr. Murray herself is not. This is another reason that Dr. Murray recommends private, residential, therapeutic placement with a rigorous academic program.
- [Student's] biggest trigger and area of concern is in relation to [his/her] social skills and poor choice-making regarding boys. The recommendation from Dr. Murray and myself is a residential, therapeutic, academic setting that is restricted only to [students of the same gender]. Additionally, this setting has a rigorous athletic program, which is a tool that we have used in the past to help [Student] develop social skills and also take advantage of the natural endorphins from exercise.

- [Student's] needs are specific, intense, and pervasive, and [he/she] requires a skilled, trained, licensed psychologist to work with [him/her] throughout [his/her] school day if other children are present.
- [Student] is extremely impulsive. When triggered, [he/she] is likely to react quickly and put [him/herself] in immediate danger of harm or death. The school district does NOT have the trained personnel to keep [him/her] safe in a setting that is less restrictive than one-on-one tutoring.
- The District suggested "step up plan" has been tried in the past and has failed. I am not willing to risk my [son's/daughter's] life on this planet again.

(Ex. S78 at 1-2.)

229. On November 30, 2018, Parent, after consultation with Dr. Murray, emailed Student's tutor and requested the District stop providing social skills training to Student. Parent's stated rationale was that she and Dr. Murray believed Student's social skills instruction needed to be delivered by a licensed psychologist or someone trained in delivering DBT. (Exs. S103 and 104; Tr. Vol II at 334:16-335:17.)

230. On November 30, 2018, the District issued a PWN indicating that it was discontinuing Student's social skills SDI, which amounted to a reduction in services of 60 minutes per week. (Ex. D420 at 1.)

CONCLUSIONS OF LAW

1. The District evaluated Student in all suspected areas of disability in a timely manner.
2. The District did not refuse to approve an IEE for Student
3. The District developed an Individualized Education Plan (IEP) that was appropriately ambitious and reasonably calculated to enable Student to receive educational benefits in light of his/her unique needs and circumstances.
4. The District provided education to Student in the least restrictive environment appropriate for Student's needs.
5. The District provided specially designed instruction and related services reasonably calculated to confer meaningful benefit to Student during the period in issue.
6. The District provided adequate prior written notice of its decision regarding an IEE for Student.
7. Student failed to demonstrate the District discriminated against him/her in the evaluation of his/her mental health condition.

8. Student failed to show the District discriminated against him/her by failing to provide educational aids and services to allow Student to access a full day of school.

9. Student did not prove the District discriminated against him/her when it declined to provide residential placement to address his/her mental health needs.

10. Student failed to show he/she is entitled to the remedies requested in his/her due process complaint.

OPINION

In due process proceedings alleging violations of the IDEA, 20 U.S.C § 1400 *et seq.*, the party seeking relief has the burden of proof. *Schaffer v. Weast*, 546 U.S. 49 (2005). In this matter, Parent, on behalf of Student and herself, filed a due process complaint on October 15, 2018, alleging procedural and substantive violations of the IDEA resulting in a denial of FAPE for Student during portions of the 2016-2017, 2017-2018, and 2018-2019 school years.¹⁵ Specifically, the period in issue begins October 15, 2016 and continues through the date Parent filed the due process complaint. Parent also alleges the District discriminated against Student in violation of § 504. Parent seeks the following remedies: compensatory education; reimbursement of educational and mental health expenses incurred by Parent; compensation for emotional harm allegedly suffered by Parent and Student; placement of Student in a residential therapeutic/educational facility; lost wages for Parent; and attorney's fees incurred for bringing this action.¹⁶ (Complaint at 18 through 20.) The burden rests on the Parent to prove the

¹⁵ The due process complaint was filed with the ODE on October 15, 2018. Pursuant to ORS 343.165(3) and OAR 581-015-2345(3)(a), a due process hearing must be requested within two years of the act or omission that gives rise to the right to request a hearing. While the applicable statutes and rules recognize limited exceptions or circumstances where that timeline may be extended, Parent failed to plead any such exceptions or circumstances in the due process complaint. Further, the due process complaint includes the following statement: "The events and harms described in this request for a due process hearing[,] including events in school year[s] 2016-2017 and 2017-2018, are ongoing[,] and *are within the two-year time frame* described in OAR 581-015-2345(3)." (Complaint at 1, emphasis added.) This language, along with the absence of any express pleading claiming otherwise, indicates Parent intended this complaint to conform to the statutory time limits established by ORS 343.165(3), despite arguments to the contrary raised by Parent's counsel at hearing. Accordingly, this order addresses only the two-year period immediately preceding the filing of the due process complaint in issue.

¹⁶ The due process complaint also identifies "[l]ost opportunity and other expenses" as well as "Educational Connections or other IEE." (Complaint at 20.) However, there is insufficient evidence in the record to identify what Parent seeks as 'lost opportunity' expenses. Accordingly, that remedy is not addressed in this order. Further, the request for 'Educational Connections' reads, in relevant part:

If the [ALJ] desires a third evaluator's opinion regarding appropriate placement, then Student requests the [ALJ] order the District to fund an evaluation of [S]tudent's mental health and educational needs and recommended placements that would be appropriate for Student through Educational Connections.

violations alleged in the due process complaint and the appropriateness of the remedies sought.

In administrative hearings, a party who bears the burden must establish each fact or position by a preponderance of the evidence. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.); see also *Cook v. Employment Division*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

Under the IDEA, all children deemed eligible for special education have a right to receive a FAPE. 20 U.S.C. §1412(1). The IDEA defines FAPE as special education and related services that: (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include an appropriate preschool, elementary, or secondary school education in the state involved; and (d) are provided in conformity with the IEP required under §1414(a)(5) of the IDEA. 20 U.S.C. §1401(a)(18); *Amanda J. v. Clark County School Dist.*, 267 F3d 877, 890 (9th Cir. 2001).

Determining whether a school district provided the student with a FAPE is a twofold inquiry: (1) whether the district complied with the procedures set forth in the IDEA; and (2) whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefits. *Board of Educ. of Hendrick Hudson School District v. Rowley*, 458 US 176 (1982) (*Rowley*). Further, the United States Supreme Court has determined that, in order for an IEP to be deemed sufficient to meet the stated goals, it must be appropriately ambitious in light of the child’s unique needs and circumstances. *Endrew F. v. Douglas County School District*, 580 U.S. ____ (2017).

In this case, Parent alleges both procedural and substantive violations of the IDEA as well as intentional discrimination in violation of §504. Each allegation raised in the due process complaint that falls within the two-year look-back period is addressed in detail below.

OAR 581-015-2000 (2018) provides definitions applicable to due process proceedings and reads, in relevant part:

The definitions below apply to OARs 581-015-2000–581-015-2999, unless the context indicates otherwise.

* * * * *

(4) “Children with disabilities” or “students with disabilities” means children or

(Complaint at 20.) Based on the findings in this order, the ALJ has determined no such third-party evaluator’s opinion is necessary. As such, this order does not address the Educational Connections evaluation further.

students who require special education because of: autism; communication disorders; deafblindness; *emotional disturbances*; hearing impairments, including deafness; intellectual disability; orthopedic impairments; *other health impairments*; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

* * * * *

(d) “Emotional Disturbance” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) *An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;*

(C) *Inappropriate types of behavior or feelings under normal circumstances;*

(D) *A general pervasive mood of unhappiness or depression; or*

(E) *A tendency to develop physical symptoms or fears associated with personal or school problems;*

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

* * * * *

(h) “Other Health Impairment” means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette’s syndrome or diabetes); and

(B) Adversely affects a child’s educational performance.

* * * * *

(10) “Evaluation” means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services

that the child needs.

* * * * *

(14) “Identification” means the process of determining a child’s disability and eligibility for special education and related services.

* * * * *

(35) “Special education” means *specialty designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability* “Special education” includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.

(36) “Specially designed instruction” means *adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:*

(a) To address the unique needs of the child that result from the child’s disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(Emphasis added.)

OAR 581-015-2080 identifies a school district’s identification, or child-find, obligation and reads, in pertinent part:

(1) The requirements of this rule apply to all children unless they are no longer entitled to a free appropriate public education under OAR 581-015-2040–581-015-2050.

(2) Pursuant to ORS 338, 339, OAR 581-021-0019, or open enrollment under section 9, chapter 718, Oregon Laws 2011 school districts must identify, locate and evaluate all children with disabilities for whom they are responsible, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services, including:

* * * * *

(d) *Children who are suspected of having a disability even though they are advancing from grade to grade;*

* * * * *

(f) Children who are home schooled[.]

* * * * *

(3) For purposes of this rule, residency is determined in accordance with ORS Chapter 339, except for children enrolled in charter schools. Residency for children enrolled in charter schools is determined in accordance with ORS Chapter 338. The district in which the charter school is located is responsible for child find for students enrolled in the charter school regardless of parental resident district.

(Emphasis added.)

The IDEA was enacted to require state educational agencies receiving federal funds to provide special education services for students with qualifying disabilities. See 20 U.S.C. § 1400(d)(1)(A). To meet its substantive obligation under the IDEA, a school must offer an “individualized education program” reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. v. Douglas County School District*, 580 ___ U.S.(2017).

To provide a FAPE in compliance with the IDEA, a public school district must evaluate a student in all areas of suspected disability, determine whether that student is eligible for special education, and formulate and implement an IEP with appropriate measurable goals and related services. 20 U.S.C. § 1414. An IEP informs how a student is to be educated, especially with regard to the student’s particular needs resulting from his or her disability. Within a student’s IEP are annual goals. *Id.* § 1414(d)(1)(A)(i)(I)(cc). The IEP team must consider the strengths of the student, concerns of the parents, evaluation results, and the academic, developmental, and functional needs of the student. *Id.* § 1414(d)(3)(A). Nonetheless, none of these determinations that are necessary for IEP formation and implementation can be made before a school district performs proper evaluations of a student in all areas of suspected disability.

It is within the context of these basic requirements of the IDEA that Student’s/Parent’s claims must be evaluated.

Claims raised under the IDEA.

1. The District failed to evaluate Student in all areas of suspected disability.

In the Ninth Circuit, “the sufficiency of a school district’s actions, including evaluation

decisions and decisions regarding the student’s substantive educational curriculum are judged by the snapshot rule.” *Forest Grove Sch. Dist. v. Student*, No. 3:12-cv-01837-AC, 2014 WL 2592654 at *20 (D. Or. June 9, 2014) (citing *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).) When making an assessment of whether an eligibility determination is “appropriate” under the IDEA, the administrative law judge or hearing officer looks to the time of the student’s evaluation by the school district. See *L.J. v. Pittsburg Unified Sch. Dist.*, 835 F.3d 1168, 1175 (9th Cir., 2016.) In applying the snapshot rule, a court must determine whether the school district’s actions were reasonable considering the facts known when the decision was made. *Adams*, 195 F.3d at 1149. Moreover, the eligibility decision is judged based whether it took all relevant information from the snapshot period into account. *L.J.*, 835 F.3d at 1175.

Parent contends that depression, self-harm, and suicidal ideations triggered the District’s obligation to evaluate the Student in a specific area of suspected disability, *to wit* ED. I disagree.

OAR 581-015-2100 identifies a school district’s responsibility for evaluations and eligibility determinations of students suspected of having one or more disabilities and provides, in relevant part:

- (1) For school-age children, school districts and juvenile and adult corrections education programs are the public agencies responsible for evaluating children and determining their eligibility for special education services.
- (2) For preschool children,
 - (a) School districts are responsible for the eligibility evaluations of children for EI/ECSE services.
 - (b) Designated referral and evaluation agencies are responsible for determining the eligibility of children for EI/ECSE services.
 - (c) EI/ECSE programs are responsible for conducting any necessary evaluations other than for eligibility determination.

In addition, OAR 581-015-2105 provides specific evaluation and reevaluation requirements and reads, in relevant part:

- (1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:
 - (a) Determining that a child is a child with a disability under OAR 581-015-2130 through 581-015-2180;
 - (b) Determining that a child continues to have a disability under OAR 581-015-2130 through 581-015-2180;
 - (c) Changing the child’s eligibility[;] * * *

* * * * *

(2) Request for initial evaluation: Consistent with the consent requirements in OAR 581-015-2090, a parent or public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability.

(3) When initial evaluation must be conducted:

(a) An initial evaluation must be conducted to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that:

(A) The child has a disability that has an adverse impact on the child's educational performance; and

(B) The child may need special education services as a result of the disability.

(b) The public agency must designate a team to determine whether an initial evaluation will be conducted.

(A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.

(B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.

(4) Reevaluation:

(a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (b) and OAR 581-015-2110(2):

(A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(B) If the child's parents or teacher requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency

agree that a reevaluation is unnecessary.

OAR 581-015-2110 provides general evaluation and reevaluation procedures and reads, in part:

- (1) Evaluation planning. Before conducting any evaluation or reevaluation of a child, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.
- (2) Notice and consent.
 - (a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2310 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.
 - (b) Before conducting any evaluation or reevaluation, *the public agency must obtain informed written consent for evaluation* in accordance with OAR 581-015-2090 and 581-015-2095.
 - (c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2310.
 - (d) Parents may challenge the public agency's refusal to conduct a reevaluation under OAR 581-015-2345.
- (3) Conduct of evaluation. In conducting the evaluation, the public agency must:
 - (a) *Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:*
 - (A) Whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180; and
 - (B) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (b) *Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and*
 - (c) *Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.*

(4) Other evaluation procedures. Each public agency must ensure that:

(a) Assessments and other evaluation materials used to assess a child under this part:

* * * * *

(C) Are used for the purposes for which the assessments or measures are valid and reliable;

* * * * *

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

* * * * *

(d) *The child is assessed in all areas related to the suspected disability, including, if appropriate, * * * social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;*

(e) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and

(f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(5) Evaluation timelines:

(a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.

(b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2095(3)(c)) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

(Emphasis added.)

Finally, OAR 581-015-2115 identifies requirements for evaluation planning and provides, in relevant part:

(1) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the child's IEP * * * team, and other qualified professionals, as appropriate, must:

(a) Review existing evaluation data on the child, including:

(A) Evaluations and information provided by the parents of the child;

(B) Current classroom-based, local, or state assessments, and classroom-based observations; and

(C) Observations by teachers and related services providers; and

(b) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child is, or continues to be, a child with a disability;

(i) For a school-age child, under OAR 581-015-2130 through 581-015-2180;

* * * * *

(B) The present levels of academic achievement and related developmental needs of the child;

(C) Whether the child needs, or continues to need, * * * special education and related services; and

(D) For reevaluation, whether the child needs any additions or modifications to special education and related services * * *:

(i) To enable the child to meet the measurable annual goals in the child's IEP * * *; and

(ii) To participate, as appropriate, in the general education curriculum * * *.

(2) Conduct of review. The team described in subsection (1) may conduct this review without a meeting. If a public agency holds a meeting for this purpose, parents must be invited to participate in conformance with OAR 581-015-2190 or, for parents of preschool children, with OAR 581-015-2750.

(3) Source of data. The public agency must administer tests and other evaluation materials as may be needed to produce the additional data

identified under subsection (1)(b).

(4) Requirements if additional data are not needed.

(a) *If the child's IEP * * * team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, and to determine the child's educational and developmental needs, the public agency must notify the child's parents:*

(A) Of that determination and the reasons for it; and

(B) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability, and to determine the child's educational and developmental needs.

(b) *The public agency is not required to conduct an assessment of the child unless requested to do so by the child's parents.*

(Emphasis added.)

While the IDEA provides no specific right for a student to be classified under a particular disability, it does require that the student's educational program be designed to suit the student's demonstrated needs: "Given the IDEA's strong emphasis on identifying a disabled child's specific needs and addressing them * * * the particular disability diagnosis affixed to a child in an IEP will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs." *Fort Osage R-1 School District v. Simms*, 641 F.3d 996, 1004 (8th Cir. 2011). Nonetheless, a school district's failure to conduct appropriate assessments or to evaluate in all areas of suspected disability is a procedural violation that may result in a substantive denial of FAPE. *Park v. Anaheim Union High School Dist.*, 464 F.3d 1025, 1031 through 1033 (9th Cir. 2006). However, as discussed by the Court of Appeal in *Amanda J.*, "[n]ot every procedural violation * * * is sufficient to support a finding that the child in question was denied a FAPE. Technical deviations, for example, 'will not render an IEP invalid.'" 267 F.3d at 892 (9th Cir. 2001), citing *Burilovich v. Bd. of Educ.*, 208 F.3d 560, 566 (6th Cir. 2000). Therefore, to show the denial of a FAPE, Parent must demonstrate that the District violated the procedural safeguards of the IDEA and that such procedural violation(s) resulted in a loss of educational opportunity for Student, seriously infringed on Parent's opportunity to participate in the IEP formulation process, or caused a deprivation of educational benefits for Student. See, *Amanda J.*, 267 F.3d 877, 892 (9th Cir. 2001), internal citations omitted.

The Court of Appeals for the Ninth Circuit has clearly established that a disability is suspected, and therefore must be assessed by a school district, when the school district has notice that the child has displayed symptoms of that disability. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1120 (9th Cir. 2016). Further, at least one court has held that a school district's knowledge of a student's anxiety and absences required the school district to arrange an evaluation of student. *Independent Sch. Dist. No. 413, Marshall v. H. M. J. by A.J. and M. N.*, 66

IDELR 41 (D. Minn. 2015).

The Court in *Timothy O* court relied upon its earlier decision in *N.B. v. Hellgate Elementary School District*, 541 F.3d 1202 (9th Cir. 2008), wherein the court established that the requirement to evaluate is activated by the informed opinions of outside experts, such as doctors and therapists at the time that information is shared with the school district. 822 F.3d at 1120.

In addition, the Ninth Circuit has held that the “informed suspicions of parents, who may have consulted outside experts,” also triggers the duty to evaluate, even if the school personnel disagree with the parents’ suspicions. *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir.1996). Nonetheless, a parent’s request to evaluate a student in an area of suspected disability is not absolute; the suspicions must be informed, such as by a medical diagnosis or outside professional opinion. *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 16 (D.D.C. 2008)

Here, Parent challenges two of the District’s evaluations of Student; the first in March 2015, while Student was in eighth grade, and the second in January 2018, while Student was in 11th grade. Parent takes issue with the District’s decision to evaluate Student under the eligibility category of OHI, rather than the category of ED, after receiving information indicating Student was suffering from depression, including suicidal ideations, that was interfering with his/her attendance at SHS.

First, Parent’s challenge to the March 2015 evaluation and subsequent May 2015 eligibility determination falls outside the two-year look-back period permitted by the IDEA. Parent acknowledges this fact in her written closing argument, but asserts the District is responsible for a continuing violation for every day during the period in issue that the District relied on the May 2015 eligibility determination and the underlying evaluations. I do not agree.

In this case, to accept Parent’s arguments regarding the 2015 evaluations and eligibility would permit Parent to boot-strap untimely claims without proper notice that would allow the District to respond to such claims and prepare a defense for hearing. There is no evidence in the record demonstrating new diagnoses, new symptoms observed or reported, or any request by Parent, prior to 2018, which would indicate the District should have suspected another disability or need for additional evaluations. Parent provides no evidentiary basis for extending the claims in this matter beyond the period in issue and did not plead any such justifications in the due process complaint. Further, the evidence in the record demonstrates that Parent accepted the initial evaluation and eligibility determination and did not dispute the OHI determination until the beginning of 2018, when the District was preparing for an evaluation planning meeting to address Student’s statutorily mandated three-year re-evaluation eligibility determination. Based on the record, I find no justification for allowing Student/Parent to challenge the District’s 2015 evaluation and eligibility determination.

Next, Parent challenges the adequacy of the District’s re-evaluation of Student conducted by Ms. Taubenfeld in January 2018 because Parent asserts the District ignored requests from her, for the additional evaluations. I do not agree with Parents that the District failed to properly evaluate Student.

First, it is important to distinguish the nature of Parent's request in February 2018. Based on the facts in the record, at no time referenced by Parent did she actually request additional evaluations or assessments of Student based on new or additional medical information, diagnoses, or suspicions. Rather, Student's diagnoses of major depressive disorder and ADHD remained fairly constant throughout the period in issue. Instead, in February 2018 Parent requested an IEE for the purpose of finding residential placement for Student. Parent's requests for IEE are addressed more fully below. For the purposes of this discussion, it is sufficient to point out that Parent made no requests for additional assessments or evaluations nor did she disagree with the appropriateness of the OHI eligibility category at that time.

Student was initially evaluated for eligibility under the diagnosis of major depressive disorder. At that time, the District and Parent appeared to agree that Student's diagnosis and symptoms aligned with the OHI eligibility category. As discussed above, the appropriateness of that determination is beyond the scope of this order.

Further, with respect to the District's Form 220B evaluation report prepared in January 2018 in preparation for Student's triannual reevaluation, the record is devoid of any request by Parent prior to that date for additional assessments or evaluation. Further, the District's form 220B was prepared in advance of Student's reevaluation and prior to parental consent for that reevaluation. Parent consented to a summary reevaluation process consisting of a review of existing records, the District's Form 220B evaluation report would have been sufficient to satisfy the requirements of the IDEA. Based on evidence in the record, it appears the first request for additional assessments or evaluations for any additional suspected disabilities came in June 2018. The record also reflects that, at that time, the District agreed to evaluate Student under the category of ED, including all necessary assessments and records reviews. Parent then, inexplicably, elected to withhold consent for the requested evaluation until September 2018 despite the District's willingness to conduct evaluations over the summer while Student was participating in educational activities at a District building.

OAR 581-015-2090 addresses the consent requirements of the IDEA and provides, in part:

- (1) Consent means that the parent or adult student:
 - (a) Has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and
 - (b) Understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.
- (2) Consent is voluntary on the part of the parent and meets the requirements of the consent provisions of this rule and 34 CFR 300.622 and 34 CFR 99.30 implementing IDEA, and FERPA respectively.

* * * * *

(5) Consent for reevaluation:

(a) *A school district must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2095.*

(b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the school district may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.

* * * * *

(7) Revocation of consent:

(a) A parent or adult student may revoke consent at any time before the completion of the activity or action for which they have given consent.

(A) *A parent or adult student may revoke consent for an evaluation or reevaluation that has not yet been conducted.*

(Emphasis added.)

Upon receiving Parent's consent for evaluation in September 2018, the District implemented the evaluation plan drafted during the previous school year. Student's evaluation and eligibility were completed less than 60 days after receiving parental consent.

An evaluation of a student for special education eligibility must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. 20 U.S.C. § 1414(b) & (c)(5); OAR 581-015-2110(3) and (4); *See also Cobb Cnty. Sch. Dist. v. D.B.*, Civ. Action No. 1:14-CV-02794-RWS (N.D. Ga. Sep. 28, 2015).

The tools and strategies selected by a school district must be tailored to assess specific

areas of educational need, target all areas related to the suspected disability, be sufficiently comprehensive to identify all of a student's special education and related services needs, and provide relevant information that directly assists persons in determining the educational needs of the child. 34 C.F.R. § 300.304(c); 20 U.S.C. § 1414(b)(3); *see also Timothy O.*, 822 F.3d at 1122. Nothing in Student's due process complaint or closing argument challenges the completeness of the District's ED evaluation based on the requirements above. Further, there is no evidence in the record to demonstrate that the District delayed, unreasonably or otherwise, in conducting the necessary assessments and information for Student's evaluation upon receiving consent from Parent.

OAR 581-015-2000(4)(d) defines ED and provides a list of characteristics including, inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression, or a tendency to develop physical symptoms or fears associated with personal or school problems. OAR 581-015-2000(4)(d)(C) through (E). Student's depression, suicidal ideations and attempts, school avoidance, and inability to form or maintain appropriate peer relations with peers fit squarely within the characteristics defined by the aforementioned rule. By contrast, OHI is defined in the same rule as limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes), and adversely affects a child's educational performance. OAR 581-015-2000(4)(h)(A) and (B). This, too, describes many symptoms displayed by Student in the school environment. Further, Parent's reports of lethargy, lack of motivation, and heightened alertness to environmental stimuli that impaired Student's ability to access education. As such, it cannot be said, based on the record before me, that the District's initial (and continuing) eligibility determination of OHI was incorrect.

Parent has not demonstrated that the District's failed to comply with the evaluation or reevaluation requirements of the IDEA simply because it selected, in Parent's opinion, a less-than-preferred eligibility category. Most significantly, the record demonstrates that, upon finding Student eligible under the category of ED, no changes to Student's AGs, STOs, SDI, or related services were deemed appropriate.

2. Whether the District failed to provide Student a FAPE in the development and implementation of Student's IEP(s).

Next, Parent argues that the District failed to provide him/her with a FAPE through the development and implementation of in adequate IEPs.

OAR 581-015-2200 identifies the requirements for the content of and IEP and provides, in relevant part:

(1) The individualized education program (IEP) must include:

(a) A statement of the child's present levels of academic achievement and

functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.

(b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability.

(c) A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and children without disabilities,

(e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.

(f) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (1)(d) of this rule.

(g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment:

* * * * *

(2) For the purposes of transition, the IEP must include:

(a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:

(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(B) The transition services (including courses of study) needed to assist the child in reaching those goals.

(b) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated before age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first.

First, Parent claims the District's IEPs developed during the period in issue failed to address his/her mental health needs by failing to include descriptions of Student's present levels of mental health concerns and by failing to include accurate parental concerns. I disagree.

A review of the relevant IEPs reflects the District's efforts to obtain, consider, and include information pertaining to Student's mental health concerns obtained from Dr. Murray, Student's treating psychologist, Parent, and Mrs. Dayton, Student's behavior support specialist. In addition, beginning in late 2018 the District also began incorporating information provided by the Parent's legal counsel. The fact that Student's present levels reflected in the IEPs changed over time is a reflection of the behaviors District staff observed in the school environment. This information also reflects the progress and regression experienced by Student over the course of the period in issue. This conclusion is supported by information provided in Dr. Murray's treatment notes in her testimony at hearing. According to that information, Student achieved significant periods of progress with regard to his/her mental health goals. Unfortunately, he/she also experienced significant setbacks in the latter part of the period in issue.

Next, Parent asserts that the District failed to develop appropriate safety plans for him/her while on the SHS campus. Again, a review of the relevant documents during the period in issue reveals that the District drafted Student's safety plan and revised those plans based on information provided by Parent, Dr. Murray, and District staff. As Student's needs increased, his/her safety plans became more detailed. Further, the record demonstrates that Student's safety plan was distributed to all of his/her teachers at the beginning of each semester. Student's final safety plan during the period in issue is an 11-page document, whereas his/her initial safety plan consisted of no more than three pages. While it might be said that this increase in the amount of

information in Student's safety plan demonstrates the inadequacy of earlier plans, the record reflects that the additional information added to Student's safety plan in November 2018 was driven more by the input of legal counsel and by Student's needs. The evidence in the record is insufficient to demonstrate the District failed to develop appropriate safety plans as it learned of Student's changing needs.

Parent also asserts the District's IEPs are flawed because the District failed to collect accurate data on Student's reactive events. The documents and testimony in the record support this assertion. In this instance, Parent appears to be challenging the District's implementation of certain IEPs rather than the development of those documents. While the record does reflect that at times the District was remiss in collecting data on Student's emotional episodes, it is not clear that this resulted in either a flawed development or implementation of any of Student's IEPs during the period in issue. This is so because, according to the evidence in the record, Student's AGs and STOs were largely driven by input from Parent and Dr. Murray based on Parent's observations in the home and Dr. Murray's observations during treatment. The record reflects that, during the period in issue, Parent was seeing significant symptomology regression with the District was seeing areas of growth and progress by Student in the school environment. The record further reflects the District observations of unsafe behaviors by Student were minimal in comparison to parental reports. Nonetheless, Student's IEPs reflect increasing service needs for Student during the period in issue based on concerns and observations by Parent and Dr. Murray. Based on the evidence in the record, I do not find that the failure to collect data on Student's reactive events, as requested by Parent, resulted in a deficient IEP during the period in issue.

In addition, Parent argues that the District failed to implement his/her IEP by failing to keep track of Student's whereabouts at all times. While the record contains anecdotal information regarding limited instances where Student was not locatable for short periods of time, Student failed to demonstrate any intentional or negligent failure to implement the safety plan on the part of the District. According to the record, some instances where Student's whereabouts were unknown were due to the fact that Parent elected not to bring Student to school and failed to notify school personnel that morning. On other occasions, it was discovered Student had stayed behind in a prior class to seek help from the teacher. Despite Parent argument to the contrary, the record fails to demonstrate that Student repeatedly eloped from school, was absent from class because he/she was hiding, or was otherwise on locatable by staff for an extended period of time. Further, the record reflects that, on occasions where Student could not be located staff implemented provisions of the safety plan by circulating emails and contacting the required personnel by phone. In response to these measures, Student's whereabouts were ascertained in a relatively short period of time.

Finally, Parent challenges the adequacy of the District's IEPs based on an allegation that for the 2018-2019 school year, the District failed to perform an agreed-upon risk assessment of its facilities and train SHS campus staff on certain treatment protocols requested by Parent. Parent's argument in this area appears a bit disingenuous based on her refusal to return Student to any public school environment at the direction of Dr. Murray. In addition, during the relevant portions of the 2018 2019 school year, Student was enrolled in the SPS online program with tutoring conducted at District offices rather than on a public school campus. In that program, Student was accompanied by an adult at all times while on District property. According to Dr.

Murray, this was the only environment outside of residential placement where Student could safely access the general education curriculum and his/her required SDI.

A review of student's IEPs during the period in issue demonstrates that the District offered access to the general education curriculum with a plan designed to allow Student to graduate on time with a regular high school diploma. In addition the IEPs provided for SDI and related services and provided accommodations for Student in the areas of test taking and assignment completions along with others. In addition student's IEPs have focused on transitioning him/her back to a public school environment on a full-time basis. I find the IEPs offered by the District were reasonably calculated to enable Student to receive educational benefits and were appropriately ambitious in light of Student's unique circumstances.

For the reasons stated above, I find Parent has failed to demonstrate the District denied Student a FAPE through the development or implementation of any of the IEPs during the period in issue.

3. The District placed Student in the least restrictive environment.

Next, and perhaps most significantly, Parent argues that the District failed to provide education to Student in the least restrictive environment and that it failed to consider residential placement for Student. Parent asserts that placement in a therapeutic residential facility is a less restrictive environment than Student's current placement in the SPS Online program with tutoring.

OAR 581-015-2240 provides requirements for placement of students needing special education and related services in the least restrictive environment and reads:

School districts must ensure that:

(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability and

(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Emphasis added.)

OAR 581-015-2250 addresses placements of students with disabilities, generally, and provides, in relevant part:

School districts must ensure that:

(1) The educational placement of a child with a disability:

- (a) Is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
 - (b) Is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240 to 581-015-2255[;]
 - (c) Is based on the child's current IEP;
 - (d) Is determined at least once every 365 days; and
 - (e) Is as close as possible to the child's home;
- (2) The alternative placements under OAR 581-015-2245 are available to the extent necessary to implement the IEP for each child with a disability;
- (3) Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled;
- (4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; and
- (5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Student's placements have varied over the period in issue and before. Initially, Student was placed in a homebound instruction program with tutoring at the behest of Dr. Murray who asserted that the public school environment would present too many triggers for Student's unsafe thinking and behaviors. Student performed well academically and socially in the homebound environment. Upon transitioning to high school, Student began with a limited on campus schedule for ninth grade that included two classes on campus. Again, Student successfully accessed the general education curriculum during this period. In tenth and eleventh grades, Student was enrolled full-time (eight classes). Student achieved marked success in tenth grade and into eleventh grade, when he/she attended classes.

Unfortunately, due to increased concerns by Parent and Dr. Murray, Student's school attendance was limited during the eleventh grade year and his/her academic progress suffered accordingly. According to Dr. Murray, there is no public school environment where Student can safely access his/her general education curriculum and SDI. Rather, Dr. Murray believes that either the current online/tutoring placement or a residential facility are the only environments where Student can safely access his/her educational curriculum and SDI. At the time of hearing, the record reflects that in his/her current educational placement Student is on track to graduate with a regular high school diploma and is receiving SDI and related services from District staff,

at least up to the point where parent requested termination of skills training by District staff.

In support of her request for residential placement for Student, parent argues that Student has no access to peers for social interaction in the online/tutoring environment. Therefore, according to Parent, the District current placement is more restrictive than a therapeutic residential placement. Parent's argument demonstrates a fundamental misunderstanding of the LRE requirements. As identified above, the IDEA requires, to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability. OAR 581-015-2240(1). While Student's current educational placement offers limited access to nondisabled peers, through online interaction, that placement also contemplates a step-up plan designed to reintegrate Student into the public school environment with nondisabled peers when he/she is deemed ready. By contrast, parent's proposed residential placement in a therapeutic environment would limit Student's access to only similarly disabled students and deprive him/her of any interaction with nondisabled peers.

Further, the evidence in the record reveals the motivation of parent and Dr. Murray to place Student in a therapeutic residential setting is driven by his/her mental health needs and suicidal ideation. Under the IDEA, the district may be required to pay the costs of residential treatment including nonmedical care if the placement is determined necessary to provide special education and related services. *See* 34 CFR §300.104. Nonetheless, the District is not required to pay for the costs of education, SDI, or related services at a residential facility if FAPE was offered by the District. *C. W. v. Rose Tree Media School District*, 55 IDELR 123 (3d Cir. 2010, unpublished.) Courts have determined that a student's safety, mental health, and medical issues may be distinct from their educational needs and therefore a district may not be obligated to fund a residential placement for other than educational needs. *Sanger v. Montgomery County Board Of Educ.*, 23 IDELR 955 (D. Md. 1996); *Fort Bend Indep. Sch. Dist. v. Douglas A.*, 115 LRP 5367 (5th Cir. 2015.); *see also Clovis Unified Sch. Dist. v. CA Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir. 1990)

Nothing in the record demonstrates that Student cannot receive a FAPE from the District. To the contrary, in the current online/tutoring environment, Student has access to the general education curriculum along with interaction with his/her nondisabled peers, albeit in a less than real-time environment. In addition, the District has offered and is capable of providing Student's SDI and related services for all of the goals contained in Student's IEP. Accordingly, Parent has failed to demonstrate that the more restrictive therapeutic environment is appropriate and/or necessary for Student to receive SDI and related services.

The determinations in this order are not meant to discount or minimize the significance of Student's mental health struggles or Parent's concerns. It is lamentable that Student is presently unable to function safely in a public school setting. Further, it is laudable to see both Parent and Dr. Murray advocate so aggressively for Student's mental health needs. Nonetheless, there is insufficient evidence in the record to support a finding that the District's current placement offer is insufficient to provide FAPE or that Parent's proposed residential therapeutic placement is necessary to do so.

4. *The District failed to provide SDI and related services reasonably calculated to confer a*

meaningful benefit.

Next, parent challenges the District's provision of SDI and related services through a series of arguments focused on specific details of progress reports and a lack of data collection by District staff. Parent also argues District failed to develop appropriate transition goals and to ensure that those working with Student were informed of his/her safety plan requirements. While not all of these arguments address the alleged failure to deliver SDI and related services, they all suffer from a lack of evidentiary support in the record.

For the purposes of this order, it is sufficient to address Parent's claim that the District failed to provide SDI and related services across multiple environments. A review of the record demonstrates that, while Student was engaged in the District online program with tutoring (in either eighth or eleventh/twelfth grades), Student received SDI and related services (accommodations) directly from his/her tutor and special education teacher. In addition, while Student was enrolled and attending classes on the SHS campus, his/her SDI and related services were provided by multiple individuals across environments including special education and general education classes. Based on the evidence in the record, the greatest impediment to Student receiving SDI and related services were a lack of attendance based, at least in part, on Parent's refusal to send Student to school. In addition, as of November 2018 Parent formally requested that the District stop providing SDI with regard to Student's Social/Emotional/Behavioral AGs and STOs.

There is insufficient evidence in the record to demonstrate that the District failed or refused to provide student's SDI and related services as outlined in his/her IEPs.

5. Whether the District failed to provide Parent with prior written notice.

A school district must provide written prior notice (PWN) to the parents of a child whenever the school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. 20 U.S.C. §1415(b)(3); 34 C.F.R. §300.503(a), OAR 581-015-2310.

OAR 581-015-2310 provides requirements for timing and contents of a prior written notice from a school district and provides, in part:

- (1) For purposes of this rule, school district also means ECSE program and its contractors and subcontractors.
- (2) Prior written notice *must be given to the parent* of a child * * * within a reasonable period of time *before a school district*[:]
 - (a) Proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; or
 - (b) *Refuses to initiate or change the identification, evaluation, or educational*

placement of the child or the provision of FAPE to the child.

(3) The content of the prior written notice *must include:*

(a) A description of the action proposed or refused by the school district;

(b) An explanation of why the district proposes or refuses to take the action;

(c) *A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;*

(d) A statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(e) Sources for parents to contact to obtain assistance in understanding their procedural safeguards[;]

(f) *A description of other options that the IEP Team considered and the reasons why those options were rejected;* and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(Emphasis added.)

The procedures relating to PWN are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to those decisions. *C.H. v. Cape Henlopen School Dist.*, 606 F.3d 59, 70 (3rd Cir. 2010). Parent contends that the District failed to provide PWN when it refused to approve and fund an IEE for Student and when it refused to approve Student's placement in a therapeutic residential facility. Before it can be determined whether the District failed to fulfill its obligations to provide PWN to Parent, I must first ascertain whether the District did, in fact, fail or refuse to approve an IEE or residential placement.

a. Refusal to provide IEE.

OAR 581-015-2305 identifies a parent's right to request an IEE and a district's obligations related to that request, and provides in part:

(1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense *if the parent disagrees with an evaluation obtained by the school district.*

(a) "Independent educational evaluation" means an evaluation conducted by a

qualified examiner who is not employed by the school district responsible for the education of the child.

(b) "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(2) If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.

(3) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(a) Except for the criteria in subsection (3), a school district may not impose conditions, or timelines related to obtaining an independent education evaluation at public expense.

(b) The school district must provide parents an opportunity to demonstrate that unique circumstances justify an independent education evaluation that does not meet the district's criteria.

(4) If a parent requests an independent education evaluation at public expense, the school district must, without unnecessary delay, either:

(a) Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or

(b) Initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.

* * * * *

(6) If the parent requests an independent educational evaluation, the school district may ask why the parent disagrees with the public evaluation. The parent may, but is not required, to provide an explanation. *The school district may not unreasonably delay* either providing the independent education evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(7) If the parent obtains an independent educational evaluation at public expense

or shares with the district an evaluation obtained at private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

(b) May be presented by any party as evidence at a due process hearing.

* * * * *

(9) A parent is entitled to only one independent educational evaluation at public expense *each time the public agency conducts an evaluation with which the parent disagrees.*

(Emphasis added.)

Parent argues that she initially requested an IEE in April 2016. Because a request during that time would be outside the two-year look back period applicable to this proceeding, it is unnecessary to determine whether parent actually request an IEE at that time. Rather, this order addresses only requests within the period in issue.

Based on the record, Parent's earliest request for an IEE came on or about February 5, 2018, while Student's IEP team were preparing for his/her triannual re-evaluation. At that time, the team was reviewing records and collecting data in preparation for any additional evaluations Student might need. Importantly, parent's request for an IEE occurred approximately three years after the last evaluation. During that time, the record does not reflect any disagreement by parent with the initial evaluation. Rather, parent's request in February 2018 appeared designed to preempt the District's re-evaluation of Student. An IEE request in anticipation of an evaluation is premature. Where, as here, a parent requests an IEE more than two years after the initial evaluation, permitting the IEE would allow parent to circumvent the two-year statute of limitations. *Student v. Atlanta Public Schools* 51 IDELR 29 (GA SEA 2008), (finding that a student's request for an IEE made three years after the district conducted its assessment, was "untimely, as it was not made within a reasonable time after [the district] conducted its evaluation and is beyond the two-year statute of limitations.")

At the time of Parent's February 2018 request for an IEE there was no evaluation by the District that Parent could legitimately challenge within the two-year statute of limitations. Further, because Student's re-evaluation had not yet occurred and Parent had not given consent for the re-evaluation, Parent's request for an IEE appears premature because an evaluation with which the Parent might disagree had not yet occurred. *See* OAR 581-015-2305 (1).

At the time of Parent's February 2018 IEE request, the District attempted to ascertain the basis for Parent's request and determine whether Parent was seeking additional evaluations for Student's current eligibility category of OHI and or a different eligibility category. During those conversations, the District asserted its position that there was no current evaluation with which

the Parent disagreed to form the basis for her IEE request. As an alternative, the District repeatedly offered to conduct any additional evaluations Parent deemed necessary. Further, the District pointed out Parent was not precluded from obtaining an IEE prior to the re-evaluation only asserted non-responsibility for payment on the part of the District if such an evaluation preceded the District's re-evaluation of Student.

With regard to Parent's specific requests for an "IEE" from Educational Connections, the evidence reflects that Parent was not seeking an educational evaluation but rather an evaluation to determine an appropriate placement for Student, specifically an appropriate residential placement. Reading the evaluation requirements in the context of the statute and rules in which they appear, it is clear the purpose of such evaluations is to ascertain a student's at disabling conditions, if any, and to determine a student's potential eligibility categories for special education services. That does not appear to be the purpose of parent's requested evaluation by Educational Connections.

In addition, as Student's emotional instability continued to escalate during 2018, Parent shifted focus from the IEE to an evaluation under the eligibility category of ED and securing a therapeutic residential placement for Student. There is no evidence in the record indicating that Parent requested an IEE from the District after the District's November 2018 evaluation of Student.

Based on the findings and analysis above, I find the District did not deny any valid request by Parent for an IEE. Accordingly, the District was not required to issue PWN regarding Parent's request for an IEE.

b. Refusal to place Student in a therapeutic residential facility.

Next, Parent asserts that the District failed to provide PWN regarding refusal to place Student in a therapeutic residential facility. I disagree.

On November 5, 2018, Student's IEP team, including parent and her legal counsel, attended a lengthy meeting addressing Student's IEP, eligibility determination, and placement. At that meeting, Parent disagreed with the District's selected placement invoiced several reasons for her disagreement. Despite this disagreement, the majority of the IEP team decided the appropriate placement for Student was in the SPS online environment with tutoring. At that time, the team rejected Parent's proposed residential placement as well as other placement options. Those decisions are memorialized in two documents, the District's Special Education Placement Determination and the District's Prior Written Notice dated November 5, 2018.

The District's placement determination contains a description of for placement options considered by the team including Parent's proposed residential placement. Each placement option is summarized in the benefits and possible harmful effects of each option are addressed. Each option contains a description of modifications and supplementary aids and services necessary for the placement. Finally, for each placement option considered, the District included a rationale for its selection or rejection of that option.

The District PWN contains a description of the placement proposed by the District. The PWN also includes a summary of the evaluations, assessment, and records used as a basis for the District's decision. Further, the PW when contains a description of other options considered along with the rationale for rejecting such options. Included within that section is parent's request for a residential placement. In addition, the district PWN indicates parent was provided with procedural safeguards related to this decision. Parent does not dispute this.

The District provided Parent with a copy of its placement determination and PWN at the November 5, 2018, meeting. A review of the District's PWN reveals that it includes all the necessary requirements contained in OAR 581-015-2310(3). Further, the District provided additional information, regarding its rationale for rejecting residential placement, to Parent in its placement determination. Therefore, the District satisfied both the letter and spirit of the law when it provided this information to Parent regarding its rejection of the proposed residential placement. *C.H.*, 606 F.3d 70.

Claims raised under §504 of the Rehabilitation Act of 1974.

Finally, Parent asserts that the District is responsible for intentional discrimination against Student based on the alleged failure to evaluate, failure to provide necessary aids and service, and refusal to place Student in an appropriate residential facility. Parent acknowledges that the §504 claims raised in the due process complaint are "rooted in the same facts and events" giving rise to the IDEA claims. (Student's Closing Brief at 64.)

34 CFR §104.36 provides that compliance with the procedures in the IDEA satisfies the requirements of §504. See, *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796, 798 (9th Cir. 1996.) Because this order determined that the District complied with the requirements of the IDEA, and because Parent asserts that the §504 claims raised in the due process complaint derive from the same alleged failures by the District, Parent's discrimination claims under §504 must fail. Further, because Parent failed to demonstrate Student was denied an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded to others, there is no basis for finding discrimination on the part of the District. See, 34 CFR §104.4(b). Accordingly, Parent's claims for relief under §504 are dismissed.

Remedies requested in Student's Due Process Complaint.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. 20 U.S.C. § 1415(i)(1)(C)(iii); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education*, 471 U.S. 359, 369 (1985). Hearing officers/administrative law judges in special education cases have similar broad equitable powers. *Forest Grove School Dist. v. T.A.*, 557 U.S. 230 (2009). In determining the equitable remedy, the hearing officer or ALJ may consider the school district's failure to update student's IEP, placements, and other documents, and their refusal to cooperate. See *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, 1059-1060 (9th Cir. 2012)

Nonetheless, Parent must prevail on at least one of her claims before this tribunal can award some or all of the remedies requested. In this matter, Parent has failed to present evidence

sufficient to prevail on any of the claims raised either under the IDEA or §504 of the Rehabilitation Act of 1974. Accordingly, there is no basis to award any of Parent's requested remedies.

ORDER

Parents' request for relief, pursuant to the Request for Due Process Hearing dated October 15, 2018 is **DENIED**.

/s/ Joe L. Allen

Senior Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

ENTERED at Salem, Oregon this 26 day of April, 2019, with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.