

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION**

Student/The District School District  
IDPH-FY-22-08-003

DUE PROCESS DECISION

**I. INTRODUCTION**

This due process proceeding was initiated by the Parents on August 9, [REDACTED]. After several continuances, the due process hearing was held via Zoom over three days: December 16 and 17, [REDACTED] and January 4, [REDACTED].

Issues for due process were as follows:

1. Did the The District School District (District) fail to timely and appropriately evaluate Student in all areas of suspected disability?
2. Did the District fail to timely identify Student as eligible for special education and related services under the IDEA?
3. Did the District's IEP offer for Student in April-May [REDACTED] fail to provide [REDACTED] with a free appropriate public education, either for procedural or substantive reasons?
4. Did the District fail to provide Student with an offer of placement to implement the programming [REDACTED] requires, thereby denying [REDACTED] a free appropriate public education?
5. Is the Student's parent entitled to reimbursement for the costs associated with [REDACTED] placement at [REDACTED] Maine since May [REDACTED] either under the *Burlington* test or as a compensatory remedy?
6. Is the Student entitled to complete [REDACTED] placement at [REDACTED] Maine at public expense either to provide [REDACTED] with a free appropriate public education or as a compensatory remedy?

The District presented first, and bore the burden of proof, pursuant to RSA 186-C:16-b, as to the appropriateness of its proposed IEP and placement from May of [REDACTED] and as to whether it met its Child Find obligations. The Parents presented their case on the second and third days, and bore the burden of proof as to the appropriateness of [REDACTED] unilateral placement at [REDACTED] and [REDACTED] request for reimbursement for costs of that placement.

The following individuals testified for the District:

[REDACTED] Director of Special Education  
[REDACTED] [REDACTED] grade Language Arts teacher  
[REDACTED] Academic Support Coordinator  
[REDACTED] Guidance Counselor  
[REDACTED] School Psychologist  
[REDACTED] Psychologist

The following individuals testified for the Parent:

██████████ LMFT, Executive Director, ██████████ Maine  
██████████ LMSW-CC, ██████████ Maine  
██████████ LCPC, ██████████ Maine  
██████████ MSW, LICSW, therapist  
██████████ Parent

Both parties submitted exhibits, all of which were admitted without objection. Both parties filed post-hearing submissions, including a supplemental memorandum addressing a reimbursement question, prepared at the hearing officer's request.

## II. FACTUAL BACKGROUND

1. Student (d.o.b. ██████████) is a soon-to-be ██████████ year-old ██████████ grader who is currently placed by ██████████ Parent at ██████████ Maine (██████████ a residential therapeutic program in ██████████ Maine.
2. Student began attending ██████████ on May 12, ██████████ Prior to ██████████ placement at ██████████ Student was a ██████████ grader at ██████████ in The District, New Hampshire.
3. Student has been educated in the The District schools since ██████████ grade (██████████). During ██████████ grade, The District placed Student in a Title I reading support program. S-15. In May ██████████ concerned with Student's progress in developing literacy skills, Parent communicated with ██████████ grade teacher, ██████████, P-001, and ██████████ a school counselor S-293, about testing and services for Student.
4. In early June ██████████ ██████████ ██████████ communicated to Parent that the District team (which did not include Parent), "did not see a need for further testing at this time." P-003. The District did not provide the Parent with a copy of IDEA procedural safeguards. *Testimony Parent.*
5. During ██████████ grade (██████████) Student again participated in a Title I reading support program [S-23] as well as a Title I support program for writing. S-23, 25, 27. Records indicate that ██████████ required "consistent support and re-teaching." S-27. During ██████████ grade, Parent again requested that Student be assessed. Both ██████████ classroom teacher and Title I reading teachers completed the NIHQ Vanderbilt Assessment Scale. P-009 through P-012. ██████████ became aware that both Title I teachers rated Student's reading and writing "problematic." P-012; S-295.
6. During ██████████ grade (██████████) Student remained in the Title I writing program. Student's ██████████ grade report card noted, among other things, that ██████████ "continues to make slow, steady progress in all areas of ██████████ grade curriculum", and that ██████████ "tends to be unfocused during class and needs to be frequently redirected back to ██████████ work" S-49.

7. For [redacted] grade ([redacted] Student remained in a Title I reading support program. S-50. Student's mid-year [redacted] grade report card notes: "In independent work, [redacted] can get distracted by neighbors and would benefit from relocating during that time." [redacted] year-end report card notes: "[Student] had a successful [redacted] grade year. [redacted] reading improved significantly and [redacted] comprehension was solid. In writing, [Student] is able to follow the steps to write a good basic paragraph. At times [redacted] showed a better understanding by expanding [redacted] thought beyond the basics. [Student] understood all of the math concepts presented in [redacted] grade but [redacted] should continue to practice [redacted] facts over the summer to reach automaticity. [Student] continues to need constant reminders of class and school rules as it affects [redacted] and [redacted] classmates learning. S-59.
8. In June [redacted] Parent requested that Student be placed in an academic support program for [redacted] grade, in lieu of a foreign language class, to focus on improving [redacted] executive function skills. SA-6; *Testimony Parent*.
9. Beginning in [redacted] Student participated in therapeutic counseling for an hour each week with [redacted] LICSW. [redacted] holds a master's degree in social work from Boston University and is licensed as both an alcohol and drug counselor and a social worker. *Testimony [redacted]* The counseling involved individual sessions as well as sessions with Parent. Additionally, Parent and [redacted] frequently discussed Student's issues, and Parent regularly consulted with [redacted] regarding Student's behaviors and needs.
10. For [redacted] grade ([redacted] Student began attending [redacted] School ([redacted] Due to continuing concerns about [redacted] difficulties with attention, concentration, and organization, Parent arranged for a psychological evaluation of Student in September [redacted] [Parent Test.] [redacted] [redacted] Ph.D., conducted Student's evaluation. S-60. Cognitive testing revealed Student to have a full-scale IQ in the "very superior" range (standard score of 131). S-61. But [redacted] found that Student's "scores for at least three attentional variables are substantially lower than they should be on the basis of [redacted] I.Q. scores." S-61. [redacted] [redacted] diagnosed Student with [redacted] ([redacted] S-63. Parent shared Student's diagnosis with the District. *Testimony [redacted] Parent*.
11. Whenever a teacher has concerns about a student, that teacher brings his or her concerns to the Child Study team. The Child Study Team is a group of professionals in the District, including special education facilitators, guidance counselors, Academic Support staff, reading specialists, behavior specialists, and teachers. When a child's case is brought to the Child Study Team, the team strategizes ways to support the student. At times, students will be referred for special education on the basis of the Child Study Team's determinations. During the time period at issue in this case, Student was never brought up to the Child Study Team because teachers saw [redacted] as a typical and well-performing student. *Testimony [redacted] [redacted]*
12. [redacted] runs an Academic Support program, a regular education intervention led by [redacted] [redacted] for [redacted] and [redacted] grade students who need a designated time for homework and other work completion. This class meets every other day for 45 minutes; it typically involves 5 to 15 minutes of discussing skills such as time management, organizational tools, and mindfulness. The remaining time is dedicated to work completion. *Testimony [redacted]*

13. The Academic Support class meets at the same time as World Language class; students who are not enrolled in a world language are enrolled in Academic Support. *Testimony* [REDACTED]
14. At Parent's request, Student attended Academic Support during [REDACTED] [REDACTED] grade school year ([REDACTED]). In Academic Support, Student worked on completing late assignments. Although Student turned in work that was well done, [REDACTED] at times turned in assignments late. According to school staff, this was not unusual for students of Student's age. *Testimony* [REDACTED] [REDACTED]. At the end of [REDACTED] grade, the school discharged Student from Academic Support, believing that [REDACTED] no longer needed the support it provided, and also mistakenly believing that Parent agreed. At Parent's request, Student was re-enrolled in Academic Support for [REDACTED] [REDACTED] grade year, instead of taking a world language. Student was disappointed not to be taking a world language. *Testimony* [REDACTED]
15. Student had good grades and attendance at school throughout [REDACTED] [REDACTED] grade year ([REDACTED] S-83, 84. Prior to switching to remote learning in March of [REDACTED] Student was earning straight As all but one quarter (in which [REDACTED] received one B grade). S-83. Student was seen as a typical, average to above-average student during this time, and was actively involved in extra-curricular activities. *Testimony* [REDACTED]
16. During Student's [REDACTED] and [REDACTED] grade years, school staff did not believe [REDACTED] was a student that should have been referred for special education. According to school staff, Student was never a "discipline problem" at school, nor did [REDACTED] exhibit defiant or oppositional behavior at school. [REDACTED] engaged with peers at a typical level, and seemed mature for [REDACTED] age in [REDACTED] ability to interact with adults. *Testimony* [REDACTED] [REDACTED]
17. In February of [REDACTED] midway through [REDACTED] grade, Student began taking medication for [REDACTED] [REDACTED] due to escalating symptoms of [REDACTED]. Initially, the medication appeared to have a positive effect on both [REDACTED] [REDACTED] and [REDACTED]. Parent noted a dramatic decrease in [REDACTED] symptoms, and the District noted that Student's demeanor was improved and [REDACTED] was more focused on tasks. SA-166, 167; *Testimony Parent*.
18. During the spring of [REDACTED] in therapy sessions, [REDACTED] [REDACTED] noted that Student was becoming more involved in everyone else's lives (rather than focusing on [REDACTED] experiencing more [REDACTED] symptoms, and having more temper outbursts. [REDACTED] changed [REDACTED] diagnostic impression of Student to [REDACTED]. *Testimony* [REDACTED] SD-92.
19. Student continued at [REDACTED] for [REDACTED] grade school year ([REDACTED]). Despite some initial confusion at school, Student continued to receive academic support that year. SA-215, 220. During [REDACTED] and [REDACTED] grade at [REDACTED] ([REDACTED] and [REDACTED] particularly once [REDACTED] started on medication, Student did much better with academics despite some struggles with [REDACTED] SF-3.
20. Throughout September and October of [REDACTED] Student experienced repeated sexual harassment, bullying, and assault on the school bus at the hands of [REDACTED] peers. The incidents were substantiated by the school's investigation. S-76, 78 – 82; SA-296, 432.

21. On March 13, ██████ in response to the COVID-19 pandemic, the District switched to remote learning. During this period, remote learning was thought to be a temporary solution to a temporary problem, and thus, it was mostly a matter of sending work home to be completed. During this time, work was assigned without direct instruction. *Testimony* ██████ ██████ Beginning in March ██████ Student significantly struggled to complete schoolwork. S-84; *Testimony Parent*, ██████
22. Teachers' roles changed significantly during this period of remote learning. Since there was no direct instruction, teachers reached out to students directly to check on them, usually via email. Most of the students Student's age were not accustomed to communicating via email prior to the pandemic, which at times made communication challenging. *Testimony* ██████ ██████
23. Remote learning was a new experience for all students; many students began having increased trouble with work completion. Teachers did not refer students for special education based solely on difficulties making the transition to remote learning, as this would be a disproportionate response to a widespread and reasonable struggle. *Testimony* ██████ According to the District, it did not refer Student for special education during ██████ ██████ grade year because, from the school's perspective, ██████ did very well prior to the pandemic closure, and ██████ decline in performance during the closure appeared to be due to shared difficulties with remote learning, rather than a disability. *Testimony* ██████ ██████ Parent, too, believed that Student was having a "great year," prior to the onset of the pandemic. SA-7.
24. During therapy at around this time, Student's behaviors began indicating other diagnoses to ██████ ██████ and ██████ ██████ determined that Student needed more than the one hour per week of therapy ██████ could provide. *Testimony* ██████
25. Prior to the onset of the pandemic, Student reported being frequently grounded, and restricted from using ██████ phone. Over the course of the semester, Student's teachers and guidance counselor became concerned about Student's level of isolation. *Testimony* ██████ ██████
26. By mid-May of ██████ Student had accumulated a number of incomplete assignments. SA-483; SA-139. Parent communicated to ██████ the academic support teacher, that Student was "struggling more as time goes on." SA-155 & S-156. ██████ ██████ agreed, explaining that Student often would not respond or show up for Google Meets video conference meetings, and was not engaging in school at all. *Testimony* ██████ By the end of May, ██████ ██████ was concerned Student had "a failing grade in social studies . . . and [had not] handed in any work this week for science or Language Arts. SA-490. As of June, ██████ Student was still failing social studies. SA-363.
27. Despite delays in work completion, Student was able to turn in ██████ assignments and pass each of ██████ classes at the end of the ██████ school year. S-83. For semester grades in the spring of ██████ the District adopted Pass/Fail grading. These grades were earned, and resulted from the quality of the work that Student submitted, despite having been turned in late in the school year. Grades for "Effort" remained on a letter grading system

in the final quarter, and the grades assigned reflect the true grade earned. *Testimony* [REDACTED] [REDACTED] Student received mostly As and Bs in Effort, with one C-. S-83.

28. On June 16, [REDACTED] Student reported to [REDACTED] [REDACTED] that [REDACTED] had made attempts at suicide and other self-harm. Concerned, [REDACTED] [REDACTED] recommended a step-up in Student's level of care. Parent discussed the issue with [REDACTED] [REDACTED] and with Student's APRN, [REDACTED]. Both explained to Parent that Student was showing signs of emerging [REDACTED] [REDACTED] ( [REDACTED] which involves issues with emotional regulation, impulsivity, and poor distress tolerance. They advised that [REDACTED] emerging profile required intervention using dialectical behavior therapy, or "DBT." SC-37; *Testimony Parent*, [REDACTED]
29. Both Parent and [REDACTED] [REDACTED] searched diligently for outpatient DBT programs that would accept a student under age 13, but they were unsuccessful. Many programs were shut down due to the pandemic or would not take students as young as Student. All they could find was an online support program through [REDACTED] in Nashua. SD 37-38; SB-128; *Testimony Parent*.
30. In the summer of [REDACTED] Student was placed by [REDACTED] [REDACTED] in an out-patient program called [REDACTED] that met four days per week, for about three hours per session. SB-128-141. Student participated in the program and loved attending; however, according to the Parent and [REDACTED] [REDACTED] Student's behavior continued to decline and [REDACTED] discussed wanting to be hospitalized, which caused them great concern. [REDACTED] was intended to last 6 weeks; because Parent felt the program was not working, [REDACTED] withdrew Student after about two weeks per [REDACTED] [REDACTED] recommendation. S-202, S-B-79, 81, 141; SC-34; *Testimony Parent*.
31. In August of [REDACTED] [REDACTED] [REDACTED] recommended to Parent that Student needed DBT group. However, neither [REDACTED] nor Parent was able to identify a full-fidelity DBT outpatient program for adolescents. *Testimony* [REDACTED] *Parent*.
32. Pursuant to the District's "Reopening Plan", Student began [REDACTED] grade ( [REDACTED] at the [REDACTED] [REDACTED] which served [REDACTED] and [REDACTED] graders. At this time, the District had adopted a "hybrid" learning model, in which half of the student population would attend school in-person on Mondays and Wednesdays, and the other half attended in-person on Tuesdays and Thursdays, with alternating in-person Fridays. Some students opted for fully remote learning at this time. For fully remote students, classes took place on the Google Meet platform every other day; on "off" days, students received assignments remotely in the same manner as did the hybrid students. Student began the school year as a hybrid student. *Testimony* [REDACTED]
33. Parent hired [REDACTED] a substitute teacher and tutor at the school, to work 1:1 with Student during [REDACTED] distance learning day given [REDACTED] difficulties at the end of [REDACTED] grade. [REDACTED] [REDACTED] tutored Student from October of [REDACTED] to May of [REDACTED] P-353. Parent provided the [REDACTED] school with a release to communicate with [REDACTED] [REDACTED] concerning Student. Id. In March [REDACTED] Parent hired a second tutor, who worked 1:1 with Student on mathematics for four hours per week, from March 5 to April 30, [REDACTED] as Student was unable to engage even with an academic topic [REDACTED] loved. S-144; *Testimony Parent*.

34. According to the District, Student was not a discipline problem in the fall of [REDACTED] nor did [REDACTED] have issues with attendance or tardies that would raise a red flag for an attendance issue. [REDACTED] testimony. Many of [REDACTED] tardies were for being a few minutes late to home room. Student's overall performance in the fall of [REDACTED] did not indicate either a disability or a need for a referral to special education. *Testimony* [REDACTED]
35. [REDACTED] [REDACTED] discussed potential interventions for Student to address [REDACTED] difficulty with work completion, with [REDACTED] primary recommendation being to move Student from Latin and into Academic Support. This change would have had the effect of lightening Student's academic workload, while also providing [REDACTED] with the structure and guidance that the Academic Support program could offer. Parent was not willing to move Student back into Academic Support in lieu of Latin. *Testimony* [REDACTED]
36. On December 1, [REDACTED] during the Covid surge, Parent advised the District that Student and [REDACTED] sibling would be switching to fully remote learning in order to protect Parent, due to Parent's medical vulnerability. Student's reluctance to make this switch led to a compromise between [REDACTED] and [REDACTED] whereby Student would continue attending school in person for Latin class, [REDACTED] only in-school class. At the time of Student's transition to remote learning, [REDACTED] was already failing or had not completed any work to be graded in multiple classes. S-88, 89; SA-317; SB-102, 103; *Testimony Parent*, [REDACTED] [REDACTED]
37. Parent noticed a reduction in Student's [REDACTED] and self-harm while [REDACTED] was learning remotely. [REDACTED] [REDACTED] also observed some improvement when Student moved to fully remote learning, away from school drama. *Testimony Parent*, [REDACTED]
38. [REDACTED] [REDACTED] noted that Student continued to deteriorate in [REDACTED] grade. Student no longer played soccer, [REDACTED] self-care had declined, and [REDACTED] bad behavior was increasingly escalating. Student called [REDACTED] lying and stealing a "habit". [REDACTED] [REDACTED] opined that Student continued to exhibit signs of [REDACTED]. *Testimony* [REDACTED] Parent noted that Student's ability to participate in many daily living skills, including personal hygiene, declined markedly during this time period. *Testimony Parent*.
39. At school, Student appeared unmotivated to engage in learning or complete [REDACTED] assigned work. *Testimony* [REDACTED] [REDACTED] also struggled socially and maintained few, if any, friendships, a significant departure from previous times. SB-129, 130; *Testimony Parent*.
40. At about that time, still attempting to identify a placement at which Student could receive DBT, Parent contacted [REDACTED] the District's out-of-district placement coordinator. One potential placement they discussed was [REDACTED] Maine.
41. In December [REDACTED] based on referrals from [REDACTED] counselor and psychiatric APRN, Student participated in a comprehensive neuropsychological evaluation conducted by [REDACTED] [REDACTED] Psy.D., of the [REDACTED]. The evaluation report issued on January 20, [REDACTED] S-91. [REDACTED] [REDACTED] diagnosed Student with [REDACTED] [REDACTED] and emerging [REDACTED] plus [REDACTED] combined type based on history. S-101. [REDACTED] found that Student continued to demonstrate a high IQ (standard score of 126), but "had a

surprising amount of difficulty reading a group of words quickly and accurately,” which suggested difficulties with [REDACTED] processing speed. S-96, 98.

42. According to [REDACTED] [REDACTED] “Student currently needs intensive intervention to learn how to get what [REDACTED] needs from [REDACTED] environment more effectively. This can be done by improving [REDACTED] ability to regulate [REDACTED] emotions, tolerate distress when it arises, and use more effective interpersonal skills.” [REDACTED] [REDACTED] strongly recommended that Student receive intensive intervention using DBT to improve [REDACTED] ability to regulate [REDACTED] emotions, tolerate distress, and develop more effective interpersonal skills. [REDACTED] also endorsed Student’s eligibility for special education services, and predicted that Student likely would experience slow overall gains even with intensive therapeutic intervention. S-101, 102.
43. In January [REDACTED] the District commenced an IDEA referral of Student. S-106 & S-107; S-114. Prior to this point, Parent had always trusted and supported the District educators and had believed their consistent advice that Student did not require further evaluation. [REDACTED] remained hopeful that The District would be able to help [REDACTED] find an appropriate DBT treatment program for Student, given the difficulties [REDACTED] had encountered during [REDACTED] own search. S-145, 146; *Testimony Parent*.
44. Parent and [REDACTED] [REDACTED] continued their search for a placement capable of delivering DBT for Student, exploring [REDACTED] Maine; [REDACTED] in Virginia; [REDACTED] the [REDACTED] [REDACTED] of New England; and [REDACTED] among others. S-202; P-015 through P-019; SC-49; SB-106; *Testimony [REDACTED] Parent*. Only [REDACTED] Maine remained as a potential fit, in Parent’s view, for Student among available placement options within reasonable visitation distance. Parent therefore filed an initial electronic application with [REDACTED] on January 11, [REDACTED] SF-1 through SF-8; *Testimony of Parent*. Parent also exchanged emails with the [REDACTED] admissions director, Sue [REDACTED]
45. The District convened an initial IEP Team meeting for Student on February 1, [REDACTED] Parent signed the District’s permission for evaluation form on February 4, [REDACTED] S-124. In an addendum to the meeting minutes, dated February 9, [REDACTED] Parent noted “pattern of self-harm, suicidal ideation, and self-harm that [REDACTED] reports as suicide attempts.” S-118; S-119.
46. [REDACTED] [REDACTED] the school psychologist, conducted issued his psychoeducational evaluation on March 15, [REDACTED] and issued his report on March 22, [REDACTED] S-126; SA-144. [REDACTED] [REDACTED] Student’s Latin teacher, provided the teacher rating scales for this report, noting that Student’s “emotional state is up and down” and rating as “Often” the number of times Student exhibited negative behaviors. S-130. Student completed rating scales as well, reporting what [REDACTED] [REDACTED] recognized as “many significant social and emotional challenges for a child [REDACTED] age.” S-131. As part of his evaluation, [REDACTED] [REDACTED] reviewed prior evaluations of Student, including the [REDACTED] psychological evaluation by [REDACTED] [REDACTED] [REDACTED] found that Student had many negative emotions and attitudes towards [REDACTED] and faced obstacles with [REDACTED] family. S-198. Despite [REDACTED] social-emotional challenges, [REDACTED] [REDACTED] found that Student’s academic skills had been developing effectively, with superior abilities in [REDACTED] application of math skills. [REDACTED] [REDACTED] was not comfortable with the diagnosis of [REDACTED] some of the criteria for the diagnosis seemed inappropriate to apply to someone of Student’s age. For example, adolescents have an inherently fluctuating sense of self, the presence of which is one of the diagnostic criteria for [REDACTED] [REDACTED] [REDACTED] concluded that Student was “an emotionally restless [REDACTED] who has



significant obstacles in terms of how [REDACTED] views both [REDACTED] and [REDACTED] family. Student reported having many negative emotions as well as negative attitudes towards [REDACTED]. [REDACTED] also reported a significant feeling of helplessness and difficulty socializing effectively with others.” S-133. [REDACTED] [REDACTED] acknowledged that diagnoses of personality disorders were not within his scope of competence, but that [REDACTED] was concerned with Student’s expression of mood difficulties and sadness. [REDACTED] noted that teachers in grades four through six had consistently expressed concerns about Student’s attentiveness in class, but it appeared that their support was adequate to help [REDACTED] be successful. *Testimony* [REDACTED]

47. The District held an eligibility meeting of Student’s IEP Team on March 30, [REDACTED]. After considering [REDACTED] [REDACTED] report, and evaluations by outside providers shared by Parent, the team found Student eligible under the category of Emotional Disturbance. S-142; S-147.
48. Based on the discussion at the March 30, [REDACTED] meeting, Parent was concerned that the District had already decided not to provide DBT services. After that meeting, Parent spoke with special education director [REDACTED] who assured Parent that [REDACTED] would reach out to [REDACTED] contacts to identify DBT programs that may have availability for Student. P-028.
49. In mid-April of [REDACTED] [REDACTED] [REDACTED] explored the possibility of Student going to [REDACTED] as [REDACTED] next school placement. Student was open to this option so long as it involved being around animals. SB-123. On April 14, [REDACTED] [REDACTED] [REDACTED] wrote a letter to the IEP Team. In the letter, [REDACTED] [REDACTED] stated that, with Student’s [REDACTED] diagnosis, [REDACTED] would be unable to maintain [REDACTED] educational level of progress without proper support for [REDACTED] mental health. [REDACTED] recommended that Student be “placed in an intensive inpatient treatment program in order to have the best chance of success.” S-165. [REDACTED] [REDACTED] believed it unlikely that Student would engage in day programming, and would be triggered too much by remaining in [REDACTED] home environment and by the physical assault [REDACTED] already had experienced on the school bus, thereby impeding [REDACTED] therapeutic progress. [REDACTED] [REDACTED] opined that Student required DBT supports throughout [REDACTED] day. *Testimony* [REDACTED]
50. On April 15, [REDACTED] [REDACTED] a special education teacher, prepared and distributed a draft IEP for Student. SA-66; SA-321; S-167. On April 21, [REDACTED] Parent responded to the draft IEP with a statement of concerns; [REDACTED] also attached information concerning [REDACTED] Maine. SA-321, 322; S-192. Parent stated that [REDACTED] believed that a denial of DBT treatment for Student is a denial of FAPE, and indicated that [REDACTED] Maine, which had indicated it would accept Student, was “one of very few residential programs offering DBT and education and accepting [REDACTED] patients in New England.” S-186. Given Parent’s concerns with the draft IEP, the District rescheduled Student’s IEP Team meeting to May 3, [REDACTED] after the April school vacation. S-188; S-189
51. On April 23, [REDACTED] Parent notified the District of [REDACTED] plan to visit “a private therapeutic school that utilizes DBT.” Parent also provided the District with reimbursement notice for a potential unilateral placement, stating: “Pending the results of our May 3, [REDACTED] meeting, I plan to remove [Student] from SAU #25 and into a therapeutic private school (to be determined) that offers the

services ■ needs to get well and access the education ■ is entitled to.” The letter did not identify a private school by name. Although the District had yet to propose a program, the letter did outline concerns regarding Student’s deterioration, and the provision of DBT services by the District. S-191.

52. On April 26, ■ ■ ■ ■ ■ APRN, who managed Student’s medications, recommended a therapeutic residential placement for Student to address ■ emerging ■ S-195. Parent forwarded this correspondence to IEP Team for consideration at its upcoming meeting. SA-258.
53. On April 29, ■ Parent visited ■ Maine, and was favorably impressed with their program. S-311; P-030; *Testimony Parent*
54. Student’s IEP Team met on May 3 and 4, ■ for the purpose of developing ■ IEP and determining ■ placement. S-198. ■ ■ ■ ■ ■ attended the May 3 session. Although ■ had attended the evaluation meeting in March, ■ ■ ■ ■ ■ attended neither of the May meetings. The May 3-4 IEP Team meeting was the first attended by the District’s special education director, ■ ■ ■ ■ ■ agreed that “Student requires intensive DBT treatment,” although ■ opinion was that daily DBT services for Student did not need to be provided in a residential placement. S-200; *Testimony ■ Parent* “expressed concerns about Student being successful while continuing to live at home,” given ■ experience in the outpatient program offered by Direction in ■ S-200; *Testimony Parent*. Parent also noted that Student was positive about participating in the ■ program. S-201; SB-126; *Testimony Parent*. District members of the team found no evidence to indicate that Student required a residential placement. In their view, during the time Student attended in-person school, ■ was successful there. Prior to remote learning, Student had good attendance. The District members of the team believed that Student would have also have good attendance at a day placement. *Testimony ■*
55. ■ ■ ■ ■ ■ told the team that Student’s program would need to provide constant redirection from someone trained in DBT and that “Student needs immersion in a DBT program for it to be successful for ■ age,” because a day placement would merely be “putting a bandaid on the problem.” S-199, S-201.
56. At the second session of the IEP Team meeting on Tuesday, May 4, ■ The District invited ■ ■ ■ ■ ■ its out-of-district placement coordinator, to discuss Student’s potential placement. S-201; S-208. ■ ■ ■ ■ ■ continued to propose only day school programming, stating that ■ “doesn’t feel Student’s needs rise to the level of residential placement. 45. When the IEP team met to discuss an IEP and placement for Student on May 3 and 4, ■ Parent was clear that ■ wanted a residential program for Student. S-200-201; *Testimony ■ ■ ■ ■ ■* The District believed that there was not enough evidence to determine that a residential program was necessary, particularly given that few interventions had been attempted thus far. *Testimony ■ ■ ■ ■ ■*

57. The District proposed a placement at a special education private day school. S-202; *Testimony* [REDACTED] Since this proposal would have Student in a therapeutic day school for [REDACTED] entire school day, 6.5 hours of [REDACTED] day would take place in special education. The District identified three schools that the District team members believed, at the time, could deliver the IEP's services, including DBT. S-202-203; the [REDACTED] School in [REDACTED] Massachusetts; [REDACTED] School in [REDACTED] New Hampshire; and [REDACTED] in [REDACTED] Massachusetts. *Testimony* [REDACTED]
58. At the IEP Team meeting on May 4, [REDACTED] Parent explained that [REDACTED] had a "time deadline of this week or I might lose another placement opportunity (at [REDACTED] the residential program I visited over spring break)." In response, "[REDACTED] [REDACTED] indicated that [REDACTED] would provide me with a new IEP proposal by Friday, May 7, [REDACTED] incorporating this new out-of-district plan." S-206.
59. Following the May 4 IEP team meeting, Parent and [REDACTED] [REDACTED] continued their discussion. During this discussion, [REDACTED] [REDACTED] shared [REDACTED] concerns, based upon prior experiences with [REDACTED] about troubling practices at that facility, including concerns about [REDACTED] behavioral interventions and academic program. Parent did not seem receptive to these concerns. S-207; *Testimony* [REDACTED] At the time of the May 4 meeting, the District was not yet aware that [REDACTED] was not approved as a special purpose private school in Maine.
60. Following the May 4 meeting, [REDACTED] [REDACTED] asked for Parent's release for the purpose of scheduling a meeting with the [REDACTED] School's admissions director. Parent immediately complied and sent back the signed release. SA-78.
61. The following day, Parent attended a tour of the [REDACTED] School. Prior to the tour, the District believed that the [REDACTED] School had in-house therapists who could implement DBT services for students. At the tour, the parties learned that the [REDACTED] School utilizes out-patient DBT providers to deliver DBT in its program, and that these providers were currently unavailable. *Testimony* [REDACTED]
62. After this visit to the [REDACTED] School, the Parent declined further tours or Google Meets with prospective schools, unless there was confirmation from them of a "strong DBT component." *Testimony Parent*. The Parent declined to sign releases for other schools, including [REDACTED] [REDACTED] School, until after filing for due process. S-228; SA-108; *Testimony* [REDACTED]
63. At 2:53 on the afternoon of Friday, May 7, [REDACTED] Special Education Facilitator [REDACTED] sent Parent the District's IEP offer for Student, along with a written prior notice and minutes from the May 3-4 meeting. P-043; S-208; S-210; S-236; *Testimony Parent*. This proposed IEP was not reviewed by [REDACTED] [REDACTED] prior to being sent to the Parent. *Testimony* [REDACTED]
64. After reviewing the proposed May 7 IEP and recognizing that it did not reflect the IEP team meeting discussion, Parent sent a reply email to [REDACTED] [REDACTED] at 6:53 pm that evening, stating that the IEP was not consistent with the meeting or with the meeting minutes, and detailing each of the errors. Parent also sent an email to [REDACTED] [REDACTED] on the afternoon of May 7, in which [REDACTED]

described these discrepancies between the proposed IEP and the meeting discussion, and indicated that [REDACTED] was now filling out the [REDACTED] paperwork. S-316; *Testimony Parent*

65. On May 7, [REDACTED] after reviewing the IEP proposal from [REDACTED] [REDACTED] Parent sent the formal application enrollment forms to [REDACTED] electronically using DocuSign.
66. The following Monday morning, May 10, [REDACTED] [REDACTED] [REDACTED] responded to Parent's email about the IEP issues, saying: "I'll need a few days, but I will get back to you this week." P-042. Parent then decided to continue with [REDACTED] enrollment process, making the initial payment on May 11, [REDACTED] *Testimony Parent*.
67. By letter dated May 11, [REDACTED] which [REDACTED] emailed to the District, Parent rejected the proposed IEP and placement offer as insufficient, and notified the District that Student would begin at [REDACTED] the following day, Wednesday, May 12, [REDACTED] S-235; SA-128.
68. [REDACTED] [REDACTED] acknowledged that [REDACTED] received Parent's email on May 11, but did not reply in any manner until [REDACTED] sent out a revised IEP three days later, May 14, [REDACTED] only by certified mail. S-240; *Testimony [REDACTED]* In July, [REDACTED] [REDACTED] admitted that the proposed IEP sent on May 7, which was the only IEP Parent had at the time [REDACTED] made [REDACTED] placement decision, "had some errors in it, which did not reflect the discussion we had at the team meeting." S-274. Parent did not receive [REDACTED] [REDACTED] May 14 letter until the following Friday, May 21, when the Superintendent asked [REDACTED] [REDACTED] to email it to Parent.
69. Student started at [REDACTED] on May 12, [REDACTED] *Testimony [REDACTED] Parent*.
70. Parent later responded to The District's second proposed IEP, indicating that [REDACTED] still did not agree with its amended terms. [REDACTED] wrote: "I cannot and will not agree to an IEP that promises an out-of-district day school placement when there is no indication that there is one available that will meet Student's needs—needs that are not in dispute among IEP Team members." S-268.
71. [REDACTED] is a residential therapeutic school located in the midcoast rural town of [REDACTED] Maine. It is fully licensed by the Maine Department of Health and Human Services as a residential treatment center and is accredited by the New England Association of Schools and Colleges (NEASC). S-159; *Testimony [REDACTED] [REDACTED] Director of Education, [REDACTED] [REDACTED] holds certifications from the Maine Department of Education as a Special Education Administrator, Director, and Teacher of Students with Disabilities. SE-42.*
72. [REDACTED] witnesses and documents attested to the following:

[REDACTED] offers a year-round, DBT program that is trauma informed, relationship-based, and uses behavior chain analysis to help its residents understand and reshape their behaviors. Its strength-based approach is designed for emotionally-traumatized students. [REDACTED] has a maximum of 45 teen-aged residents across two principal campuses. The camp-like [REDACTED] campus

is for students at levels 1 and 2 of the program, while the [REDACTED] is for students at levels 3 and 4. There is approximately an equal number of males and females at [REDACTED] students receive a school-approved wardrobe to diminish distractions, and are not allowed access to cell phones, internet, or television, so they can focus internally while at [REDACTED] employs ten masters-level therapists, plus residential staff, academic faculty, and awake overnight staff. All [REDACTED] staff members are trained in the fundamentals of DBT. Staff members communicate with the therapists to provide insight as well as in-the-moment support for students. [REDACTED] utilizes four DBT modules of 2-3 months each with its students: mindfulness, distress tolerance, motion regulation and interpersonal effectiveness. Because DBT skills require practice to become internalized, [REDACTED] “DBT lessons are enhanced when the skills are reinforced daily within the behavioral milieu, during individual and family therapy.” *Testimony [REDACTED] Hendy.*

73. Although the District continues to maintain that there are day school programs available that could provide DBT programming for Student, its offer ultimately focused exclusively on the [REDACTED] School in [REDACTED] Massachusetts. [REDACTED] confirmed Parent’s experience when [REDACTED] reached out to colleagues seeking DBT placement options, only to discover that DBT programs are difficult to find for students of Student’s age. *Testimony [REDACTED] Parent.*
74. Parent visited the [REDACTED] website seeking information on whether that school provided a DBT treatment program. [REDACTED] of [REDACTED] responded to Parent in late August and informed [REDACTED] that [REDACTED] does not offer any specialized DBT programming, although some of the clinicians employed there do have some DBT training that they may utilize. *Testimony Parent*
75. According to the District, Student could receive twice-weekly DBT services from the DBT-trained clinicians, with the option of increasing the number of sessions as needed. [REDACTED] also determined that [REDACTED] has a strong academic component, and offers a six-week summer program. At the September [REDACTED] meeting at [REDACTED], [REDACTED] and [REDACTED] admissions director, [REDACTED] acknowledged that the [REDACTED] day school program was not a DBT program, and would not offer the type of programming Student is receiving at [REDACTED] and suggested adding on services outside the school day. *Testimony [REDACTED]*
76. On November 2, [REDACTED] conducted an assessment of Student’s reading skills at [REDACTED]. [REDACTED] assessment included test administration, observation of the learning environment, and an interview with Student. [REDACTED] concluded that Student had strong reading skills, and does not fit the profile for a specific learning disability. S-283; *Testimony [REDACTED]*

### III. DISCUSSION

#### A. The District’s Proposed Placement

The appropriateness of a school district’s action must be reviewed in terms of what was reasonable at the time the IEP was developed. See *Roland M. v. Concord School Committee*, 910 F.2d 983, 992 (1st Cir. 1990), cert.denied 111 S. Ct. 1122 (1991). The IDEA and federal and state special education regulations require that Student be placed in the least restrictive appropriate environment. See 20 U.S.C. §

1412(a)(5)(A) (emphasis added). Schools must make available a “continuum” of placement options, ranging from mainstream public school placements, through placement in special day schools, residential schools, home instruction and hospital placement. See 34 C.F.R. § 300.551(b)(2), 300.552(c), (e), 300.553; Ed. 1115.04(b) (emphasis added). In other words, a student must be placed in the least restrictive environment in which the student can make meaningful educational progress.

Under the IDEA, students must be educated in the least restrictive environment that meets the requirements of educational benefit. Kathleen H. v. Mass. Department of Education, 154 F.3d 8 (1<sup>st</sup> Cir. 1998). The question is whether Student requires residential programming in order to achieve meaningful educational progress in light of all the circumstances. Andrew F. v. Douglas City School District R.E.-1, 580 U.S. \_\_\_, 137 S. Ct. 988 (2017).

At the outset, it should be clarified that the District’s formal IEP and placement proposal is the one sent by [REDACTED] [REDACTED] to the Parent on May 14, [REDACTED]. No one disputes that the first IEP sent to the Parent on May 7, [REDACTED] contained errors and did not reflect the team’s actual decisions. The second IEP, sent out by [REDACTED] [REDACTED] on May 14, [REDACTED] is the District’s IEP and placement proposal and is consistent with the team discussions.

The proposed IEP reflected Student’s need for DBT therapy, a central issue in this case. The IEP included goals for addressing social conflicts, and a goal for addressing emotionally challenging circumstances. S-253. The executive functioning goal addresses Student’s difficulty with work completion. The IEP includes classroom accommodations. The placement proposal in the IEP is for a private special education school. According to [REDACTED] [REDACTED] Student would receive specialized instruction with behavioral and emotional support throughout the day, in a small group setting with low teacher/student ratio. The IEP proposed individual counseling twice per week, for 30 minutes, and group counseling once per week for 30 minutes; these would be DBT sessions. The District also offered to arrange and fund appropriate wrap-around services and other supports, which would have provided Student with access to additional DBT sessions, and to other supports as needed. *Testimony* [REDACTED]

In this case, the evidence is inconclusive as to Student’s need for residential program in order to benefit from education. The District’s proposed IEP, as amended and sent to the Parent on May 14, [REDACTED] was reasonably calculated to provide Student with educational benefit in the least restrictive environment. However, it is unclear whether actual DBT therapies, or private day placements – including [REDACTED] – were then available to implement the IEP.

## **B. Parent’s Unilateral Placement at [REDACTED] – Reimbursement**

### **a) Notice**

Parents who intend to seek reimbursement for a private unilateral placement must provide proper notice to the District. Reimbursement may be denied or reduced if:

- (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to

provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- (II) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (I).

20 U.S.C. §1412(a)(10)(C)(iii); 34 C.F.R. §300.148. The notice requirement “serves the important purpose of giving the school system the opportunity, before the child is removed, to assemble the Team, evaluate the child, devise an appropriate plan, and determine whether a free appropriate public education can be provided in the public schools.” Greenland School District v. Amy N., 358 F.3d 150, 160 (1<sup>st</sup> Cir. 2004).

The relevant sequence of events is as follows:

On April 2, [REDACTED] Parent emailed the neuropsychiatric evaluation to [REDACTED] SC-24

On April 6, [REDACTED] [REDACTED] emailed to the Parent an acceptance letter “to whom it may concern”, stating that Student had been accepted into the [REDACTED] program, and would be enrolled for the remainder of the [REDACTED] school year, the summer of [REDACTED] and part of the [REDACTED] school year. SC-23.

On April 21, [REDACTED] Parent forwarded information on [REDACTED] to the District team members in advance of the IEP team meeting scheduled for May 3, [REDACTED]

On April 23, [REDACTED] Parent sent the District what [REDACTED] characterizes as the required notice of unilateral placement. In this letter, Parent outlined [REDACTED] concerns, advised the District that there was an opening at a residential placement (which is not specifically identified), and stated that time was of the essence. This letter was issued to the District prior to the first IEP meeting, and so Parent advised that the notice was conditional pending the results of the May 3, [REDACTED] meeting. At that time, there had been no placement proposal; the parties had agreed to postpone the team meeting at which the IEP and placement would be discussed to May 3, [REDACTED]

The team meeting was held over two days – May 3 and 4, [REDACTED] Following the May 4, [REDACTED] meeting, the specific placement at [REDACTED] was discussed.

On May 5, [REDACTED] prior to receiving a proposed IEP, but following [REDACTED] visit to the [REDACTED] School, Parent informed [REDACTED] that [REDACTED] would be enrolling Student there. P-037. On May 7, [REDACTED] following receipt of the first IEP which contained errors, Parent submitted, via DocuSign, the required enrollment materials to [REDACTED] On May 11, [REDACTED] Parent electronically submitted the first payment to [REDACTED] P-347. Also on May 11, [REDACTED] Parent emailed correspondence to the District advising that Student would be placed at [REDACTED] starting the following day (May 12). Student began attending [REDACTED] on May 12, [REDACTED]

Whether proper notice was given turns on whether the April 23, [REDACTED] letter met the IDEA notice requirements. The April 23, [REDACTED] letter does not identify a specific placement, but it does articulate Parent's concerns generally and advises the District of a time-limited opening at the residential program. That Parent made this notice conditional pending the results of the May 3, [REDACTED] team meeting is evidence of good faith on [REDACTED] part. Taken together with the April 21, [REDACTED] email attaching [REDACTED] information, the letter constitutes adequate notice to the District.

The District points out that the April 23, [REDACTED] letter could not have been a "rejection of a placement proposal" because a proposal had not yet been made. But had the Parent waited until the placement proposal on May 3 or 4 before providing notice, [REDACTED] risked forfeiting the [REDACTED] spot being held open for the following week. In other words, it would have been impossible to both wait for a placement proposal and provide timely notice, without likely losing the [REDACTED] spot.

Some courts have held that "removal" occurs when parents sign an enrollment contract; others have held that it occurs when the student first attends an orientation session or classes at the private school. (citations omitted). In this case, whether removal occurred on May 7 when Parent forwarded the enrollment materials, on May 11 when Parent made the first payment, or on May 12, when Student began attending [REDACTED] timely notice was given as of April 23, [REDACTED]

#### **b) Appropriateness of [REDACTED] Placement**

Parent has the burden of proof regarding whether [REDACTED] is appropriate. *D.B. v. Esposito*, 675 F.3d 26, 35 (1<sup>st</sup> Cir. 2021). As noted above, although the IEP as amended was reasonably calculated to provide Student with a FAPE, it is not apparent whether the agreed-upon DBT therapies were actually available and ready to be implemented in a timely manner at any of the private day schools proposed by the District.

Regardless, for the reasons set forth below, I find that [REDACTED] was not an appropriate placement. See *Rafferty v. Cranston Public School Committee*, 315 F.3d 21 (1<sup>st</sup> Cir. 2002).

First, there is [REDACTED] approval status, and the way in which [REDACTED] represented it. [REDACTED] is a for-profit corporation; it is not and has never been an approved special purpose private school (SPPS). For about three years, [REDACTED] was continuously engaged in applying for SPPS status from the Maine Department of Education (Maine DOE), before abandoning the project around July [REDACTED]. See SE-3. [REDACTED] is no longer seeking certification as a SPPS. *Testimony* [REDACTED]. In September of [REDACTED] the Maine Department of Education mistakenly sent [REDACTED] a SPPS License in an email to [REDACTED], [REDACTED] Compliance Director at the time. [REDACTED] Ryan was the only individual on the email; [REDACTED] [REDACTED] received the copy of the mistakenly issued "license" from [REDACTED] [REDACTED]. Within days of receiving this "license", [REDACTED] staff sought clarification from the Maine DOE and were told that the "license" was mistakenly issued, and that [REDACTED] was not authorized to operate a SPPS at this time. [REDACTED] [REDACTED] spoke to [REDACTED] [REDACTED] about this communication from Maine DOE, and made [REDACTED] aware that [REDACTED] was not a licensed SPPS. Despite having received this explanation from the Maine DOE, [REDACTED] held itself out as a SPPS using the mistakenly-issued "license". SC-23; *Testimony* [REDACTED]

[REDACTED] [REDACTED] was the Executive Director during the time Parent was applying to [REDACTED] for Student, and while [REDACTED] was deciding whether to enroll Student there. In an email to Parent on April 6, [REDACTED] [REDACTED] [REDACTED] represented to Parent that [REDACTED] had received SPPS status, attaching a copy of the



“license” in question. S-C-23. At the due process hearing, ██████ testified that ██████ “should not have done that.” *Testimony* ██████ ██████ was aware that ██████ had not received the license, but that ██████ “thought that we were in the process of getting the license and that we would get it, like, within a week.” ██████ understood, from ██████ conversation with ██████ about the mistakenly-issued “license,” that receipt of a real license was going to be “delayed,” because they needed to do “more work on our policies.” *Id.* Although lack of approval or licensing does not, in and of itself, bar reimbursement, the above-described circumstances are concerning.

The second issue is the learning environment at ██████ According to District professionals, Student can engage best in academic environments that encourage discussion; ██████ is a curious and engaged learner, who requires academic rigor and discussion-based learning in an appropriate educational program. *Testimony* ██████ ██████ But ██████ educational program is limited to “concentrated study time”, utilizing self-directed learning activities, with monitoring by a teacher. SE-45. Students complete their work quietly, and without engagement with their peers. This was noted by ██████ ██████ during ██████ November 4, ██████ observation of Student in the ██████ learning environment; although a teacher was present in the room, ██████ interaction with students was limited to checking a student’s work or speaking with them individually. S-287. There is no discussion-based academic learning; students are prohibited from talking during school. SF-81; *Testimony* ██████ ██████ Students are not separated by age or grade level; there are two sessions per school day, where students are separated by gender on the ██████ campus (for “Level 1” students). ██████ utilizes Edmentum’s online PLATO courses for curricular purposes. SE-31. Until they reach “Level 2” in the program, students are not permitted access to the internet; only upon reaching “Level 2” do student receive access to a computer for word processing. *Testimony* ██████ ██████ During Student’s interview with ██████ ██████ on November 4, ██████ Student also indicated that “all academic work is independently driven and ██████ follows up with a teacher for explanation and support if needed.” S-288. Despite the shorter amount of academic time compared to a more traditional school, Student reported that ██████ was “completing a lot of work” and was almost finished with ██████ grade. Student noted that ██████ thought “this way of learning is easier because school is only three hours.” S-288.

Along similar lines, elements of ██████ academic curriculum do not appear to meet Maine’s academic standards, as outlined in the Maine Learning Results. SE-46, 47, 61, 64, 65, 67, 68, 69. Documentary evidence and testimony do not establish that ██████ has filled these instructional gaps. Additionally, Student’s “████████ Education Plan”, found at SE-45, predicts the number of credits that ██████ will attain upon completion, notes ██████ projected grade by the end of ██████ time there, and contains one brief progress note from August 6, ██████ ██████ progress reports from ██████ consist of a list of rows of what appear to be dates, or possibly fractions, next to each academic subject; there is no readily apparent meaning or explanation, and no clarifying testimony was offered. S-E-44.

Regarding the various therapies, it is not readily apparent from the ██████ documents, including session notes and billing records, which of the sessions are specifically DBT services, and which are other types of interventions. Many of the service notes, reflecting weekly sessions, are labeled “DBT”, SF-472, 473, 474, while others notes are not labeled as such. Although non-therapeutic staff at ██████ have adopted the “language of DBT,” this is insufficient to establish that these staff deliver DBT therapy, and no explanatory testimony was offered. Further, according to an informational narrative generated by ██████ residents participate in up to four weekly group therapy sessions, one of which is DBT. Each resident attends a weekly DBT session, with attained skills reinforced daily within the behavioral milieu. S-161, 162.

Certain of [REDACTED] practices are problematic. [REDACTED] [REDACTED] described, in considerable detail, a common intervention at [REDACTED] involving requiring students who commit an infraction to wear an orange vest which identifies that student as a rule violator. Student was made to wear this vest the day after engaging in “pushback” with staff. P-197, 198. The behavioral notes are unclear as to how long Student was made to wear the orange vest, but [REDACTED] did wear it for at least two days. P-195 - 197; *Testimony* [REDACTED] In addition to wearing the orange vest, Student was required to move out of [REDACTED] current sleeping arrangements and into a different location. Students and staff recognize that vest-wearers are at risk of dropping a “level” due to their rule-breaking. Students wearing the vest are required to follow the rules of the level below them, and are not allowed to access the privileges associated with their level. It can take “a few days” before a student to demonstrate improvement sufficient to have the vest removed; it is also unclear how long a student must wear the vest generally, or what criteria must be met for vest removal. According to [REDACTED] [REDACTED] wearing the vest makes the student stand out with [REDACTED] peers, which can effectively alter behavior. [REDACTED] stated that the vest “is a consequence for behavior. It shows everyone else that that resident is not allowed to do certain things because they’re back at ‘Level 1’.” Thus, a primary intent behind the use of the vest is to identify children *to their peers and staff* as rule violators (emphasis added). Significantly, [REDACTED] [REDACTED] noted that other students are expected to let staff know if a rule is broken. *Testimony* [REDACTED]

Per [REDACTED] staff and documentation, other practices include the following:

- limiting students’ access to and communication with their parents; for the first 30 days, a student is not permitted to call home under any circumstance.
- Taking a student’s shoe laces to prevent him or her from running away. Children commonly run away from [REDACTED] it is typical for more than one student to run away each summer. Runaways are less common in the winter months, but not unheard of.
- Requiring students to ask permission before speaking – to a peer or to a staff member – and requiring any conversations to be monitored by staff; according to [REDACTED] [REDACTED] this monitoring “contributes to self-awareness and mindfulness...creates a habit of thinking before speaking.” *Testimony* [REDACTED]
- Students are not permitted to return home for holidays. This rule is in place because without it, [REDACTED] had to “battle getting [the students] back.” *Testimony* [REDACTED]
- Students may not “push back” against any expectations, whether it concerns how much they wish to eat, or the amount of time they need in the bathroom. P-231; S-F-77.
- Students may be punished for such things as failing to turn in one’s food log on time, or being one of the last to stand and line up during a group transition. S-F-25, -40.
- In addition to the “vest” described above, [REDACTED] utilizes an intervention known as “going on reflection,” which is similar to a time out, and which can last as long as an entire day. Reflection sometimes takes place in a gazebo. While on reflection, a student is sometimes assigned a writing task, or a physical chore to complete. Student has received both writing assignments and chores when [REDACTED] has gone on reflection. SF-9, -14, 23, 25, 36, 40, 54; P-242; *Testimony* [REDACTED]

A particularly troublesome intervention that has occurred with respect to Student involves ██████ insistence that ██████ become willing to eat mayonnaise and yogurt - two foods that ██████ has always disliked - to the point of consequating ██████ for not eating these foods. Student has been disciplined whenever a meal with either ingredient is served and ██████ declines to eat them. Student has been placed “on reflection,” many times for not eating what was served. SF-9, 14, 17, 23, 32, 43, 55; P-235; P-236. At times, this forced ██████ to miss school. SF-494. This has also forced ██████ to miss therapy sessions. P-243. Eventually, getting Student to willingly eat mayonnaise and yogurt became a focus of ██████ therapy time. SF-100; *Testimony* ██████ Staff in the program asked Student to compare ██████ “fixed mindset” regarding mayonnaise to “[the fixed mindset] of an addict.” SF-28. <sup>1</sup>

New Hampshire law prohibits “any technique that unnecessarily subjects the child to ridicule, humiliation or emotional trauma.” RSA 126-U:4; *see also* Ed 1203.03(c)(1)(G). Maine law contains a similar provision, prohibiting the use of any substance or stimulus “intended to modify behavior, which the person administering it knows or should know is likely to cause physical and/or emotional trauma to a student, even when the substance or stimulus appears to be pleasant or neutral to others. Such substances and stimuli include, but are not limited to: ....water spray, noxious fumes, extreme physical exercise, costumes, or signs.” Maine DOE Rules 05 071, ch. 33, §2.1 (2013) (emphasis added).

The Parent maintains that, even if ██████ practices violate state law, this neither supports nor requires a denial of reimbursement. The District argues that these practices violate state law, and therefore reimbursement is barred. <sup>2</sup> I find the District’s argument persuasive.

Reimbursement under the IDEA is an equitable remedy. A unilateral placement is made at a parent’s own financial risk. *See School Committee of Town of Burlington v. Dept. of Educ. for the Commonwealth of Massachusetts*, 736 F. 2d 773 (1<sup>st</sup> Cir. 1984; *aff’d* 471 U.S. 359, 373-74 (1985)). Even in cases where the public school’s proposed IEP is found to be deficient, reimbursement is not automatic; a private placement may not necessarily be found to be “proper” under the IDEA. *See Mr. and Mrs. I. v. M.S.A.D. No. 55*, 480 F. 3d 1, 24 (1<sup>st</sup> Cir. 2004); *Rafferty v. Cranston Public School Committee*, 315 F. 3d 21 (1<sup>st</sup> Cir. 2002).

The court in *Rafferty* denied reimbursement because the student spent four to five hours a day, five days a week, alone with a clinician working on reading. The court noted that, although the tutoring improved the student’s reading ability, ██████ did not study any other academic subjects. The court noted that “Mainstreaming may not be ignored, even to fulfill substantive educational criteria.” *Rome School Committee v. Mrs. B.*, 247 F. 3d 29, 33 (1<sup>st</sup> Cir. 2001).

Citing *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), Parent states that it would be unfair to expect a parent to know of a violation prior to making a unilateral placement. Unlike the parent in *Florence County* case, Parent here was made aware, at least on May 4, ██████ of school personnel’s concerns regarding ██████ practices. Additionally, on July 1, ██████ after learning from the

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<sup>1</sup> Student is the child of an alcoholic ██████, raising some question regarding the propriety of making such a statement to ██████

<sup>2</sup> At the request of the undersigned hearing officer, the parties were asked to brief the specific issue of whether, if ██████ practices were found to have violated state law, reimbursement was barred as a matter of law.

District that [REDACTED] was not listed as an approved SPPS, Parent reached out to Maine officials seeking to clarify [REDACTED] licensing status.

Parent argues that the New Hampshire RSA 191-U:4, cited above, does not apply to [REDACTED] a private school in Maine, but rather, applies only to private schools approved by the New Hampshire State Board of Education or serving as a provider of a component of a child's individualized education program. As a unilateral parental placement, Parent reasons, [REDACTED] meets neither criterion. This analysis does not hold water. [REDACTED] is providing services to a New Hampshire student, who has been identified as eligible for special education under the IDEA, and for whom an IEP has been proposed. The request is for public funds to support a private school whose practices may well bar reimbursement or placement had they occurred in an approved New Hampshire school.

According to [REDACTED] staff and Parent, Student has experienced successes at [REDACTED] and has made notable academic and therapeutic gains. But success at a private placement "does not establish that such placement is the requisite adequate and appropriate education." *Rome School Committee v. Mrs. B.*, 247 F.3d 29, 43 (1<sup>st</sup> Cir. 2001). In this case, despite Student's progress, the circumstances warrant a denial of both reimbursement, and of placement at [REDACTED] at public expense.

### **C. Timeliness of Identification/Compensatory Education**

Based upon this record, the District should have identified Student as eligible for special education as of the start of [REDACTED] grade year ([REDACTED]). Accordingly, the Student is entitled to compensatory services for a period of time equivalent to the start of school in September of [REDACTED] to the time of referral for special education in late January of [REDACTED]. The services will be in the form of DBT therapy sessions, weekly, unless otherwise agreed. The IEP team will determine the appropriate time frame for the provision of these services. In addition, Parent is entitled to reimbursement for the math and general tutorial expenses, as set forth in P-353.

## **IV. PROPOSED FINDINGS OF FACT AND RULINGS OF LAW**

Parent and District's Proposed Findings of Fact and Rulings/Conclusions of Law are incorporated herein.

Parent's Proposed Findings of Fact: Numbers 1-7, 9, 11, 12, 14-26, 30-31, 34, 36, 37-43, 50, 51, 53, 54, 56, 59, 63, 65, 68-74, 77, 79, 80, 82, 83, 86, 88-99, 101, 102, 105, 108, 109, 110-114, 116-120, 122, 124-128, 132-139, 141-148, 151, 156-160, 162, 163-165, 167, 168, 170-173, 176, 178, 182, 184-191 are granted; the remaining proposed findings of fact are neither granted nor denied as written, except that, to the extent that they conflict with this Decision, they are deemed denied.

Parent's Proposed Rulings of Law: Number 5 is granted in part, with respect to school year [REDACTED] as set forth above. All other proposed Rulings of Law are denied as written.

District's Proposed Findings of Fact: Numbers 1, 4-9, 11, 12, 14, 16-22, 24-26, 28-43, 45, 47, 48, 53, 54, 56, 59, 60-65, 66-77, 79-84, 88-95 are granted; the remaining proposed findings of fact are neither granted nor denied as written; except that, to the extent that they conflict with this Decision, they are deemed denied.

District's Proposed Conclusions of Law: Numbers 1, 2, 4, 5, 8, 9, 12 are granted; Number 3 is denied as to the [REDACTED] school year through the IDEA referral in January of [REDACTED] as detailed above; Number 7

is denied. The remaining proposed conclusions of law are neither granted nor denied as written, except that, to the extent they conflict with this Decision, they are deemed denied.

**V. CONCLUSION AND ORDERS**

- A. The District’s IEP offer in May of [REDACTED] was reasonably calculated to provide Student with FAPE, but there was insufficient evidence that the placement and services offered were actually available and could be implemented;
- B. The District appropriately evaluated Student in all areas of suspected disability;
- C. The District should have initiated the special education process as of the start of the [REDACTED] school year; as such, the Student and Parent are entitled to an award of compensatory education as set forth in Part III, C. above;
- D. The Parent has not met [REDACTED] burden of showing that [REDACTED] is proper under the IDEA;
- E. Parent is not entitled to reimbursement for the [REDACTED] placement, and Student is not entitled to complete [REDACTED] placement at [REDACTED] at public expense.

Date: February 11, [REDACTED]

\_\_\_\_\_  
Amy B. Davidson, Hearing Officer

**APPEAL RIGHTS**

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of competent jurisdiction. The Parents have the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parents or School District, seeks judicial review of the hearing officer's decision.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

██████████ School District  
(IDPH-FY-22-08-003)

PROPOSED FINDINGS OF FACT

1. ██████████ ("██████████" of ██████████ is a nearly fourteen year-old ██████████ grader (d.o.b. ██████████)
2. ██████████ parent, ██████████ ("██████████" is a single parent with three other children and is a ██████████ survivor. ██████████ has always been an active supporter of the ██████████ public schools and its teachers, heading up the group known as ██████████ which works to promote the school budget and teacher contracts. [Parent Test.]
3. ██████████ rejected ██████████ IEP offer and placed ██████████ unilaterally at ██████████ Maine, a therapeutic residential school in ██████████ ME, on May 12, ██████████ [Parent Test.]
4. Prior to ██████████ placement at ██████████ Maine, ██████████ was a ██████████ grade remote student at ██████████ School in ██████████
5. ██████████ has been educated in the ██████████ Schools since ██████████ grade (██████████). Others have described ██████████ as smart and delightful, though ██████████ has struggled with ██████████ focus and learning to read. [Parent Test.; S-12]
6. During ██████████ grade, ██████████ placed ██████████ in a Title I reading support program. [S-15]
7. In May ██████████ concerned with ██████████ progress in developing literacy skills, ██████████ communicated with ██████████ grade teacher, ██████████ [P-001], and ██████████ a school counselor [S-293], about testing and services for ██████████
8. Despite multiple requests, including a formal discovery request, ██████████ claimed to have no documents in its possession related to

this communication until it distributed S-293 through S-299 as school district exhibits for this hearing *after* prevailing on its partial motion to dismiss claims that arose more than two years ago. [Parent Test.; S-136]

9. In early June [REDACTED] [REDACTED] [REDACTED] communicated to [REDACTED] that the [REDACTED] "team," which did not include [REDACTED] "did not see a need for further testing at this time." [P-003]
10. In denying [REDACTED] request for testing, [REDACTED] did not provide [REDACTED] with a copy of [REDACTED] IDEA procedural safeguards. [Parent Test.]
11. During [REDACTED] grade ([REDACTED] [REDACTED] again participated in a Title I reading support program [S-23] as well as a Title I support program for writing. [S-23, 25, 27] [REDACTED] required "consistent support and re-teaching." [S-27]
12. During [REDACTED] grade, [REDACTED] again requested that [REDACTED] be assessed. Both [REDACTED] classroom teacher and Title I reading teachers completed the NIHQ Vanderbilt Assessment Scale. [P-009 through P-012]. [REDACTED] became aware that both Title I teachers rated [REDACTED] reading and writing "problematic." [P-012; S-295]
13. [REDACTED] took no steps to evaluate or identify [REDACTED] in [REDACTED] grade, despite knowing that [REDACTED] was concerned. [S-295; Parent Test.]
14. During [REDACTED] grade ([REDACTED] [REDACTED] again raised concerns, including about [REDACTED] decision to remove [REDACTED] from the Title I writing program after [REDACTED] became "extremely alarmed" seeing the quality of [REDACTED] written work compared with [REDACTED] peers'. [P-014]
15. [REDACTED] remained in the Title I reading support program during [REDACTED] grade, but remained excluded from writing support. [S-34; S-36]
16. [REDACTED] [REDACTED] grade report card noted that [REDACTED] "tends to be unfocused during class and needs to be frequently redirected back to [REDACTED] work." [S-49]
17. For [REDACTED] grade ([REDACTED] [REDACTED] remained in a Title I reading support program. [S-50]

18. Beginning in [REDACTED] [REDACTED] participated in therapeutic counseling for an hour each week with [REDACTED] LICSW. [REDACTED] [REDACTED] holds a master's degree in social work from Boston University and is licensed as both an alcohol and drug counselor and a social worker. [REDACTED] Test.; Parent Test.]
19. In October [REDACTED] [REDACTED] was diagnosed with aggressive [REDACTED] [REDACTED] [SC-72] [REDACTED] then [REDACTED] years-old, took this news the hardest. [Parent Test.]
- [REDACTED] [REDACTED] mid-year [REDACTED] grade report card notes: "In independent work, [REDACTED] can get distracted by neighbors and would benefit from relocating during that time." [REDACTED] year-end report card notes: "[REDACTED] continues to need constant reminders of class and school rules as it affects [REDACTED] and [REDACTED] classmates' learning." [S-59]
21. In June [REDACTED] [REDACTED] requested that [REDACTED] be placed in an academic support program for [REDACTED] grade, in lieu of a foreign language class, to focus on improving [REDACTED] executive function skills. [SA-6; Parent Test.]
22. For [REDACTED] grade ([REDACTED] [REDACTED] began to attend [REDACTED] [REDACTED] School. Due to continuing concerns about [REDACTED] difficulties with attention, concentration, and organization, [REDACTED] arranged for a psychological evaluation of [REDACTED] in September [REDACTED] [Parent Test.]
23. [REDACTED] Ph.D., conducted [REDACTED] evaluation. [S-60]
24. Cognitive testing revealed [REDACTED] to have a full-scale IQ in the "very superior" range (standard score of 131). [S-61] But [REDACTED] [REDACTED] found that [REDACTED] "scores for at least three attentional variables are substantially lower than they should be on the basis of [REDACTED] I.Q. scores." [S-61]
25. [REDACTED] [REDACTED] diagnosed [REDACTED] with [REDACTED] [REDACTED] [REDACTED] [S-63] [REDACTED] shared [REDACTED] diagnosis with [REDACTED] [REDACTED] Test.; Parent Test.]
26. Also in October [REDACTED] [REDACTED] parents separated. [Parent Test.]



27. In counseling during this time period, ██████ presented as a rambunctious ██████ grader who required constant redirection and needed to improve ██████ ability to focus. [██████ Test.]
28. The academic support teacher described ██████ as "very impulsive" and admitted having a hard time keeping ██████ contained. The teacher also noted that ██████ sometimes appeared ██████ and often was involved in "drama" at school. [██████ Test.]
29. Despite being in academic support, ██████ struggled with ██████ grade homework. ██████ wrote to ██████ teacher about trying to establish a one-hour per day homework schedule for ██████ "We've been arguing about it, because everything with ██████ is an argument, but maybe you can give me some guidance on whether or not that's a good approach or the right amount of time." [SA-172 & 173]
30. In late-December ██████ ██████ reported to ██████ ██████ therapist, that ██████ ██████ had physically abused ██████ ██████ alerted DCYF, which conducted an investigation. [██████ Test.; SB-4 & SB-5]
31. Midway through ██████ grade, ██████ began taking medication for ██████ ██████ due to escalating symptoms of ██████ ██████ Initially, the medication appeared to have a positive effect on both ██████ ██████ and inattention. [Parent Test.; SA-166] ██████ notified ██████ of the decision to medicate ██████ for ██████ ██████ [SA-168]
32. In April ██████ ██████ told ██████ counselor that "█████ holds everything inside b/c ██████ will never stop crying if ██████ allows self to start crying." [SB-19]
33. During the spring of ██████ ██████ ██████ noted that ██████ was becoming more involved in everyone else's lives (rather than focusing on ██████ experiencing more ██████ symptoms, and having more temper outbursts. ██████ changed ██████ diagnostic impression of ██████ to ██████ ██████ [██████ Test.; SD-92]
34. ██████ continued at ██████ ██████ School for ██████ grade (██████) Despite some initial confusion at school, ██████ continued to receive academic support that year. [SA-215; SA-220]

35. Even though [REDACTED] knew [REDACTED] had been diagnosed with [REDACTED] and knew [REDACTED] was suffering from [REDACTED] and had been prescribed medication for [REDACTED], [REDACTED] did not identify and evaluate [REDACTED] as required by IDEA. [REDACTED] Test.; Parent Test.]
36. By early October [REDACTED] [REDACTED] was expressing concern to [REDACTED] [REDACTED] about [REDACTED] lying constantly, sneaking [REDACTED] phone for use on social media, having constant problems with [REDACTED] and trying to "rescue" [REDACTED] friend who was having abuse issues. [SB-39] [REDACTED] [REDACTED] saw [REDACTED] behavior as regressing as [REDACTED] became unable to discern when [REDACTED] was lying. [REDACTED] Test.]
37. Throughout September and October [REDACTED] [REDACTED] experienced repeated sexual harassment, bullying, and assault on the school bus at the hands of [REDACTED] peers. [SA-296; SA-432; S-76; S-78 through S-80] Investigation by the school substantiated what had occurred. [SA-296; S-81 through S-82]
38. Beginning in March [REDACTED] [REDACTED] significantly struggled to complete schoolwork when the COVID-19 pandemic resulted in [REDACTED] school closing and moving to distance learning, which involved work assignments without instruction. [S-84; Parent Test.; [REDACTED] Test.]
39. [REDACTED] guidance counselor, [REDACTED] engaged in emails with [REDACTED] concerning [REDACTED] failure to complete [REDACTED] academic work. [SA-28] [REDACTED] teacher, [REDACTED] did likewise. [SA-140; [REDACTED] Test.]
40. At around this time, as [REDACTED] behaviors started pointing towards other diagnoses, [REDACTED] [REDACTED] realized [REDACTED] needed more than the one hour per week of therapy [REDACTED] could provide. [REDACTED] Test.]
41. By mid-May, [REDACTED] had accumulated a long list of incomplete assignments. [SA-483; SA-139]
42. [REDACTED] communicated to [REDACTED] the academic support teacher, that [REDACTED] was "struggling more as time goes on." [SA-155 & S-156]

43. [REDACTED] [REDACTED] agreed, explaining that [REDACTED] often would not respond or show up for Google Meets video conference meetings, and was not engaging in school at all. [REDACTED] Test.]
44. By the end of May, [REDACTED] [REDACTED] was concerned [REDACTED] had “a failing grade in social studies . . . and [had not] handed in any work this week for science or LA. You also haven’t finished today’s math. What is happening??” [SA-490].
45. [REDACTED] was still failing social studies in June, as the school year ended, yet [REDACTED] did not refer [REDACTED] for evaluation. [SA-363]
46. In early June [REDACTED] [REDACTED] emailed [REDACTED] [REDACTED] with deep concerns about [REDACTED] “Sometimes I feel like [REDACTED] lost to me and it is heartbreaking. I feel like [REDACTED] is deliberately doing stuff so 99% of our interactions right now have to be negative and I am exhausted.” [SC-41 & 42]
47. On June 16, [REDACTED] [REDACTED] revealed to [REDACTED] [REDACTED] that [REDACTED] had made numerous attempts to [REDACTED] including two times during the quarantine, and that [REDACTED] had engaged in [REDACTED] trying to [REDACTED], and [REDACTED] using [REDACTED] [REDACTED] indicated that [REDACTED] would like to [REDACTED] [REDACTED] recalls [REDACTED] having a gleam in [REDACTED] eye as [REDACTED] discussed the [REDACTED] in which [REDACTED] had engaged, and feared [REDACTED] was deteriorating quickly. [REDACTED] Test.; SB-78]
48. [REDACTED] [REDACTED] became very concerned with this report of suicidality and [REDACTED] and recommended a step-up in [REDACTED] level of care. [REDACTED] Test.]
49. [REDACTED] described [REDACTED] as “boastful” when describing [REDACTED] [REDACTED] attempts in June [REDACTED] but observed physical evidence of [REDACTED] including broken blood vessels on [REDACTED] face after [REDACTED] apparently tried to [REDACTED] [REDACTED] [REDACTED] feared that [REDACTED] would continue such attempts and ultimately succeed. [Parent Test.]
50. [REDACTED] discussed the issue with [REDACTED] [REDACTED] and with [REDACTED] APRN, [REDACTED] Both explained to [REDACTED] that [REDACTED] was showing signs of emerging [REDACTED] which involves issues with emotional regulation, impulsivity, and

poor distress tolerance. They advised that [REDACTED] emerging profile required intervention using dialectical behavior therapy or "DBT." [Parent Test.; [REDACTED] Test.; SC-37]

51. Both [REDACTED] and [REDACTED] searched diligently for outpatient DBT programs that would accept a student under age [REDACTED], but they were unsuccessful. Many programs were shut down due to the pandemic or would not take students as young as [REDACTED]. All they could find was an online support program through [REDACTED] in [REDACTED] [SD 37-38; SB-128; Parent Test.]
52. Direction was not a pure DBT program, but utilized a methodology that purported to be similar. [REDACTED] Test.; Parent Test.; P-354 through P-387] Although [REDACTED] participated in the program, [REDACTED] was much younger than other patients in the group and did not retain any of the skills that form the core of DBT. [REDACTED] behavior continued to decline and [REDACTED] discussed wanting to be hospitalized, which caused great concern. [REDACTED] Test.; Parent Test.; SB-81]
53. On July 10, [REDACTED] [REDACTED] emailed [REDACTED] [REDACTED] "I think we are in crisis. I know I am." [SC-35]
54. Based on [REDACTED] [REDACTED] recommendation, [REDACTED] withdrew [REDACTED] from the Direction program, and [REDACTED] behavior and attitude briefly improved. [REDACTED] Test.; Parent Test.; SC-35; SB-82]
55. By August [REDACTED] however, [REDACTED] had gained 35 pounds since the pandemic began and [REDACTED] self-care was declining markedly. [SB-85]
56. [REDACTED] [REDACTED] emailed [REDACTED] on August 4, [REDACTED] advising that [REDACTED] needed "a full DBT group as [REDACTED] best option." [SC-49]
57. DBT is most effective when delivered in a group setting where patients can help each other learn the skills they are being taught and see how it affects them. [REDACTED] Test.]
58. Despite their best efforts, neither [REDACTED] [REDACTED] nor [REDACTED] was able to identify a full-fidelity DBT outpatient program for adolescents. [REDACTED] Test.; Parent Test.]

59. Pursuant to [REDACTED] "Reopening Plan," [REDACTED] began [REDACTED] grade ([REDACTED] at the [REDACTED] School on a hybrid schedule. [REDACTED] hired [REDACTED] a substitute teacher and tutor at the school, to work 1:1 with [REDACTED] during [REDACTED] distance learning day given [REDACTED] difficulties at the end of [REDACTED] grade. [REDACTED] provided the middle school with a release to communicate with [REDACTED] concerning [REDACTED] [SA-299; Parent Test.]
60. By fall [REDACTED] [REDACTED] had developed a pattern of negative behaviors that involved lying, sneaking, and stealing. [REDACTED] formerly strong sense of right and wrong had become distorted. [REDACTED] was increasingly angry and aggressive in [REDACTED] dealings with others. [REDACTED] Test.; Parent Test.]
61. At school, [REDACTED] appeared unmotivated to engage in learning or complete [REDACTED] assigned work. [REDACTED] also struggled socially and maintained few, if any, friendships, a significant departure from previous times. [Parent Test.; SB-129 & SB-130]
62. [REDACTED] ability to participate in many daily living skills, including personal hygiene, declined markedly during this time period. By the fall of [REDACTED] [REDACTED] had gained more than 50 pounds and continued to sneak and hoard food, while [REDACTED] isolated [REDACTED] in [REDACTED] room. [Parent Test.]
63. [REDACTED] [REDACTED] grew more concerned as [REDACTED] continued to deteriorate in [REDACTED] grade. [REDACTED] no longer played soccer, [REDACTED] self-care had declined, and [REDACTED] bad behavior was increasingly escalating. [REDACTED] called [REDACTED] lying and stealing a "habit." [SB-94; [REDACTED] Test.]
64. [REDACTED] continued "to exhibit [REDACTED] signs" during this time frame. [SB-99; [REDACTED] Test.]
65. A November email from [REDACTED] math teacher concerning a test explained: "[REDACTED] scored a 53% mechanics and 32% on problem solving competencies. The class average was 90% and 82% respectively for your reference." [SA-314]
66. [REDACTED] replied: "Quite honestly, I don't know what to do about it. [REDACTED] in therapy and I have [REDACTED] [REDACTED] coming to work with [REDACTED] to

try to keep [REDACTED] on task. But even just me mentioning this mail turned into a shouting match.” [SA-315]

67. At about that time, still attempting to identify a placement at which [REDACTED] could receive DBT, [REDACTED] contacted [REDACTED] out-of-district placement coordinator. One potential placement they discussed was [REDACTED] Maine, which [REDACTED] [REDACTED] praised. [Parent Test.]
68. In early December [REDACTED] as COVID cases surged, [REDACTED] and [REDACTED] became remote students to protect their [REDACTED] due to [REDACTED] medical vulnerability. [REDACTED] only in-school class was Latin. [S-88; SA-317; SB-102]
69. At the time of [REDACTED] transition to remote learning, [REDACTED] was already failing or had not completed any work to be graded in multiple classes. [S-89; SB-103 (“[REDACTED] is behind in all of [REDACTED] classes”)]
70. In December [REDACTED] based on referrals from [REDACTED] counselor and psychiatric APRN, [REDACTED] participated in a comprehensive neuropsychological evaluation conducted by [REDACTED] [REDACTED] Psy.D., of the [REDACTED] of New England. The evaluation report issued on January 20, [REDACTED] [S-91]
71. [REDACTED] [REDACTED] diagnosed [REDACTED] with [REDACTED] [REDACTED] and emerging [REDACTED] plus [REDACTED] based on history. [S-101] [REDACTED] found that [REDACTED] continued to demonstrate a high IQ (standard score of 126) [S-95], but “had a surprising amount of difficulty reading a group of words quickly and accurately,” which suggested difficulties with [REDACTED] processing speed. [S-98]
72. [REDACTED] [REDACTED] found that [REDACTED] presented as “a very angry [REDACTED] who feels unappreciated, and in some ways cheated by others. [REDACTED] moods are erratic and [REDACTED] reacts to [REDACTED] internal states impulsively but also unapologetically. [REDACTED] has difficulty considering or caring about how [REDACTED] behaviors affect other people, because [REDACTED] is internally consumed with getting [REDACTED] own needs met.” [S-101]
73. [REDACTED] report states: “[REDACTED] sense of self is very unstable right now and [REDACTED] is prone to more negativistic rumination than [REDACTED] willingly

acknowledges. For [REDACTED] rules and boundaries are the structures that [REDACTED] can act out against in order to show [REDACTED] disdain for authority. [REDACTED] more problematic behavior is likely purposeful to elicit a response from others and to demonstrate [REDACTED] ability to transgress or 'get around' any rules set in place. [REDACTED] progress in therapy may be stunted because of [REDACTED] fears that [REDACTED] actually cannot do better or fears of how overwhelmed [REDACTED] is by [REDACTED] own conflicting emotions." [S-101]

74. According to [REDACTED] [REDACTED] "[REDACTED] currently needs intensive intervention to learn how to get what [REDACTED] needs from [REDACTED] environment more effectively. This can be done by improving [REDACTED] ability to regulate [REDACTED] emotions, tolerate distress when it arises, and use more effective interpersonal skills." [S-101]
75. [REDACTED] [REDACTED] strongly recommended that [REDACTED] receive intensive intervention using DBT to improve [REDACTED] ability to regulate [REDACTED] emotions, tolerate distress, and develop more effective interpersonal skills. [REDACTED] also endorsed [REDACTED] eligibility for special education services, and predicted that [REDACTED] likely would experience slow overall gains even with intensive therapeutic intervention. [S-101 & S-102]
76. In January [REDACTED] [REDACTED] finally commenced an IDEA referral of [REDACTED] [S-106 & S-107; S-114]
77. Prior to this point, [REDACTED] had always trusted and supported [REDACTED] educators and had believed their consistent advice that [REDACTED] did not require further evaluation. [REDACTED] remained hopeful that [REDACTED] would be able to help [REDACTED] find an appropriate DBT treatment program for [REDACTED] given the difficulties [REDACTED] had encountered during [REDACTED] own search. [Parent Test.; S-145 & S-146]
78. By this point, [REDACTED] was angered talking about school, was refusing to speak with [REDACTED] teachers, and was not engaging for lengthy segments of [REDACTED] counseling sessions. [SB-109]
79. [REDACTED] and [REDACTED] [REDACTED] continued their search for a placement capable of delivering DBT for [REDACTED] exploring [REDACTED] Maine; [REDACTED] in Virginia (a short-term program that rejected [REDACTED] and recommended a longer term, more secure placement);

██████████ (which had no availability for the foreseeable future due to a staffing crisis); the ██████████ of New England (which did not have any options for ██████████ age); and ██████████ (which closed its adolescent ██████████ program), among others. [S-202; P-015 through P-019; SC-49; SB-106; Parent Test.; ██████████ Test.]

80. Only ██████████ Maine remained as a potential fit for ██████████ among available placement options within reasonable visitation distance. ██████████ therefore filed an initial electronic application with ██████████ on January 11, ██████████ [Parent Test.; SF-1 through SF-8]
81. ██████████ exchanged emails with the ██████████ admissions director, ██████████ but was concerned about the 9-12 month program duration. [S-301 through S-303] ██████████ confirmed that ██████████ could provide DBT and address ██████████ diagnoses. [S-304]
82. ██████████ convened an initial IEP Team meeting for ██████████ on February 1, ██████████ explained to the team that “██████████ lacks skills to stay on track and to overcome what’s going on in ██████████ head.” [S-116]
83. ██████████ asked ██████████ the school’s evaluator, to contact ██████████ given ██████████ four years of experience counseling ██████████ [S-117] ██████████ never contacted ██████████ [██████████ Test.; ██████████ Test.]
84. By February ██████████ was reporting “no motivation to complete school,” because ██████████ believed that “no matter what ██████████ school would advance ██████████ to ██████████ grade. [SB-113]
85. In an addendum to the meeting minutes dated February 9, ██████████ traced ██████████ downward trajectory since the fall ██████████ bullying incident, noting ██████████ “pattern of ██████████ ideation, and ██████████ that ██████████ reports as ██████████ attempts.” [S-118; S-119]
86. ██████████ signed ██████████ permission for evaluation form on February 4, ██████████ [S-124]
87. In March ██████████ hired a second tutor to work 1:1 with ██████████ for four hours per week on mathematics, as ██████████ was unable to engage even with an academic topic ██████████ loved. [Parent Test.; S-144]



88. [REDACTED] [REDACTED] [REDACTED] Latin teacher, balked at [REDACTED] doing [REDACTED] class remotely, telling [REDACTED] principal: "[REDACTED] can barely pay attention when I am standing next to [REDACTED] What should I do?" [SA-134; P-022]
89. [REDACTED] had noticed a reduction in [REDACTED] [REDACTED] and [REDACTED] while [REDACTED] was learning remotely. [Parent Test.; P-025; S-142]
90. [REDACTED] [REDACTED] also observed some improvement when [REDACTED] moved to fully remote learning, away from school drama. [REDACTED] Test.]
91. [REDACTED] [REDACTED] issued his psychoeducational evaluation report on March 22, [REDACTED] [S-126; SA-144]
92. [REDACTED] [REDACTED] provided the teacher rating scales for this report, noting that [REDACTED] "emotional state is up and down" and rating as "Often" the number of times when [REDACTED] "Acts without thinking," "Disrupts other adolescent's activities," "Speaks out of turn during class," "Annoys others on purpose," "Hits other adolescents," "Is easily distracted," "Has trouble making new friends," and "Isolates self from others." [S-130]
93. [REDACTED] completed rating scales as well, reporting what [REDACTED] [REDACTED] recognized as "many significant social and emotional challenges for a child [REDACTED] age." [S-131]
94. [REDACTED] [REDACTED] conducted no observation of [REDACTED] in a learning environment and did not complete a structured clinical interview with [REDACTED] in the course of his evaluation. [REDACTED] Test.]
95. Nevertheless, [REDACTED] [REDACTED] concluded that [REDACTED] was "an emotionally restless [REDACTED] who has significant obstacles in terms of how [REDACTED] views both [REDACTED] and [REDACTED] family. [REDACTED] reported having many negative emotions as well as negative attitudes towards [REDACTED] [REDACTED] also reported a significant feeling of helplessness and difficulty socializing effectively with others." [S-133]
96. [REDACTED] [REDACTED] conceded that diagnoses of personality disorders are "not within my scope of competence," but acknowledged that [REDACTED] was concerned with [REDACTED] expression of mood difficulties and sadness. [REDACTED] Test.]

97. ██████ emailed ██████ after reviewing his report to clarify that ██████ academic performance in ██████ grade was not "acceptable" and to explain the severity of ██████ situation: "I just wanted to make sure you understand that the reason we are at this point with ██████ which in my opinion is much more serious than your recommendations reflect, is because we have tried all of the things you identify, for years, and ██████ continues to decline. ██████ has been in weekly psychotherapy since ██████ in addition ██████ has been seeing a psychiatric APRN monthly since early ██████ and finally, ██████ participated in an Intensive Outpatient Program last summer." [SA-144]
98. ██████ held an eligibility meeting of ██████ IEP Team on March 30, ██████ [S-139; S-156]
99. Team found ██████ eligible under the category of Emotional Disturbance. [S-142; S-147]
100. ██████ was concerned that the discussion at the meeting suggested a reluctance on ██████ part to provide ██████ with evidence-based DBT services as recommended for ██████ [S-145 & S-146]
101. ██████ emailed the team after the meeting: "I just wanted to confirm that in light of ██████ statement that DBT treatment would not be part of ██████ IEP because it is not expertise available in the school building, I do intend to resume my search for DBT treatment options for ██████ I had suspended my search when I started this process, but given how slow my progress was before then, I am concerned about letting another month pass us by and then having to start again from the beginning. To be clear, I still want to move forward with the IEP process, I will just be doing this search in addition so that I don't lose time." [SA-196]
102. Following the meeting, ██████ also spoke with ██████ special education director, ██████ "because I was concerned that the school district team members had already decided that DBT would not be considered and only in-school services would be available." ██████ promised ██████ that ██████ would reach out to ██████ contacts to identify DBT programs that may have availability for ██████ [P-028]

103. In counseling during April [REDACTED] [REDACTED] expressed that [REDACTED] would rather be angry with [REDACTED] teachers than accept assistance on work with which [REDACTED] was struggling, and that [REDACTED] was angry about needing tutors to assist [REDACTED] academically. [SB-122]
104. In mid-April, [REDACTED] [REDACTED] discussed [REDACTED] potentially going to [REDACTED] as [REDACTED] next school placement. [REDACTED] was open to this option so long as it involved being around animals. [SB-123]
105. [REDACTED] [REDACTED] wrote a letter to the IEP Team, dated April 14, [REDACTED] [S-165] [REDACTED] letter stated: "With the diagnosis of [REDACTED] [REDACTED] will be unable to maintain [REDACTED] educational level of progress . . . without the proper support for [REDACTED] mental health. . . . [REDACTED] needs to be placed in an intensive-inpatient treatment program in order to have the best chance of success. It has been clinically proven that adolescents that can receive these specialized services at the youngest age possible, have the best outcomes of having better interpersonal relationships, improved sense of self, a more stabilized mood, and lower rates of [REDACTED] and [REDACTED] incidents." [S-166]
106. [REDACTED] demonstrated deteriorating relationships with everyone, a poor sense of self, and a highly destabilized mood. [REDACTED] [REDACTED] firmly believed that [REDACTED] required residential programming to facilitate [REDACTED] immersion in a therapeutic DBT program. [REDACTED] [REDACTED] feared that it was unlikely that [REDACTED] would attend or engage in day programming, and would be triggered too much by remaining in [REDACTED] home environment and by the physical assault [REDACTED] already had experienced on the school bus, thereby impeding [REDACTED] therapeutic progress. [REDACTED] required DBT supports throughout [REDACTED] day. [REDACTED] Test.]
107. [REDACTED] having located a therapeutic DBT-based program and placement for [REDACTED] at [REDACTED] Maine, continued to raise [REDACTED] concern about [REDACTED] dire need for intensive DBT-based intervention. [Parent Test.]
108. On April 15, [REDACTED] [REDACTED] a special education teacher, prepared and distributed a draft IEP for [REDACTED] [SA-66; SA-321; S-167]

109. The draft IEP stated that [REDACTED] "behavior does not impede his/her learning or the learning of others." [S-170] It contained goals only for executive functioning and resolving social conflicts. [S-173] It provided for specially designed instruction to occur only 30 minutes per day to work on executive function skills, and called for only 30 minutes of non-DBT group counseling every six days. [S-175] It also did not provide for any summer programming. [S-178]
110. [REDACTED] admitted to a colleague that [REDACTED] was "going to hold off on the school participation/attendance goal" for [REDACTED] even though attendance and engagement were among the biggest concerns with [REDACTED] educational performance. [SA-333]
111. [REDACTED] admitted that [REDACTED] never reviewed the draft IEP for [REDACTED] before [REDACTED] sent it to [REDACTED] [REDACTED] Test.]
112. [REDACTED] replied to the draft IEP with a statement of concerns on April 21, [REDACTED] [SA-321; S-192] [REDACTED] also provided the team with information concerning [REDACTED] Maine. [SA-322]
113. [REDACTED] statement of concerns stated: "I believe that a denial of DBT treatment for [REDACTED] is a denial of FAPE." [REDACTED] indicated that [REDACTED] Maine, which had indicated it would accept [REDACTED] was "one of very few residential programs offering DBT and education and accepting [REDACTED] patients in New England." [S-186]
114. [REDACTED] was continuing to spiral downward in [REDACTED] participation and engagement with school. [REDACTED] [REDACTED] reported on [REDACTED] on April 21, stating things were not going well: "[REDACTED] doesn't produce much of anything." [SA-339; SA-340]
115. Most of [REDACTED] IEP team members had never met or interacted with [REDACTED] or had only done so briefly: [REDACTED] met [REDACTED] one time, for approximately two hours, for evaluation; [REDACTED] [REDACTED] guidance counselor, had met with [REDACTED] once; [REDACTED] and [REDACTED] had never met [REDACTED] [REDACTED] Test.; [REDACTED] Test.; [REDACTED] Test.; Parent Test.; S-146].

116. Given [REDACTED] concerns with the draft IEP, [REDACTED] rescheduled [REDACTED] IEP Team meeting until after the April school vacation, to Monday, May 3, [REDACTED] [S-188; S-189]
117. With the IEP Team meeting rescheduled, [REDACTED] notified [REDACTED] of [REDACTED] plan to visit [REDACTED] Maine on April 29, [REDACTED] during the school vacation week. [S-190]
118. [REDACTED] correspondence dated April 23, [REDACTED] explained that [REDACTED] level of functioning was continuing to "deteriorate before my eyes and [REDACTED] is unrecognizable to me, even though we see each other every day." [S-191]
119. In that letter of April 23, [REDACTED] also provided [REDACTED] with reimbursement notice for a potential unilateral placement: "Pending the results of our May 3, [REDACTED] meeting, I plan to remove [REDACTED] from SAU # [REDACTED] and into a therapeutic private school (to be determined) that offers the services [REDACTED] needs to get well and access the education [REDACTED] is entitled to." [S-191]
120. On April 26, [REDACTED] [REDACTED] APRN, who managed [REDACTED] medications, recommended a therapeutic residential placement for [REDACTED] to address [REDACTED] emerging [REDACTED] [S-195] [REDACTED] forwarded this correspondence to IEP Team for its upcoming meeting. [SA-258]
121. On April 29, [REDACTED] [REDACTED] visited [REDACTED] Maine, and was favorably impressed with the appropriateness of this potential placement given [REDACTED] needs. [S-311; P-030; Parent Test.]
122. [REDACTED] IEP Team met on May 3 and 4, [REDACTED] for the purpose of developing [REDACTED] IEP and determining [REDACTED] placement. [S-198]
123. [REDACTED] [REDACTED] attended the May 3 session; [REDACTED] [REDACTED] [REDACTED] psychological evaluator, attended neither of the sessions, leaving [REDACTED] without any psychological expertise at the meetings. [S-198]
124. The May 3-4 IEP Team meeting was the first attended by [REDACTED] special education director, [REDACTED] [REDACTED] agreed that "[REDACTED] requires intensive DBT treatment," although [REDACTED] opinion was that

daily DBT services for ██████ did not need to be provided in a residential placement. [S-200; ██████ Test.]

125. ██████ “expressed concerns about ██████ being successful while continuing to live at home,” given ██████ experience in the outpatient program offered by Direction in ██████ [S-200; Parent Test.]
126. ██████ also noted that ██████ was positive about participating in the ██████ program. [S-201; Parent Test.; SB-126]
127. ██████ ██████ told the team that ██████ program would need to provide constant redirection from someone trained in DBT [S-199] and that “██████ needs immersion in a DBT program for it to be successful for ██████ age,” because a day placement would merely be “putting a bandaid on the problem.” [S-201]
128. At the second session of the IEP Team meeting on Tuesday, May 4, ██████ ██████ invited ██████ its out-of-district placement coordinator, to discuss ██████ potential placement. [S-201; S-208]
129. ██████ continued to propose only day school programming, stating that ██████ “doesn’t feel ██████ needs rise to the level of residential placement,” despite acknowledging that ██████ “requires daily DBT treatment.” [S-200; S-202]
130. No psychologist expressed the opinion that attending a day program on a normal school calendar would provide services sufficient to meet ██████ needs.
131. ██████ advocated for ██████ to be placed in a day program at the ██████ School in ██████ Massachusetts. [S-313 through S-314]
132. ██████ stated that ██████ had contacted the ██████ School to explore openings and described the program as having a DBT approach and a rigorous academic curriculum. [S-202]
133. ██████ ██████ also mentioned potential placement options at ██████ School in ██████ Massachusetts, which ██████ also claimed used a DBT approach, and the ██████ School in ██████ New Hampshire, which ██████ “didn’t think . . . was appropriate for ██████ needs.” [S-202]

134. [redacted] ultimately admitted that the [redacted] School does not offer a DBT program and does not even have clinicians on staff with DBT training, but at the time [redacted] raised this concern, [redacted] brushed [redacted] off and tried to schedule a meeting anyway. [redacted] Test.; SA-109]
135. [redacted] later submitted an addendum to [redacted] minutes from the May 3-4 IEP Team meeting, in which [redacted] reiterated [redacted] statement to the team that [redacted] was "receiving far more support per week—8 hours of [privately funded] individualized 1:1 attention—than the first IEP proposed." [S-204]
136. [redacted] also noted that [redacted] had disagreed with [redacted] description of the potential pool of acceptable placements for [redacted] "[redacted] said there were 'plenty' of day school options to consider that offer DBT. I expressed my surprise at that and noted how long I have been looking for options without success." [S-205]
137. At the IEP Team meeting on May 4, [redacted] clearly explained that [redacted] had a "time deadline of this week or I might lose another placement opportunity (at [redacted] the residential program I visited over spring break)." In response, "[redacted] [redacted] indicated that [redacted] would provide me with a new IEP proposal by Friday, May 7, [redacted] incorporating this new out-of-district plan." [S-206]
138. Following the May 4 meeting, [redacted] asked for [redacted] release for the purpose of scheduling a meeting with the [redacted] School's admissions director. [redacted] immediately complied and sent back the signed release. [SA-78]
139. [redacted] and [redacted] conferred with [redacted] the [redacted] School's admissions director, during the late afternoon of Wednesday, May 5, [redacted] [SA-72]
140. During the meeting with [redacted] they learned that, contrary to [redacted] representations at the IEP Team meeting, the [redacted] School does not utilize a DBT approach or even offer therapeutic counseling for its students. [Parent Test.]

141. [REDACTED] emailed [REDACTED] [REDACTED] after the [REDACTED] School meeting: "I was intentionally misled regarding DBT being offered at the [REDACTED] School. . . . [I]t doesn't even offer any therapeutic treatment at all. Further, [REDACTED] echoed exactly what I have been saying all along and what has led me to this point: it is extremely difficult to find outpatient DBT programs in the area right now." [S-228; SA-108]
142. [REDACTED] explained: "Because I have now lost confidence in the information I am receiving from the School district, I do not want to schedule any more Google Meets with prospective schools/programs unless I have been provided with direct information/literature from them that confirms a strong DBT component." [S-228; SA-108]
143. [REDACTED] has never provided the requested proof of a DBT component for its proposed placements, instead blaming [REDACTED] for refusing to "participate in the meeting that [REDACTED] [REDACTED] set up with St. Ann's, instead choosing to move forward with your unilateral placement." [S-240] As [REDACTED] suspected then, and has now confirmed with [REDACTED] directly, this is because [REDACTED] does not offer a DBT program. [Parent Test.].
144. [REDACTED] also emailed later that night concerning [REDACTED] difficulties with [REDACTED] [REDACTED] who had commented: "Even when [REDACTED]s here [REDACTED] is out to lunch. [REDACTED] not dumb but spacey." [P-035]
145. At 2:53 on the afternoon of Friday, May 7, [REDACTED] [REDACTED] [REDACTED] [REDACTED] sent [REDACTED] [REDACTED] IEP offer for [REDACTED] along with a written prior notice and minutes from the May 3-4 meeting. [P-043; Parent Test.; S-208; S-210; S-236]
146. [REDACTED] conceded that [REDACTED] did not review the May 7 IEP offer before it was sent to [REDACTED] and agreed its contents did not reflect what had been discussed at the IEP Team meeting. [REDACTED] Test.]
147. [REDACTED] reviewed the proposed IEP and immediately became concerned because it was materially different from what [REDACTED] had offered at the IEP Team meeting. Although [REDACTED] IEP stated that [REDACTED] "requires intensive intervention using an evidence based approach such as DBT and other trauma based



approaches," [S-214] the IEP's provisions did not offer [REDACTED] these services.

148. [REDACTED] sent a reply email to [REDACTED] [REDACTED] at 6:53pm on May 7, stating that the IEP "is not consistent with our meeting or with the minutes you have provided." [P-042; compare S-208 through S-226 with S-198 through S-203]
149. [REDACTED] proposed IEP contained annual goals for problem solving skills [S-218], identification of [REDACTED] emotional state [S-218], and self-regulation [S-219], but nothing with regard to [REDACTED] problems with school attendance, participation, or engagement.
150. In addition, [REDACTED] proposed IEP offered only specially designed instruction in behavioral regulation for 30 minutes per day, and just two thirty minute sessions every six days of individual counseling, with one 30-minute group counseling session every six days, while failing to specify the use of DBT. [S-220] The IEP also did not propose placement outside of the middle school [S-221] or offer any ESY services for the upcoming summer of [REDACTED] as the Team had agreed. [S-224]
151. [REDACTED] also sent an email to [REDACTED] [REDACTED] on the afternoon of May 7, in which [REDACTED] explained that [REDACTED] proposed IEP "contradicts our meeting—no out of school services offered, no extended year services. They are adding in 50 minutes of individual counseling by someone in special ed once every 6 days. So, I am filling out the [REDACTED] paperwork right now. . . ." [S-316; Parent Test.]
152. [REDACTED] [REDACTED] responded that [REDACTED] was "mortified by the actions of the school." [REDACTED] did not believe that [REDACTED] would benefit from a day school placement and questioned whether [REDACTED] would even attend if placed in such a program. [S-316; [REDACTED] Test.]
153. Having reviewed [REDACTED] IEP offer, [REDACTED] worked to secure a slot for [REDACTED] at [REDACTED] as there was "only one opening, the week of 5/10/21." [P-032] [REDACTED] sent the formal application enrollment forms electronically using DocuSign to get the process underway. [P-040; P-457 (reflecting time stamps in Pacific Time)]

154. [REDACTED] [REDACTED] responded to [REDACTED] email about the IEP issues on Monday morning, May 10, [REDACTED] saying only: "I'll need a few days, but I will get back to you this week." [P-042]
155. Puzzled by this delay, given [REDACTED] knowledge of the deadline for responding to [REDACTED] and determined to get [REDACTED] into programming that met the full criteria for a DBT program—by offering intensive individual therapy, group therapy, skills training, and 24/7 availability for consultation around application of skills to real-life situations—[REDACTED] decided to move forward with enrolling [REDACTED] at [REDACTED] and making the initial payment. [Parent Test.]
156. By letter dated May 11, [REDACTED] which [REDACTED] emailed to [REDACTED] [REDACTED] rejected [REDACTED] proposed IEP and placement offer as insufficient, and notified [REDACTED] that [REDACTED] would begin at [REDACTED] the following day, Wednesday, May 12, [REDACTED] [S-235; SA-128]
157. [REDACTED] May 11 letter stated: "On Friday, May 7, [REDACTED] I received a new IEP proposal that does not include an out-of-district placement, intensive therapy of any kind, evidence-based treatment for [REDACTED] diagnosis such as DBT, or extended school year services. . . . The IEP proposal appears to add only 30 minutes of individual counseling, once every 6 days, to be provided by a Special Education Teacher." [S-236]
158. [REDACTED] [REDACTED] admitted that [REDACTED] received [REDACTED] email on May 11, but did not reply in any manner until [REDACTED] sent out a revised IEP three days later, May 14, [REDACTED] only by certified mail. [REDACTED] Test.; S-240]
159. In July, [REDACTED] [REDACTED] admitted that the proposed IEP sent on May 7, which was the only IEP [REDACTED] had at the time [REDACTED] made [REDACTED] placement decision, "had some errors in it, which did not reflect the discussion we had at the team meeting." [S-274]
160. [REDACTED] did not receive [REDACTED] [REDACTED] May 14 letter until the following Friday, May 21, when the Superintendent asked [REDACTED] [REDACTED] to email it to [REDACTED] That letter stated: "Thank you for pointing out that this agreed upon level of instruction and services were not included in the copy of the IEP that was sent home to you." [S-240; [REDACTED] Test.; Parent Test.]

161. The belatedly-revised IEP from ██████ received nine days after ██████ began at ██████ included an extended school year proposal, but stated that ██████ would “be placed in an out of district day school” (generically listed as “Private Day School”) that remained unidentified. [S-249; S-255 & S-256; S-259]
162. ██████ started at ██████ on May 12, ██████ [Parent Test.; ██████ Test.]
163. ██████ later responded to ██████ second proposed IEP, indicating that ██████ still did not agree with its amended terms, due to its insufficient provision of required therapeutic services. [S-270] ██████ wrote: “I cannot and will not agree to an IEP that promises an out-of-district day school placement when there is no indication that there is one available that will meet ██████ needs—needs that are not in dispute among IEP Team members.” ██████ continued: “It is disappointing and disturbing that the School District would suggest that I should pull my daughter from a placement, where ██████ has already transitioned, without an alternative plan in place and knowing full-well the seriousness of ██████ diagnosis.” [S-268]
164. ██████ is a residential therapeutic school located in the midcoast rural town of ██████ Maine. It is fully licensed by the Maine Department of Health and Human Services as a residential treatment center and is accredited by the New England Association of Schools and Colleges (NEASC). [██████ Test.; S-159]
165. ██████ Director of Education, ██████ holds certifications from the Maine Department of Education as a Special Education Administrator, Director, and Teacher of Students with Disabilities. [SE-42]
166. ██████ offers a year-round, DBT program that is trauma-informed, relationship-based, and uses behavior chain analysis to help its residents understand and reshape their behaviors. Its strength-based approach is designed for emotionally-traumatized students. [██████ Test.; ██████ Test.]
167. ██████ has a maximum of 45 teen-aged residents across two principal campuses. The camp-like ██████ campus is for students at levels 1 and 2 of the program, while the ██████ is for students

at levels 3 and 4. There is approximately an equal number of males and females at [REDACTED] [REDACTED] Test.; SF-456; SF-459 & SF-461; SF-472 & SF-473]

168. [REDACTED] students receive a school-approved wardrobe to diminish distractions, and are not allowed access to cell phones, internet, or television, so they can focus internally while at [REDACTED] [REDACTED] [S-159; [REDACTED] Test.]
169. [REDACTED] employs ten masters-level therapists, plus residential staff, academic faculty, and awake overnight staff. All [REDACTED] staff members are trained in the fundamentals of DBT. Staff members communicate with the therapists to provide insight as well as in-the-moment support for students. [REDACTED] Test.; [REDACTED] Test.; S-159]
170. [REDACTED] utilizes four DBT modules of 2-3 months each with its students: mindfulness, distress tolerance, emotion regulation and interpersonal effectiveness. [S-162]
171. Because DBT skills require practice to become internalized, [REDACTED] "DBT lessons are enhanced when the skills are reinforced daily within the behavioral milieu, during individual and family therapy." [S-162; [REDACTED] Test.; [REDACTED] Test.]
172. On arrival, [REDACTED] would not take responsibility for any of the behaviors that necessitated [REDACTED] therapeutic placement; [REDACTED] engaged in a negative and distorted style of thinking, distrusted most people, and had great difficulty expressing [REDACTED] emotions. [REDACTED] Test.]
173. In group therapy, [REDACTED] initially would not volunteer until [REDACTED] was the very last person to contribute. [REDACTED] Test.; [REDACTED] Test.]
174. [REDACTED] [REDACTED] master treatment plan [SF-197; P-117] has addressed goals and objectives for [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [SF-200 through SF-203; P-120 through P-123]

175. [REDACTED] has received frequent and consistent individual, family, and group therapies at [REDACTED] plus DBT skills training and individualized academics with a certified teacher. [Parent Test.; [REDACTED] Test.; [REDACTED].; [REDACTED] Test.]
176. [REDACTED] receives on average, approximately four hours per week of therapy at [REDACTED] in addition to DBT skills training and academic instruction. [REDACTED] has benefitted from those services. [P-328; P-332; P-335; P-339; P-344; Parent Test.; [REDACTED] Test.; Mallet Test.; [REDACTED] Test.]
177. Although [REDACTED] continues to maintain that there are day school programs available that could provide DBT programming for [REDACTED] its offer has focused exclusively on the [REDACTED] School in [REDACTED] Massachusetts. [REDACTED] Test.; Parent Test.]
178. [REDACTED] [REDACTED] confirmed [REDACTED] experience when [REDACTED] [REDACTED] reached out to colleagues seeking DBT placement options, only to discover that DBT programs are difficult to find for students of [REDACTED] age. [REDACTED] Test.; Parent Test.]
179. [REDACTED] visited the [REDACTED] website seeking information on whether that school provided a DBT treatment program. [REDACTED] of [REDACTED] responded to [REDACTED] in late August and informed [REDACTED] that, contrary to [REDACTED] claim, [REDACTED] does not offer any specialized DBT programming, although some of the clinicians employed there do have some DBT training that they may utilize. [Parent Test.]
180. [REDACTED] visited [REDACTED] at [REDACTED] [REDACTED] invitation in early September, at which time [REDACTED] reiterated that it is not a DBT program and could not offer the comprehensive type of programming [REDACTED] is receiving at [REDACTED] [REDACTED] offers no group therapy or DBT skills sessions, both essential components of DBT, and does not offer real-time consultation for application of DBT skills. It also has only a 6-week extended school year program, leaving its students without services for four weeks each summer. [Parent Test.; [REDACTED] Test.]
181. At the September [REDACTED] meeting at [REDACTED] [REDACTED] [REDACTED] and [REDACTED] admissions director, [REDACTED] acknowledged that the [REDACTED] day school program would not provide [REDACTED] with DBT treatment sufficient to meet [REDACTED] needs and suggested adding on services

outside the school day, on top of the lengthy commute between ██████ and Massachusetts. ██████ however, has failed to provide any information confirming that these additional services would be DBT, appropriate for ██████ diagnosis, and has made no formal proposal to amend ██████ IEP. [P-050; Parent Test.]

182. ██████ has attended two Family Weekends at ██████ one during the summer and one in November ██████ On the second weekend, the family (██████ and ██████ other three children) received permission for ██████ to stay overnight with them in a rented cabin. [Parent Test.]

183. Since ██████ arrival at ██████ ██████ has achieved level 3 (of 4) on ██████ level system and completed ██████ ██████ grade academic work about five months early. ██████ has learned to accept responsibility and admit how ██████ past behaviors and mistakes have hurt family members. ██████ also has learned more effective communication skills, including how to identify and talk about ██████ feelings, and has begun working on ██████ ██████ grade curriculum requirements. [Parent Test.]

184. After spending many weeks at level 2, ██████ earned level 3 status at ██████ in early November ██████ Due to this promotion, ██████ moved from the ██████ campus to the ██████ [██████ Test.; ██████ Test.; Parent Test.; ██████ Test.; S-287]

185. To earn entry to level 3, ██████ had to prepare and present an accountability letter, which ██████ read in the presence of ██████ ██████ and therapist. [P-462; ██████ Test.; Parent Test.]

186. ██████ therapist explained that ██████ letter "blew me away," as ██████ had finally moved ██████ focus from being a "victim" to being accountable for what ██████ had done to others. [██████ Test.]

187. At ██████ ██████ has improved ██████ level of empathy and concern for others, ██████ hygiene and self-care skills, and overall ██████ sense of responsibility and understanding for how ██████ has impacted ██████ and those around ██████ ██████ has learned to take accountability for ██████ past negative behaviors and is motivated to work hard to successfully complete both the academic and functional portions of ██████ ██████ program. ██████ described ██████ as "my old ██████ again. [Parent Test.; P-462]

188. [REDACTED] described [REDACTED] transformation from initially having a difficult time identifying [REDACTED] feelings, to becoming receptive to therapeutic suggestions, and, ultimately, to becoming a more trusting person. [REDACTED] also has engaged successfully in therapeutic family work while at [REDACTED] moving from a distorted thinking style (which led [REDACTED] to jump to assumed conclusions) to a newfound ability to open to new ideas and express [REDACTED] feelings. [REDACTED] [REDACTED] now sees [REDACTED] as experiencing genuine happiness and having a bigger smile. [REDACTED] also has lost weight and begun exercising more to help [REDACTED] feel better physically. [REDACTED] Test.]
189. [REDACTED] lists [REDACTED] anticipated discharge as May 12, [REDACTED] after completion of twelve months in the program. [REDACTED] Test.; P-117]
190. [REDACTED] costs \$9,850 per month, broken down as \$4,670 for therapeutic services; \$2,690 for academic services; and \$2,490 for residential services), plus a one-time fee of \$3,400 for an individualized academic curriculum and \$1,250 for clothing and supplies. [S-302] Due to [REDACTED] significant weight loss as [REDACTED] health and self-care have improved, there has been a second clothing fee of \$450. [P-349]
191. [REDACTED] has incurred the costs set forth on the cost summary spreadsheet, which totaled nearly \$86,000 in costs related to [REDACTED] as of the start of the hearing, with additional monthly liabilities expected in excess of \$10,000 from January [REDACTED] through [REDACTED] anticipated completion of the program in May [REDACTED] [P-353]

## CONCLUSION

For all the reasons enumerated above, [REDACTED] respectfully requests that [REDACTED] Hearing Officer issue an order in [REDACTED] favor against [REDACTED] awarding [REDACTED] reimbursement of [REDACTED] [REDACTED] related expenses and awarding [REDACTED] compensatory educational services, consistent with the proposed rulings set forth below.

## PARENT'S PROPOSED RULINGS

1. [REDACTED] has failed to meet its burden of proving by a preponderance of the evidence that the IEP sent to Parent on May 7, [REDACTED] was appropriate under the IDEA, per the standard set forth in *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 ([REDACTED])
2. Although not necessary for resolution of the issues in this case, [REDACTED] also has failed to meet its burden of proving by a preponderance of the evidence that the IEP sent to Parent on May 21, [REDACTED] proposing a non-existent private day school placement capable of offering a DBT program, was appropriate under the IDEA, per the standard set forth in *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 ([REDACTED])
3. Parent has met [REDACTED] burden of proving by a preponderance of the evidence that Student's unilateral placement at [REDACTED] Maine is proper under the IDEA, per *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).



4. Parent is therefore entitled to reimbursement of the enumerated costs related to Student's placement at [REDACTED] Maine from May [REDACTED] through [REDACTED] completion of the program, anticipated to occur in May [REDACTED]
5. [REDACTED] violated [REDACTED] Child Find rights under the IDEA by failing to refer, evaluate, identify, and initiate programming for [REDACTED] until [REDACTED] thereby entitling [REDACTED] to an award of compensatory educational services.

Dated: January 21, [REDACTED]

Respectfully submitted,

[REDACTED]

[REDACTED]

STATE OF NEW HAMPSHIRE  
STATE DEPARTMENT OF EDUCATION

██████████ School District

IDPH- FY-22-08-003

██████████ SCHOOL DISTRICT PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Set forth below are ██████████ School District's proposed findings of fact and conclusions of law. Beyond what is set forth in this document, the ██████████ School District (██████████) asks the Hearing Officer to approve all the factual statements in its posthearing memorandum that would be central to a ruling in ██████████ favor on the six issues in this case.

**Proposed Findings of Fact**

- a. ██████████ IEP and IEP development were appropriate.
1. ██████████ is a ██████████ year-old child with a birthdate of ██████████. See Complaint.
2. ██████████ educational career has been marked by above-average performance.
3. ██████████ was never a "discipline problem" at school, nor did ██████████ exhibit defiant or oppositional behavior at school. ██████████ testimony; ██████████ testimony; S-83. ██████████ engaged with peers at a typical level, and seemed mature for ██████████ age in ██████████ ability to interact with adults. Id. ██████████ presents as "wise beyond ██████████ years." ██████████ testimony. ██████████ did not seem ██████████ or ██████████ at school. ██████████ testimony.
4. ██████████ runs an Academic Support program for students who need a designated time to work on homework and other work completion. ██████████ testimony. Academic Support is a regular education intervention. Id. ██████████ ██████████ leads the Academic Support program

for students in [REDACTED] and [REDACTED] grade. Id. Academic Support is a class that meets every other day, for 45 minutes. Id. The Academic Support period typically consists of 5-15 minutes of discussing skills such as time management, organizational tools, and mindfulness. The remaining time – around 70 percent of time in Academic Support – is dedicated to work completion. Id.

5. Students who are not enrolled in a world language are enrolled in Academic Support, which meets at the same time as world language classes. [REDACTED] testimony.
6. Whenever a teacher has concerns about a student, that teacher brings his or [REDACTED] concerns to the Child Study team. [REDACTED] testimony; [REDACTED] testimony. The Child Study Team is a group of professionals in the [REDACTED] School District, including special education facilitators, guidance counselors, Academic Support staff, reading specialists, behavior specialists, and teachers. [REDACTED] testimony; [REDACTED] testimony. When a child is brought to the Child Study Team, the team strategizes ways to support the student. [REDACTED] testimony; [REDACTED] testimony. At times, students will be referred for special education on the basis of the Child Study Team's determinations. [REDACTED] testimony. During the time period at issue in this case, [REDACTED] was never brought up to the Child Study Team because teachers saw [REDACTED] as a typical and well-performing student. [REDACTED] testimony; [REDACTED] testimony.
7. [REDACTED] attended Academic Support during the [REDACTED] school year, on the Parent's request. S-A-232. [REDACTED] was not referred to Academic Support on the basis of teacher concerns. Id. In Academic Support, [REDACTED] would work on completing late assignments. [REDACTED] testimony; [REDACTED] testimony. Although [REDACTED] turned in well-done work, [REDACTED] at times turned in assignments late. [REDACTED] testimony; [REDACTED] testimony. This was not unusual for students of [REDACTED] age. [REDACTED] testimony; [REDACTED] testimony.

8. [REDACTED] did not require specialized instruction in order to turn assignments in on time. [REDACTED] testimony; [REDACTED] testimony. At the end of [REDACTED] [REDACTED] grade year, [REDACTED] was discharged from Academic Support on the basis that [REDACTED] no longer needed the support it provided, and on the misapprehension that the Parent agreed with [REDACTED] dismissal. [REDACTED] testimony. Upon learning of this change at the start of the school year, the Parent requested that [REDACTED] be re-enrolled in Academic Support instead of taking a world language. S-A-232; [REDACTED] testimony. [REDACTED] agreed, and [REDACTED] re-entered Academic Support for [REDACTED] [REDACTED] grade year. [REDACTED] testimony.
9. [REDACTED] was disappointed not to be taking a world language. [REDACTED] testimony. [REDACTED] [REDACTED] permitted [REDACTED] to use the Academic Support period as a "study hall." [REDACTED] testimony. [REDACTED] was seen as a leader in Academic Support. [REDACTED] testimony; S-84.
10. [REDACTED] had good grades and attendance at school throughout the [REDACTED] school year. S-83, -84. Prior to switching to remote learning in March of [REDACTED] [REDACTED] was earning straight As all but one quarter (in which [REDACTED] received one B grade). S-83. [REDACTED] was a typical, average to above-average student during this time, and was actively involved in extra-curricular activities. [REDACTED] testimony. During [REDACTED] [REDACTED] and [REDACTED] grade years, [REDACTED] was "never" a student who would have been referred to special education. [REDACTED] testimony.
11. Following the [REDACTED] school year, [REDACTED] was able to leave Academic Support, and instead enroll in Latin, due to [REDACTED] strong academic success and progress. [REDACTED] testimony.
12. [REDACTED] [REDACTED] believed that [REDACTED] was having a "great year," prior to the onset of the pandemic. S-A-7.

13. ■■■ did not refer ■■■ for special education during ■■ or ■■ grade.
14. ■■■ loved ■■ peers. Despite the fact that ■■ was at times involved in age-appropriate, typical “drama” among ■■ peers, ■■■ valued ■■ friendships as being among the “most important” things in ■■ world. ■■■ testimony.
15. ■■■ had ongoing difficulties with ■■ relationships at home. ■■ felt competitive with ■■ older ■■ – who was “seemingly perfect” in ■■■ view – which resulted in conflicts. ■■■ testimony; S-202. From ■■ ■■■ ■■■ felt that ■■ was always “in trouble,” grounded, and losing privileges. ■■■ testimony; ■■■ testimony.
16. On March 13, ■■■ the ■■■ School District switched to remote learning, in response to the Covid-19 pandemic. During this period, remote learning was thought to be a temporary solution to a temporary problem, and thus, it was mostly a matter of sending work home to be completed. ■■■ testimony. There was no direct instruction during this time. ■■■ testimony. ■■■ had difficulties with work completion during this period. ■■■ testimony; ■■■ testimony.
17. ■■■ was not alone in struggling with school during the pandemic. ■■■ testimony; ■■■ testimony. Remote learning was a new experience for all students, and many students began having increased trouble with work completion. ■■■ testimony; ■■■ testimony.
18. Teachers did not refer students for special education solely on the basis that they struggled to make the transition to remote learning, as this would be a disproportionate response to a widespread and reasonable struggle. ■■■ testimony. Teachers did not refer ■■■ for special education during ■■ ■■ grade year because ■■ did very well prior to the pandemic closure, and ■■ drop off in performance during the closure did not

seem due to a disability but instead due to difficulties with remote instruction shared by many students. Id.

19. ██████ did not require special education in ██████ grade. ██████ testimony; ██████ testimony.
20. Teachers' roles changed significantly during this period of remote learning. Since there was no direct instruction, teachers reached out to students directly to check on them, usually via email. ██████ testimony. Most of the students ██████ age were not accustomed to communicating via email prior to the pandemic, which at times made communication challenging. ██████ ██████
21. Prior to the onset of the pandemic, ██████ reported being frequently grounded, and grounded from ██████ phone. ██████ testimony; ██████ testimony. In the spring of ██████ this pattern continued, with ██████ grounded from ██████ phone for as much as a month at a time. S-A-58, 59; S-C-53. ██████ suffered emotionally from a lack of regular access to ██████ peers, either in person or by electronic means. ██████ testimony; S-84; S-A-51. Over the course of the semester, ██████ teachers and guidance counselor became concerned about ██████ level of isolation. ██████ testimony; ██████ testimony.
22. Despite delays in work completion, ██████ was able to turn in ██████ assignments and pass each of ██████ classes at the end of the ██████ school year. ██████ testimony; S-83. For semester grades in the spring of ██████ ██████ adopted Pass/Fail grading. These grades were earned, and resulted from the quality of the work that ██████ submitted, despite having been turned in late in the school year. See ██████ testimony; ██████ testimony. Grades for "Effort" remained on a letter grading system in the final quarter, and the grades assigned reflect the true grade earned. ██████ testimony. "Effort" grades

primarily reflect work completion. Id. [REDACTED] received mostly As and Bs in Effort, with one C-. S-83.

23. On June 16, [REDACTED] [REDACTED] reported to [REDACTED] counselor, [REDACTED] that [REDACTED] had attempted [REDACTED] on a couple of occasions. S-B-78. [REDACTED] made this report almost in a bragging manner. [REDACTED] testimony. Fortunately this was the only time [REDACTED] reported a [REDACTED] gesture. See [REDACTED] testimony. In January [REDACTED] [REDACTED] [REDACTED] reported that [REDACTED] had not made any [REDACTED] statements in the past six months, which was since that initial report in June [REDACTED] S-F-5; [REDACTED] testimony.
24. In the summer of [REDACTED] [REDACTED] was placed by [REDACTED] [REDACTED] in an out-patient DBT program called [REDACTED] that met four days per week, for about three hours per session. S-B-128-141. This program was intended to last 6 weeks, but after about two weeks in the program, the Parent withdrew [REDACTED] from the group, on the basis that the Parent felt the program was not working, and was "making [REDACTED] worse." S-202, S-B-79, 81, 141; S-C-34.
25. [REDACTED] "loved" attending the [REDACTED] program prior to [REDACTED] [REDACTED] pulling [REDACTED] out. S-C-43.
26. [REDACTED] [REDACTED] frequently reported to [REDACTED] therapist, [REDACTED] about things [REDACTED] did during this time that made [REDACTED] upset. This included [REDACTED] verbally fighting with [REDACTED] [REDACTED] not doing [REDACTED] chores quickly or correctly, not cleaning up after [REDACTED] after crafting or cooking, and leaving apple cores and food containers in [REDACTED] room. S-C-45-48.
27. [REDACTED] [REDACTED] reported to [REDACTED] [REDACTED] that [REDACTED] was "unsafe" and "not in [REDACTED] right mind." S-C-35. [REDACTED] "unsafe" behaviors included negligently leaving a paring knife

next to [REDACTED] snack of watermelon, leaving two ibuprofen tablets on the couch, and attempting to smooth the edges of a plastic container using a lighter, without regard of the risk posed by pine shavings on the floor. S-C-36; [REDACTED] testimony. [REDACTED] did not attempt to start a fire, and the other actions were unintentional. [REDACTED] was [REDACTED] years old at the time of these incidents.

28. [REDACTED] informed [REDACTED] that [REDACTED] wanted to send [REDACTED] to a wilderness therapy program, "ASAP." S-C-36. [REDACTED] also considered sending [REDACTED] to live with [REDACTED] or to [REDACTED] [REDACTED] S-C-51.
29. In the fall of [REDACTED] [REDACTED] began attending [REDACTED] School, containing grades [REDACTED] in the [REDACTED] School District. At this time, the [REDACTED] School District adopted a "hybrid" learning model, in which half of the student population would attend school in-person on Mondays and Wednesdays, and the other half attending in-person on Tuesdays and Thursdays. [REDACTED] testimony. In-person Fridays alternated between these two cohorts. Id. On days when a cohort was not in school, students received work assignments remotely. Id. Some students opted for fully remote learning at this time. For fully remote students, classes took place on the Google Meet platform every other day, and on "off" days students received assignments remotely in the same manner as the hybrid students. Id.
30. [REDACTED] began the [REDACTED] school year as a hybrid student. [REDACTED] [REDACTED] had phone conversations with [REDACTED] [REDACTED] during the semester where [REDACTED] explained that [REDACTED] was looking for another school for [REDACTED] because hybrid "was not working." [REDACTED] testimony.



31. [REDACTED] was not a discipline problem in the fall of [REDACTED] nor did [REDACTED] have issues with attendance or tardies that would raise a red flag for an attendance issue. [REDACTED] testimony. Many of [REDACTED] tardies were for being a few minutes late to home room. [REDACTED] testimony.
32. [REDACTED] overall performance in the fall of [REDACTED] did not indicate either a disability or a need for a referral to special education. [REDACTED] testimony.
33. [REDACTED] [REDACTED] informed [REDACTED] on December 1, [REDACTED] that [REDACTED] and [REDACTED] would be immediately switching to fully remote learning. [REDACTED] testimony; [REDACTED] testimony; [REDACTED] testimony; S-B-102. [REDACTED] reluctance to make this switch led to a compromise between [REDACTED] and [REDACTED] in which [REDACTED] would continue coming to school to attend Latin in-person. [REDACTED] testimony.
34. [REDACTED] difficulty with work completion increased after [REDACTED] switch to remote learning. [REDACTED] testimony.
35. [REDACTED] [REDACTED] discussed potential interventions for [REDACTED] to address [REDACTED] difficulty with work completion, with [REDACTED] primary recommendation being to move [REDACTED] from Latin and into Academic Support. [REDACTED] testimony. This change would have had the effect of lightening [REDACTED] academic workload, while also providing [REDACTED] with the structure and guidance that the Academic Support program could offer. Id. [REDACTED] [REDACTED] was not willing to move [REDACTED] back into Academic Support in lieu of Latin. Id.
36. In a phone conversation in late January [REDACTED] [REDACTED] [REDACTED] asked [REDACTED] [REDACTED] about options for "testing." [REDACTED] [REDACTED] felt that it sounded like [REDACTED] [REDACTED] was asking about special education testing, and so [REDACTED] gave [REDACTED] [REDACTED] information about how to make a referral for special education. [REDACTED] testimony; S-124.

37. The Parent referred [REDACTED] for special education on January 29, [REDACTED] S-114.
38. The parent provided the school with a psychological evaluation by [REDACTED] McEachern-Dugre, dated January [REDACTED] [REDACTED] initially told [REDACTED] that [REDACTED] did "not quite" have a border line personality disorder. S-325. Ultimately, though, [REDACTED] [REDACTED] concluded [REDACTED] did meet the criteria for that disorder. S-324-25.
39. The School Psychologist, [REDACTED] [REDACTED] conducted a psychoeducational evaluation of [REDACTED] on March 15, [REDACTED] S-126,-154.
40. As part of his evaluation, [REDACTED] [REDACTED] reviewed prior evaluations of [REDACTED] including the [REDACTED] psychological evaluation by [REDACTED] [REDACTED] [REDACTED] found that [REDACTED] had many negative emotions and attitudes towards [REDACTED] and faced obstacles with [REDACTED] family. S-198. Despite [REDACTED] social-emotional challenges, [REDACTED] [REDACTED] found that [REDACTED] academic skills had been developing effectively, with superior abilities in [REDACTED] application of math skills. Id. [REDACTED] [REDACTED] was not comfortable with the diagnosis of [REDACTED] some of the criteria for the diagnosis seemed inappropriate to apply to someone of [REDACTED] age. [REDACTED] testimony. For example, adolescents have an inherently fluctuating sense of self, the presence of which is one of the diagnostic criteria for [REDACTED] [REDACTED] testimony.
41. The IEP team found [REDACTED] eligible for special education under the category of Emotional Disturbance on March 30, [REDACTED]
42. During [REDACTED] spring vacation, [REDACTED] [REDACTED] visited [REDACTED] campus. [REDACTED] testimony.
43. On April 23, the Parent wrote a letter to [REDACTED] stating [REDACTED] intent to enroll [REDACTED] in a private residential program, and that [REDACTED] intended to seek reimbursement from [REDACTED] S

190; █████ testimony. This letter did not name a particular school or program, and did not object to any program proposed by █████ since the team had not met yet to propose a program. S-190-91.

44. The IEP team met on May 3 and 4, █████ to develop an IEP and propose a placement that would be designed to deliver a FAPE to █████ S-198. █████ found no evidence to determine that █████ required a residential placement. During the time when █████ attended in-person school, █████ was successful there. █████ testimony. Prior to remote learning, █████ had good attendance. █████ believed that █████ would have also have good attendance at a day placement. █████ testimony.

45. When the IEP team met to discuss an IEP and placement for █████ on May 3 and 4, █████ █████ was clear that █████ wanted a residential program for █████ █████ testimony; █████ testimony; S-200-01. █████ believed that there was not enough evidence to determine that a residential program was necessary, particularly given that few interventions had been attempted thus far. █████ testimony; █████ testimony.

46. Given the lack of evidence that a residential placement was educationally necessary, █████ proposed a placement at a special education private day school. S-202; █████ testimony. Since this proposal would have █████ in a therapeutic day school for █████ entire school day, 6.5 hours of █████ day would take place in special education. █████ testimony. █████ identified three schools that █████ believed could deliver the IEP's services, including DBT. █████ testimony; S-202-203.

47. The IEP proposed individual counseling twice per week, for 30 minutes, and group counseling once per week for 30 minutes. S-255. These would be DBT sessions. █████ testimony; see S-256.

48. The following day, May 5th, [REDACTED] the Parent attended a tour of a potential special education school, the [REDACTED] School. Prior to the tour, [REDACTED] believed that the [REDACTED] School had in-house therapists who could implement DBT to students. At the tour, [REDACTED] and the Parent learned that the [REDACTED] School utilizes out-patient DBT providers to deliver DBT in its program, and that these providers were currently unavailable. [REDACTED] testimony.
49. After this visit to the [REDACTED] School, the Parent refused to attend further tours of potential schools, on the basis that [REDACTED] visit to the [REDACTED] School was a waste of [REDACTED] time, and was costing [REDACTED] money. [REDACTED] testimony, S-228. The Parent also refused to sign releases for schools including [REDACTED] School and [REDACTED] School until well after filing for due process. [REDACTED] testimony.
50. At 11:44 on May 5, almost immediately following the tour with the [REDACTED] School, [REDACTED] [REDACTED] emailed [REDACTED] to inform them that [REDACTED] would be admitting [REDACTED] to [REDACTED] the following Wednesday, May 12. P-037. [REDACTED] [REDACTED] did not inform [REDACTED] of this plan.
51. Despite the Parent's unwillingness to visit potential schools, [REDACTED] continued its search for an appropriate special education school. Based on its search, [REDACTED] believed that [REDACTED] [REDACTED] was an appropriate fit for [REDACTED] [REDACTED] testimony.
52. [REDACTED] determined during its search that [REDACTED] has two DBT-trained clinicians, and that [REDACTED] could have twice weekly DBT sessions at [REDACTED] with the option to increase the number of sessions as needed. [REDACTED] testimony. The Parent was informed of [REDACTED] DBT-trained clinicians on May 10, [REDACTED] S-228. [REDACTED] determined that [REDACTED] [REDACTED] has a strong academic component, and that [REDACTED] would be in a classroom with

students who were well-matched with [REDACTED] in academic ability. [REDACTED] testimony. [REDACTED] has in-person, live academic instruction. [REDACTED] testimony. [REDACTED] also has a six week summer program which would constitute a suitable ESY program for [REDACTED] P-42; [REDACTED] testimony. At this time, [REDACTED] only requires an interview with [REDACTED] before accepting [REDACTED] to its program. [REDACTED] testimony. The Parent has refused to make [REDACTED] available for this interview. Id.

53. Although presented with appropriate options for [REDACTED] school, it was clear that the Parent was only interested in placement at [REDACTED] [REDACTED] testimony. After the IEP team meeting on May 4th, [REDACTED] [REDACTED] spoke with the Parent, “mother to [REDACTED] to explain [REDACTED] concerns with [REDACTED] program. Id. [REDACTED] [REDACTED] had learned of troubling practices at [REDACTED] from prior experiences with [REDACTED] Id. [REDACTED] shared [REDACTED] concerns with the Parent, including concerns about its behavioral interventions and academic program, but the Parent was not receptive to these concerns. Id. At the time of the meeting on May 4, [REDACTED] was not aware that [REDACTED] was not approved as a special purpose private school in Maine.

54. On Friday, May 7, at 2:54 PM, [REDACTED] emailed the Parent a proposed IEP from the May 4 meeting that contained several errors, including failing to indicate placement the proposed placement at a special education private day school, and the need for DBT therapy. P-043; [REDACTED] testimony.

55. That same afternoon, May 7th, [REDACTED] [REDACTED] had been submitting the required paperwork to enroll [REDACTED] at [REDACTED] including signed releases, medication lists, and a copy of [REDACTED] and [REDACTED] father’s parenting plan. P-388-458. [REDACTED] sent the paperwork via DocuSign at 1:08 that day, and [REDACTED] [REDACTED] began viewing it four minutes later at 1:12.

P-457. By 2:56 PM, two minutes after [REDACTED] email to [REDACTED] attaching the proposed IEP, [REDACTED] had finished signing and uploading the requested documentation. Id.

56. At 6:53 PM on May 7, after business hours, the Parent responded to [REDACTED] email, pointing out the above errors and requesting an explanation for them. P-042. By this time, the Parent had already submitted the necessary paperwork to enroll [REDACTED] at [REDACTED] with a plan to enroll [REDACTED] on May 12. P-037; P-458. On Monday, May 10 at 8:03 AM, [REDACTED] responded to the Parent, stating that [REDACTED] would take a look at the documents, and [REDACTED] would need a few days to get back to [REDACTED] P-042.

57. Upon receiving this email from [REDACTED] the Parent testified that [REDACTED] immediately submitted the necessary paperwork to [REDACTED] to enroll [REDACTED] there, however the documentation provided through discovery and in the Parent's exhibits does not reveal any additional paperwork submitted after Friday, May 7. In fact, the Parent informed [REDACTED] prior to receiving the IEP – on May 5th – that [REDACTED] intended to enroll [REDACTED] at [REDACTED] for an admission date of May 12, [REDACTED] P-037.

58. The Parent did not inform [REDACTED] of [REDACTED] intent to admit [REDACTED] to [REDACTED] until May 11, the day before the admission date [REDACTED] had arranged with [REDACTED] a week before. S-235; P-037. In this letter dated May 11, the Parent stated [REDACTED] intent to seek funding from [REDACTED] for this placement.

59. On May 14, [REDACTED] responded to the Parent's letter, attaching a copy of the corrected proposed IEP and placement. S-240, -244. [REDACTED] believes that this IEP and placement would meet [REDACTED] needs, "very well," and would allow for meaningful progress on [REDACTED] goals. [REDACTED] testimony.

60. The contents of this corrected proposal reflect the IEP team's discussions and decisions.

█████ testimony. The proposed placement at a private day school would include summer services, as reflected in ESY portion of the IEP. S-259.

61. This IEP would have provided █████ with a FAPE. █████ testimony.

62. The Parent signed rejecting the proposed IEP on June 4, █████ S-270.

63. Over the summer, █████ made efforts to resolve the Parent's concerns with █████ proposed placement, including by offering to help arrange wrap-around services, which would include additional DBT sessions and in-home supports. █████ testimony.

64. The family requested this due process hearing challenging the IEP and placement on August 9, █████

65. █████ had █████ █████ █████ conduct an assessment of █████ reading skills while █████ was at █████ on November 2, █████ █████ submitted that report to the Parent and the District. S-283. █████ █████ concluded that █████ had strong reading skills and does not have a profile for a specific learning disability. █████ testimony.

b. █████ is not an appropriate placement for █████

i. █████ is too restrictive for █████

66. █████ is not and has never been an approved special purpose private school. It is a for-profit corporation.

67. █████ engages in legally prohibited behavioral interventions, including the use of aversive techniques, as defined by Maine and New Hampshire law.

68. [REDACTED] has a practice of limiting children's access to and communication with their parents. In the first 30 days of a child's stay at [REDACTED] or [REDACTED] is not permitted to call home under any circumstance. [REDACTED] testimony.
69. [REDACTED] has a practice of taking a child's shoe laces to prevent him or [REDACTED] from running away. [REDACTED] testimony. Children commonly run away from [REDACTED] it is typical for more than one student to run away each summer. Id. Runaways are less common in the winter months, but not unheard of. Id.
70. [REDACTED] has a practice of requiring a child to ask permission before speaking – to a peer or to a staff member – and of requiring any conversations to be monitored by staff. [REDACTED] testimony.
71. Children at [REDACTED] are required to ask permission before either sitting or standing. [REDACTED] testimony.
72. Children at [REDACTED] may not "push back" against any expectations, whether it be how much they wish to eat, or the amount of time they need in the bathroom. P-231; S-F-77.
73. Children at [REDACTED] may be punished for any manner of failures to meet adult expectations, from failing to turn in one's food log on time to being one of the last to stand and line up during a group transition. S-F-25, -40.
74. [REDACTED] was the victim of one of [REDACTED] aversive techniques when [REDACTED] was made to wear a vest that identified [REDACTED] as a rule violator. P-197; [REDACTED] testimony. This is a common intervention at [REDACTED] [REDACTED] [REDACTED] "received the vest" the day after having engaged in "pushback" with staff. P-198; P-197. The behavioral notes are unclear as to how long [REDACTED] was made to wear the orange vest, but [REDACTED] did so for at least two days. P-195, -196, -197; [REDACTED] testimony. In addition to wearing the orange vest, [REDACTED]



was required to move out of [REDACTED] current sleeping arrangements and into a different location. The purpose of the vest is to identify children as rule violators. [REDACTED] testimony. Children and staff recognize that vest-wearers are at risk of dropping a "level" due to their rule breaking. Id. Children wearing the vest are required to follow the rules of the level below them, and are not allowed to access the privileges associated with their level. Id. It can take "a few days" before a child can demonstrate improvement sufficient to have the vest removed. Id.

75. [REDACTED] testified that wearing the vest makes the child stand out with [REDACTED] peers which can effectively alter behavior. [REDACTED] stated that "[The vest] is a consequence for behavior. It shows everyone else that that resident is not allowed to do certain things because they're back at level 1." Id.
76. Other behavioral interventions include students "going on reflection," which is similar to a time out, and can last as long as an entire day. Id. Reflection sometimes takes place in a gazebo. Id. While on reflection, a student is sometimes assigned a writing task, or a physical chore to complete. [REDACTED] has received both writing assignments and chores when [REDACTED] has gone on reflection. S-F-9, -14, -23, -25, -36, -40, -54; P-242.
77. Children at [REDACTED] are not permitted to return home for holidays. This rule is in place because without it, [REDACTED] had to "battle getting [the students] back." [REDACTED] testimony.
78. Other violations of [REDACTED] rules and expectations include:
- a. Doodling on the inside of one's hat; P-187.
  - b. Reading or having books that are not approved as "classics" or self-help; S-F-479.
  - c. Having a fidget toy; S-C-12.

- d. Discussing news events; S-F-86.
  - e. Failing to agree to have one's picture taken. S-F-55.
  - ii. The academics available at [REDACTED] are insufficient for [REDACTED]
79. [REDACTED] educational program is limited to "concentrated study time," utilizing self-directed learning activities. S-E-45. [REDACTED] utilizes Edmentum's online PLATO courses for curricular purposes. S-E-31. Students are not permitted access to the internet at [REDACTED] and only upon reaching "Level 2" do student receive access to a computer for word processing. [REDACTED] testimony; [REDACTED] testimony. Students' "instruction" and educational material is received through books and paper. [REDACTED] testimony.
80. There is no live teaching at [REDACTED] students are self-directed, and quietly complete their work without engagement with other students. [REDACTED] testimony; [REDACTED] testimony. There are two "class" sessions per school day, which are separated by gender on the [REDACTED] Campus. [REDACTED] testimony. Accordingly, classes are not separated by age or grade level. Id.
81. At [REDACTED] there is no discussion-based academic learning. In fact, students are prohibited from talking during school. S-F-81; [REDACTED] testimony.
82. [REDACTED] can engage best in academic environments that encourage discussion. [REDACTED] testimony; [REDACTED] testimony. [REDACTED] is a curious and engaged learner, who requires academic rigor and discussion-based learning in an appropriate educational program. Id.
83. In addition to the above deficiencies, elements of [REDACTED] academic curriculum do not appear to meet Maine's academic standards, as outlined in the Maine Learning Results. S-E-46, -47, -61, -64, -65, -67, -68, -69. Documentary evidence and testimony do not establish that [REDACTED] has filled these instructional gaps.

84. [REDACTED] "[REDACTED] Education Plan," merely suggests the number of credits that [REDACTED] will leave with, and [REDACTED] projected grade by the end of [REDACTED] time there. S-E-45. [REDACTED] progress reports from [REDACTED] are a jumble of fractions with no readily apparent meaning. S-E-44.

iii. [REDACTED] therapeutic interventions are inappropriate for [REDACTED]

85. [REDACTED] schedule at [REDACTED] contains only one session of group DBT per week. S-F-472, -473, -474. No testimony or other evidence show that [REDACTED] receives any additional DBT sessions.

86. [REDACTED] proposed placement would have provided more DBT services to [REDACTED] than [REDACTED] has provided. See S-F-472, -473, -474; S-255; [REDACTED] testimony. [REDACTED] also offered to arrange and fund appropriate wrap-around services and other supports, which would have provided [REDACTED] with access to even more DBT sessions, and to other supports as needed. [REDACTED] testimony.

87. Although non-therapeutic staff at [REDACTED] have adopted the "language of DBT," this is insufficient to establish that these staff deliver DBT therapy. See testimony of [REDACTED]  
[REDACTED]

88. [REDACTED] has never liked mayonnaise, and not until attending [REDACTED] where compliance is the primary progress metric, has this dislike become a crisis rising to the level of therapeutic intervention. P-155.

89. [REDACTED] perseveration on [REDACTED] dislike of mayonnaise and yogurt has led [REDACTED] to be disciplined every time a meal with either ingredient is served. [REDACTED] has been put "on reflection," many times for not eating what was put in front of [REDACTED]. S-F-9, -14, -17, -23, -32, -43, -55; P-235; P-236. At times, this forced [REDACTED] to miss school. S-F-494. This has

also forced [REDACTED] to miss therapy sessions. P-243. Eventually, getting [REDACTED] to willingly eat mayonnaise and yogurt became a focus of [REDACTED] therapy time. S-F-100; [REDACTED] testimony. Some staff in the program went so far as to ask [REDACTED] to compare [REDACTED] “fixed mindset” regarding mayonnaise to “[the fixed mindset] of an addict.” S-F-28. Such an assertion is particularly breathtaking when one considers that [REDACTED] is the child of an alcoholic [REDACTED] [REDACTED] testimony.

90. [REDACTED] therapy at [REDACTED] is otherwise focused on the family unit. [REDACTED] testimony. [REDACTED] therapy at [REDACTED] is not intended to address challenges with learning or the school environment. Id.

**iv. [REDACTED] is not an approved special purpose private school.**

91. [REDACTED] is not, and has never been, an approved special purpose private school in the state of Maine.
92. [REDACTED] was continuously engaged in applying for special purpose private school status from the Maine DOE for about three years, before abandoning the project around July [REDACTED]. See S-E-3; [REDACTED] testimony. [REDACTED] is no longer seeking certification as a special purpose private school. [REDACTED] testimony.
93. The Maine Department of Education mistakenly sent [REDACTED] a Special Purpose Private School License in September of [REDACTED] in an email to [REDACTED], [REDACTED] Compliance Director at the time. Id. [REDACTED] [REDACTED] was the only individual on the email; [REDACTED] [REDACTED] received the copy of the mistakenly issued “license” from [REDACTED]. Id. [REDACTED] staff reached out to the DOE for clarification regarding their receipt of this “license” within days of receiving it. Id. The Maine DOE immediately explained to [REDACTED] that this “license” was mistakenly issued, and that [REDACTED] was not authorized to operate a

special purpose private school ("SPPS") at this time. Id. [REDACTED] spoke to [REDACTED] about this communication about the DOE, and made [REDACTED] aware that [REDACTED] was not a licensed SPPS. Id.

94. Despite having received this explanation from the Maine DOE, [REDACTED] held itself out as a special purpose private school using the mistakenly-issued "license." [REDACTED] testimony; S-C-23.

95. [REDACTED] was the Executive Director at the time when [REDACTED] applied to [REDACTED] for [REDACTED] and at the time when [REDACTED] was deciding whether to enroll [REDACTED] there. [REDACTED] testimony. [REDACTED] represented in an email to [REDACTED] that [REDACTED] had received SPPS status. S-C-23. [REDACTED] testified that [REDACTED] "should not have done that." [REDACTED] testimony. [REDACTED] was aware that [REDACTED] had not received the license, but that [REDACTED] "thought that we were in the process of getting the license and that we would get it, like, within a week." Id. [REDACTED] understood, from [REDACTED] conversation with [REDACTED] about the mistakenly-issued "license," that receipt of a real license was going to be "delayed," because they needed to do "more work on our policies." [REDACTED] [REDACTED].

96. [REDACTED] knowingly misrepresented itself as a special purpose private school.

#### **Proposed Conclusions of Law**

1. The District has the burden of proof regarding its IEP and placement, and whether the District met IDEA's child find requirements. RSA 186-C:16b; Order (12-10-21).
2. The Parent has the burden of proof regarding whether [REDACTED] is appropriate. *D.B. v. Esposito*, 675 F.3d 26, 35 (2012); *see also Schaffer v. Weast*, 546 U.S. 49, 57-58 (2005). Prehearing Conference Report (Amended) (11-30-21).

3. The District did not violate its child find or referral duties during the time periods at issue in this case.
4. The District evaluated [REDACTED] in all suspected areas of disability.
5. The IEP and placement proposed by [REDACTED] in its corrected IEP on May 14, [REDACTED] are reasonably calculated to provide [REDACTED] with meaningful educational benefits in the least restrictive environment. *See, e.g., Andrew F. v. Douglas County School District*, RE-1, 137 S.Ct. 988, 1001 (2017); *C.D. v. Natick Public School District*, 924 F.3d 621, 629 (1<sup>st</sup> Cir. May 2019); *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1086 (1st Cir. 1993); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).
6. [REDACTED] engages in aversive behavioral interventions that are illegal in both Maine and New Hampshire. RSA 126-U:4, IV; Ed. 1114.07(c); Me. DOE Rules 5 071, ch. 33, § 2.1 (definition), 6.2(F) (2013).
7. The Parent failed to provide the required notice in a timely manner of [REDACTED] intent to seek reimbursement for enrolling [REDACTED] at [REDACTED] 20 U.S.C. § 1412(a)(10)(C)(iii).
8. The Parent's placement of [REDACTED] at [REDACTED] is not proper under the Act, and therefore cannot support a reimbursement order. *See Sch. Comm. Of Town of Burlington, Mass. V. Dep't of Educ. of Mass.*, 471 U.S. 359, 373-74 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993).
9. [REDACTED] proposed placement included summer programming, and met state and federal special education obligations that govern extended year programming. *See* Ed 1110.01(b) [REDACTED] *see also* RSA 186-C:15, I.
10. Parent obstructed [REDACTED] ability to propose the [REDACTED] placement at an IEP team meeting by stalling the search process for an appropriate special education school.

11. Compensatory education is an equitable remedy. The equities do not support a compensatory education order because the Parent's actions were unreasonable. The Hearing Officer may reduce or deny reimbursement for a unilateral placement where the actions taken by the parents were unreasonable. 20 U.S.C. § 1412(a)(10)(C)(iii).
12. The IEP team process followed by [REDACTED] did not violate any of the procedural requirements of state and federal law. *See generally* Ed 1120; 34 C.F.R. § 300.320, .321, .322, .323, .324.
13. Even if there was a procedural violation under state and federal special education laws, any such violation did not have the requisite impact on [REDACTED] or the Parent so as to warrant a remedy under state and federal special education laws. *See* 20 U.S.C. § 1415(f)(3)(E)(ii).

Respectfully submitted,

[REDACTED] SCHOOL DISTRICT  
By and through its attorneys,  
[REDACTED]

January 21, [REDACTED]

By: [REDACTED]  
[REDACTED]  
[REDACTED]

**CERTIFICATE OF SERVICE**

I certify that on this 21<sup>st</sup> day of January [REDACTED] I mailed by first class mail and sent by electronic mail a copy of the within Proposed Findings of Fact and Conclusions of Law to [REDACTED] Attorney for the Parent.

[REDACTED]