

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Stewart¹

BSEA # 2101061

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held on May 11, 12, 13, 14 and June 7, 2021, before Hearing Officer Amy Reichbach. In compliance with the Commonwealth's directive that the BSEA hold no in-person hearings during the current pandemic, and with the consent of both parties, the hearing took place via Zoom videoconference. Those present for all or part of the proceedings, all of whom agreed to participate virtually, were:

Mother

Bryant Amitrano

Debbie Dixon

Michael Eracleo

Evelyn Harriott

Chelsea Medvedeff

Samantha O'Connell

Vanessa Prosper Ph.D.

Jeffrey Ristaino M.D.

Tyler Russell

Juliana Schneider

Jenna Zamar

Cristina F. Freitas, Esq.

Debbie F. Freitas, Esq.

Paul J. Klehm, Esq.

Colby C. Brunt Esq.

Thomas Costello, Esq.

Nina Pickering-Cook, Esq.

Liz Scian, Esq.

Marguerite M. Mitchell

Marion Schulz

Assistant Principal, Merriam Elementary School, Acton-Boxborough Regional School District (ABRSD)

Interim Director of Special Education, ABRSD

Detective, Acton Police Department (APD)

School Psychologist, Conant Elementary School, ABRSD

Special Education Teacher, Merriam Elementary School, ABRSD

Clinical Psychologist, Independent Evaluator

Psychologist

Student's Pediatrician

School Resource Officer and Detective, APD

Principal, Merriam Elementary School

Teacher, Conant Elementary School

Attorney for Parent

Attorney for Parent

Attorney for Parent

Attorney for ABRSD

Attorney for ABRSD

Attorney for APD

Attorney for APD

Hearing Officer, Bureau of Special Education Appeals (BSEA) (observer)

Legal Intern, BSEA

¹ "Stewart" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

Carol Kusinitz
Alexander Loos

Court Reporter
Court Reporter

The official record of the hearing consists of documents submitted by the Parent and marked as Exhibits P-1 to P-8, P-10 to P-71, P-74 (pp. 4-5), P-77, P-78, P-80, P-82 to P-92, P-94, P-95, and P-97 to P-130;² documents submitted by Acton-Boxborough Regional School District marked as Exhibits S-1 to S-9, S-14 to S-18, S-20 to S-53, S-55 to S-58, S-60, and S-61; approximately five days of oral testimony and argument; and a five-volume transcript produced by court reporters. At the request of the parties the case was continued to July 9, 2021 and the record held open for submission of closing arguments. The parties' closing arguments were received and the record closed on that date.

INTRODUCTION

The procedural history of this matter has been summarized in my prior rulings. For additional detail, the reader may consult my *Ruling on Parent's Motion to Consolidate*, issued on December 23, 2020; *Ruling on Acton-Boxborough Regional School District's Partial Motion to Dismiss and Parent's Motion to Join the Town of Action*, issued on March 12, 2021; *Ruling on Parent's Motion to Sequester Witnesses*, issued April 6, 2021; and/or *Ruling on Parent's Motion to Vacate or Quash Subpoenas and Acton-Boxborough Regional School District's Motion in Limine to Quash Subpoenas and Exclude Testimony of Acton Police Officers*, issued May 7, 2021.

To summarize, on October 29, 2020, Parent filed two Hearing Requests against Acton-Boxborough Regional School District (the District or ASRBD), the instant matter involving Stewart and the other, his brother.³ Regarding Stewart, Parent alleged that he has developmental and socio-emotional disabilities and that the District discriminated against him and against her, on the basis of race, ethnicity, color, disability and English language learner status, in violation of the IDEA and § 504 of the Rehabilitation Act of 1973 (Section 504).

Among other things, Parent alleged that the District created a hostile environment by failing to respond appropriately to Stewart's allegations of bullying; failed to convene a Team Meeting in response thereto; improperly involved the School Resource Officer (SRO) in behavioral incidents, which were manifestations of Stewart's disability; unlawfully seized Stewart and his mother and used excessive force on them; disclosed personal information about Stewart to the police department; improperly utilized the SRO to investigate Stewart and his brother's absences; and implemented a one-to-one aide without Parent's consent and without convening a Team Meeting to discuss the need for said service.⁴

² Exhibit P-76 was marked for identification.

³ The case involving Stewart's brother was assigned to Hearing Officer Rosa Figueroa.

⁴ Parent requested that the BSEA find that the District committed intentional infliction of emotional distress, loss of consortium, false imprisonment, and false arrest; find that Parent has exhausted her administrative remedies; and award Parent compensatory services, monetary and punitive damages, and attorney's fees and costs. The matter was scheduled for hearing on December 3, 2020. Parent's claims seeking relief for privacy violations, disability and non-disability discrimination, torts, and policy and procedure violations, to the extent they were not premised on a right created by the IDEA, were dismissed prior to Hearing.

Parent requested a declaration of procedural and substantive violations, and a finding that ABRSD violated the District's handbook and a number of laws, regulations, policies, and memoranda, including the Individuals with Disabilities Education Act (IDEA), Section 504, the Family Educational Rights and Privacy Act, and the Constitution.

On December 18, 2020, the District filed a *Partial Motion to Dismiss Parent's Hearing Request*, seeking dismissal of Parent's claims seeking relief and/or factual findings related to statutes and regulations that do not pertain to special education rights and procedural safeguards and/or denial of a free appropriate public education (FAPE) under Section 504; claims seeking relief for alleged violations of the District's own policies, procedures, student handbooks and memoranda of understanding with the police department; claims related to accepted, implemented, and expired IEPs; and requests for an Order of monetary and punitive damages and/or attorney's fees and costs. Following my *Ruling* on this *Motion*, the issues that remained for Hearing were delineated as follows:

- (A) Whether Acton-Boxborough discriminated against Stewart in violation of § 504 of the Rehabilitation Act of 1973, through
 - 1. failure to follow policies and procedures to investigate and address bullying concerns beginning on or about October 22, 2019 through January 2020;
 - 2. changes in Stewart's IEP services (addition of one-to-one aide, removal from general education classes) without parental consent between January and March 2020;
 - 3. involvement of the SRO in responding to Stewart's dysregulation in January 2020; and/or
 - 4. imposition of inappropriate consequences and punishment (i.e., cleaning the classroom, removal from classroom, disallowing bathroom use, preventing access to mother) for manifestations of Stewart's disability (i.e., behavior dysregulation) between December 2019 and January 2020.
- (B) Whether Acton-Boxborough denied Stewart a FAPE in violation of the Individuals with Disabilities Education Act by
 - 1. failing to implement an accepted, expired IEP dated March 28, 2019 to March 27, 2020 through
 - a. use of the SRO in response to Stewart's dysregulation in January 2020;
 - b. alteration of IEP services without the consent of his parent/guardian (i.e., assignment of one-to-one aide, pull-out from general education classes) between December 2019 and March 2020;
 - c. failure to utilize positive behavior interventions and instead imposing inappropriate consequences and punishment (i.e., cleaning the classroom, removal from classroom, disallowing bathroom use, preventing access to mother) on Stewart between December 2019 and January 2020.

2. failing to follow policies and procedures to investigate bullying concerns between October 2019 and January 2020; and/or
3. failing to address bullying concerns by convening an IEP meeting and reviewing the IEP and changes that were needed, if any, thereto between October 2019 and January 2020.

(C) Whether Parent rejected the IEP dated March 28, 2019 to March 27, 2020

1. If the answer to (C) is “yes,” whether Stewart’s IEP dated 3/28/2019-3/27/2020 was reasonably calculated to provide Stewart with a FAPE in the LRE;

(D) If the answer to (A), (B) or (C)(1) is yes, what is the appropriate remedy?

Following several postponements granted for good cause, the Hearing began on May 11, 2021.

On May 13, 2021, at the close of Parent’s case, the District filed a *Motion for Directed Verdict* on the following claims: “bullying” (A(1), B(2), B(3)); “use of the SRO” (A(3) and B(1)(A)); “inappropriate consequences” (A(4) and B(1)(c)); and “constructive rejection” (C). Parent filed her *Opposition* the same day, and on May 14, 2021, the parties supplemented their written submissions with oral arguments. I ruled orally on the District’s *Motion* that day. The parties then filed a *Motion to Continue* the Hearing until June 7, 2021 for additional testimony, which I allowed. I issued a formal written *Ruling on Acton-Boxborough Regional School District’s Motion for Directed Verdict* on June 7, 2021, granting it as to the “bullying claims” (A(1), B(2), B(3)), and the “constructive rejection claim” (C). I also entered a *Directed Verdict*, in part, for the “SRO claims” (A(3) and B(1)(A)), as to the incidents on January 7, 2020 and January 8, 2020, but not as to claims regarding January 9, 2020.⁵ I denied the District’s *Motion* with regard to the “inappropriate consequences claims” (A(4) and B(1)(c)).

The issues that remained for hearing were delineated as follows:⁶

- (A) Whether Acton-Boxborough discriminated against Stewart in violation of § 504 of the Rehabilitation Act of 1973, through
 2. changes in Stewart’s IEP services (addition of one-to-one aide, removal from general education classes) without parental consent between January and March 2020;
 3. involvement of the SRO in responding to Stewart’s dysregulation on January 9, 2020; and/or
 4. imposition of inappropriate consequences and punishment (i.e., cleaning the classroom, removal from classroom, disallowing bathroom use, preventing access to mother) for manifestations of Stewart’s disability (i.e., behavior dysregulation) between December 2019 and January 2020.

⁵ Although much of the evidence submitted, through documents and testimony, pertains to these claims, I need not find facts on claims that are no longer before me.

⁶ The list of remaining issues reflects their assigned numerical/alphabetical designation prior to my *Ruling* on the District’s *Motion for Directed Verdict*.

(B) Whether Acton-Boxborough denied Stewart a FAPE in violation of the IDEA by

1. failing to implement an accepted, expired IEP dated March 28, 2019 to March 27, 2020 through
 - a. use of the SRO in response to Stewart's dysregulation on January 9, 2020;
 - b. alteration of IEP services without the consent of his parent/guardian (i.e., assignment of 1:1 aide, pull-out from general education classes) between December 2019 and March 2020;
 - c. failure to utilize positive behavior interventions and instead imposing inappropriate consequences and punishment (i.e., cleaning the classroom, removal from classroom, disallowing bathroom use, preventing access to mother) on Stewart between December 2019 and January 2020.

For the reasons below, I conclude that Acton-Boxborough Regional School District did not discriminate against Stewart in violation of Section 504 or deny Stewart a FAPE in violation of the IDEA by failing to implement an accepted IEP.

FINDINGS OF FACT

1. Stewart is nine years old and resides in Acton, Massachusetts with his mother and two older brothers. Physically, he has always been large for his age. Stewart enjoys reading the bible, playing sports, putting things together, and solving problems. He speaks English, Swahili and Kikuyu. Stewart is quiet, sweet, loving, and full of energy. He has a great sense of humor. Stewart is generous and helpful; in fact, when he became aware that students at his school liked to trade Pokémon cards, which were no longer of interest to him, he donated his cards to the school psychologist so that other students could earn them as prizes. (Mother, I: 92-93; Medvedeff, II: 209; Harriott, III: 169-70)
2. Stewart is also self-conscious; he is concerned about the way he looks and what others think of him. He worried about giving incorrect answers and struggles with communicating verbally to others what is bothering him, often shutting down and letting things build up. As a coping mechanism, Stewart frequently pulls his hood over his head. (P-14, P-100;⁷ Mother, I: 92, 97-98, 110, 113-14; Medvedeff, II: 209-10; O'Connell, III: 48, 58-62)
3. Stewart began receiving special education services for a developmental delay at the age of three or four. In kindergarten, he spent half his day in the general education classroom and half in the special education resource room. (P-14, P-100, P-117; Mother, I: 93-94,

⁷ Dr. O'Connell produced a report that was submitted by Parent as Exhibit P-12; however, after noting grammatical errors and that a page from a subtest of the WISC had not been added to the composite score, she revised the report. These revisions did not change her opinion or her recommendations. The revised version was submitted by Parent as Exhibit P-100. (O'Connell, III: 16-17)

182-83; Medvedeff, II: 108) In addition to developmental delay, Stewart's medical history includes diagnoses of anxiety and social pragmatic communication disorder.⁸ After the events that gave rise to the instant matter, Stewart was diagnosed with several specific learning disabilities. (P-14, P-100; Ristaino, II: 22-25, 65-66; O'Connell, III: 59-60)

4. Stewart has been under the care of Jeffrey Ristaino, M.D. at Harvard Vanguard in Concord, Massachusetts since birth. Dr. Ristaino is board-certified as a pediatrician and has been practicing for 26 years. At Hearing, Dr. Ristaino testified that he sees patients and provides diagnoses for both physical illnesses and emotional issues such as anxiety, depression, and attention deficit hyperactivity disorder. He has treated children who have been bullied in school and/or experienced emotional trauma, anxiety, and post-traumatic stress disorder (PTSD).⁹ (Ristaino, II: 5-12)
5. During the 2018-2019 school year, Stewart attended first grade at Gates Elementary School in Acton, on a full inclusion Individualized Education Program (IEP).^{10,11} ABRSD conducted his three-year reevaluation in March 2019, which include cognitive testing, a social/emotional/behavioral assessment, a physical therapy assessment, and achievement testing. Stewart was unable to complete portions of the WISC-V, but he scored in the Average to High Average range on the portions he did complete. On the Developmental Reading Assessment (DRA), he displayed adequate levels of decoding and fluency, but had difficulty making connections while reading. Stewart's social/emotional/behavioral screening indicated anxiety, but the evaluator was unable to determine whether this was the primary driving force behind his maladaptive behaviors, given his difficulties expressing his thoughts and feelings verbally. As part of the reevaluation, a Board-Certified Behavior Analyst (BCBA) observed Stewart twice; the first time, he participated actively in class, but the second, he was not following directions, needed much more adult attention, and appeared extremely self-conscious. The BCBA reported that Stewart had difficulty completing writing tasks and that he could participate actively in lessons when confident, but when stressed or uncomfortable, tended to shut down and could not vocalize the problem, his feelings, or potential solutions. She recommended that a behavior support plan be created and implemented to target interfering behaviors. (P-12, P-14, P-97, P-100, P-117; S-1, S-14, S-15, S-16, S-17, S-18)
6. Stewart's Team convened to discuss these evaluations at his Annual Review meeting on March 28, 2019. The IEP developed after this meeting covered the period from 3/18/2019

⁸ Stewart's pediatrician, Dr. Jeffrey Ristaino, testified that he diagnosed Stewart with PTSD. This diagnosis is not supported by the documentary evidence, including the records from Dr. Ristaino's office. (P-102; S-48, S-49; Ristaino, II: 22-25, 65-66)

⁹ Dr. Ristaino testified that over the years he had seen about 15 to 20 patients that had significant post-traumatic stress disorder. (Ristaino, II: 11-12)

¹⁰ This IEP was amended in December 2018 to add weekly counseling with the school psychologist, as Stewart had been demonstrating significant emotional challenges, refusing to follow directions at times because he was worried about what people would think of him, and shutting down when upset. Mother accepted this amendment in full. (S-2)

¹¹ Stewart also received services in connection with his status as an English Language Learner. (P-22; S-15)

to 3/27/2020 (2019-2020 IEP). It noted a clinically significant concern in anxiety and that Stewart was at-risk in the categories of depression, adaptability, study skills, social skills, hyperactivity, and aggression. The IEP reflected Parent's concern about Stewart's self-esteem and explained that his emotional vulnerabilities impact his academic performance; that he has difficulties writing, particularly when faced with open-ended assignments; that he may shut down and refuse to complete tasks; and that he is self-conscious and worried about what others think about him, particularly when working in an individual setting and as such, does better in small groups. The IEP provided accommodations for Stewart's social/emotional and behavioral needs, including movement breaks, a positive behavior support plan, and social coaching. It included social/emotional, behavior, and English Language Arts (ELA) goals. Specifically, Stewart's social/emotional goal included the following objectives: access adult support using some means of communication, such as writing, when experiencing difficulty joining his class or verbalizing what is bothering him; and joining his class after a check-in with a trusted adult when having difficulty transitioning to school upon arrival. The IEP also provided for A-grid consultation between the BCBA and staff (1 x 15 minutes/week); B-grid support by a special educator or special education assistant (450 minutes/week); and, in the C-grid, a social skills group (1 x 30 minutes/week), counseling (1 x 30 minutes per week), and ELA instruction (3 x 30 minutes/week). (P-14; S-3; Medvedeff, II: 110-13)

7. Parent accepted the proposed 2019-2020 IEP and the corresponding full inclusion placement on May 13, 2019. Stewart's 2019-2020 IEP was neither amended nor rejected before it expired. (P-14; Mother, I: 182)
8. In September 2019, shortly after Stewart had begun the school year at Gates, Mother requested that he be transferred to the Merriam Elementary School, also in Acton, because, she asserted, he had been bullied at the Gates. Stewart began at the Merriam on or about September 23, 2019 and remained there until January 9, 2020. Stewart did not attend school between January 10 and January 28, 2020, at which time he transferred to the Conant Elementary School in Acton. He remained there through March 9, 2020, when ABRSD closed due to COVID-19. Stewart was absent for 25 days and tardy on 32 days during the first two terms of the 2019-2020 school year. The following school year, Stewart did not attend school in Massachusetts between September and November of 2020.¹² In or about November 2020, Stewart was enrolled in the Douglas Elementary School, also in Acton. (P-21, P-35, P-94; S-46; Mother, I: 93, 183, 209, 224-26; Medvedeff, II: 207; Zmary, IV: 92-93)
9. Chelsea Medvedeff served as Stewart's special education teacher and liaison during his time at the Merriam School. In these capacities, she delivered direct instruction to him and ensured that his IEP was implemented. Ms. Medvedeff has worked for ABRSD as a special education teacher and case manager for three years. Previously, she taught as a classroom and stabilization teacher at the ACCEPT Education Collaborative. Ms.

¹² Mother's testimony regarding the enrollment of her children in an Alabama school was internally inconsistent. Initially, Mother asserted that the family was in Alabama on vacation. Later, she testified that she enrolled the children in school there, but when asked directly whether Stewart was in school between September and November 2020, she stated that he was not. (Mother, I: 225-26)

Medvedeff has been trained in Safety Care de-escalation strategies since 2011 and serves as a member of the Merriam's Crisis Intervention Team (CIT).¹³ (Medvedeff, II: 104, 194-96, 206-07, 228-29)

10. In addition to Ms. Medvedeff, during the 2019-2020 school year, the CIT included Principal Julianna Schneider; Assistant Principal Bryant Amitrano; school psychologist Carolyn Imperato-McCammon; guidance counselor Katie Turner; and special educators Melissa Padera and Jenn Washburn. (Medvedeff, II: 97; Schneider, V: 8)
11. Members of the CIT are trained by Mr. Amitrano in de-escalation and restraint strategies known as "Safety Care." They must earn and maintain re-certification that involves learning and practicing these strategies. The strategies aim to help students, with staff support, to self-regulate and use functional communication to demonstrate compliance with adult directives.¹⁴ (Medvedeff, II: 201-06; Amitrano, IV: 21; Schneider, V: 9)
12. ABRSD has developed a policy governing the use of restraints in schools, effective January 2017, which provides for annual training of all staff/faculty. Designated Safety Care Intervention Staff receive at least sixteen hours of in-depth training in order to serve as school-wide resources to assist in proper administration of physical restraint. Among other things, the training includes appropriate procedures for preventing the use of physical restraint; identification of specific "dangerous behaviors" that may warrant restraint; methods for evaluating risk of harm of various courses of action in these situations;¹⁵ and instruction on monitoring physical signs of distress during a restraint and recognizing the impact of its use on students and their families. Designated staff also receive training in the proper administration of physical restraint. Although the policy provides that only school staff who have received required training, or in-depth training pursuant to the policy, administer restraints, it also specifies that the training requirements do not "preclude a teacher, employee, or agent of the school from using reasonable force to protect students, other persons, or themselves from assault or imminent, serious physical harm." (P-3; S-46; Medvedeff, II: 202-06)

Reporting requirements associated with the restraint policy require notifying the principal, writing a report, and sending that report to the Superintendent's office, as well

¹³ Though ABRSD's documents reference a Building Crisis Team, during the Hearing the witnesses referred to a Crisis Intervention Team (CIT). I use the latter term. The relevant policy provides that the CIT, which consists of a building administrator, the school psychologist assigned to the building, the counselor assigned to the student, and other personnel, is activated when a crisis causes a mental emotional trauma requiring a response from school personnel. Crisis, for these purposes, includes unexpected events and any threatening or dangerous situation which involves the physical and/or emotional wellbeing of a student. Once activated the CIT recommends a response to the situation which may, in the case of an individual student in trauma, result in referral for evaluation to a hospital or other agency or specialist. Pursuant to the District's policy, until CIT action is taken, the student must remain under the supervision of a school staff/faculty member. (P-7)

¹⁴ These steps include WAIT ("why am I talking"), which allows a child to become calm and demonstrate that calm before the CIT member begins prompting; and "help strategy," whereby the CIT member offers support asking whether the student might need to go for a walk, or whether there is anything that member can do for the student. (Medvedeff, II: 96-98, 169-70, 201-06; Schneider, V: 9)

¹⁵ The ABRSD restraint policy lists intervention and alternatives to physical restraint, including offering the student a choice and not blocking access to an escape route. (P-3)

as informing parents/guardians. Among other things, the report must include the date and time the restraint began and ended, and the name and job title of any staff who participated and/or observed. The District must then forward to the Massachusetts Department of Elementary and Secondary Education (DESE) a copy of the written report within five school working days. (P-3; Amitrano, IV: 108-12)

13. One month after he began school at the Merriam, on or about October 22, 2019, Stewart arrived home from school crying, and he told his mother he did not want to return to school because another student had called him “fat.”¹⁶ Mother reported this incident to the District the following day. The District responded appropriately by conducting a timely investigation, and determined that bullying, as defined by relevant state law and the District’s Bullying Prevention and Intervention Policy, had not occurred.¹⁷ (P-4, P-17, P-30, P-84; S-5 S-21, S-55; Mother, I: 95)
14. Although Mother testified that Ms. Schneider was not available to meet to discuss her concerns about Stewart being called “fat” when she went to school for his parent-teacher conference on October 24, 2019, the evidence suggests they did, in fact, meet, and on cross-examination, Mother acknowledged that they spoke for thirty minutes that day. Ms. Imperato-McCammon also called Mother that afternoon, after Mother’s conversation with Ms. Schneider. (P-30, P-85; Mother, I: 101-02, 186-88; Medvedeff, II: 213-15)
15. On October 28, 2019, Stewart’s mother drove him to school, but he did not want to get out of the car once they arrived. Mother contacted Mr. Amitrano, who was able to persuade Stewart to enter the building. Mr. Amitrano worked with Stewart on that day to develop a plan, with reinforcements, to encourage Stewart to take the bus to school and arrive on time. He emailed Mother to let her know that he had spoken with Stewart to offer his support, and he offered his support to Mother as well. (P-46, P-59, P-83; S-32, S-44; Mother, I: 102-03)
16. That afternoon, Mother emailed Ms. Imperato-McCammon to request a meeting to discuss what had happened that morning and to review Stewart’s IEP. The next day, she emailed Mr. Amitrano to share that Stewart refused to take the bus because some kids had said something to him. At this time, Mother was concerned that school staff were not following Stewart’s IEP because they had not responded appropriately when he had difficulty communicating his discomfort with being called “fat.” (P-86, P-87; Mother, I: 104-05)

¹⁶ Mother’s assertion, at Hearing, that Stewart had told her of 11 instances of bullying by the same student was contradicted by her response, completed under oath, within *Parent’s Supplemental Responses, Objections and Supplemental Request for Protective Order in Response to ABRSD’s First Set of Interrogatories*. (S-58; Mother, I: 226-28, 237-38)

¹⁷ As explained in my *Ruling on Acton-Boxborough Regional School District’s Motion for Directed Verdict*, after reviewing the evidence before me at the close of Parent’s case in the light most favorable to Parent, I determined that the record could not support a finding that bullying occurred. As such, I did not reach the question (and do not here) whether the District discriminated against Stewart in violation of Section 504 or denied him a FAPE in connection with Parent’s bullying allegations.

17. Stewart's Team convened on November 19, 2019 to discuss his transition to the Merriam, as well as Mother's concerns about bullying. Attendees included Mother, Ms. Medvedeff, Stewart's general education teacher Lauren Bova, Ms. Imperato-McCammon, Mr. Amitrano, Ms. Schneider, an ABRSD BCBA, and Stewart's in-home therapist. At this time Stewart was leaving the classroom frequently, particularly when an assignment involved writing. Stewart's in-home therapist suggested that Stewart's anxiety was leading to behaviors in the home, and that things going on in the home might be contributing to his anxiety. During the meeting, Mrs. Imperato-McCammon reiterated her conversation with Stewart and stated that he appeared happy at school. She explained that Ms. Medvedeff and Mr. Amitrano were supporting recess to keep an eye out for any potential bullying. Additionally, Mrs. Imperato-McCammon discussed the reinforcement program in place for when Stewart arrived at school on time. The Team determined that Stewart's IEP continued to address his needs appropriately. (P-17; S-5; Mother, I: 106, 111, 188-90; Medvedeff, II: 117-21, 214, 216-22)
18. By mid-December, Stewart was frequently tardy to school; he told Ms. Medvedeff he was sleeping late, but never mentioned the bullying incident. When faced with a writing task he would often crumple or rip it, or he would leave the room. Stewart's frequent elopement from the classroom¹⁸ was affecting Ms. Medvedeff's and Ms. Bova's ability to teach him. Moreover, in addition to the movement breaks provided for in Stewart's IEP, given his discomfort with eating in front of his peers, he was permitted to have breakfast and snack in another location, but he often would delay eating, by sitting or chatting, and refuse to return to class afterward. (P-41; S-24; Mother, I: 113, 116; Medvedeff, II: 124-28, 210-11, 224-28, 285-86)
19. On December 16, 2019, to promote safety, offer alternatives to elopement, and increase Stewart's time on task in the classroom, Ms. Medvedeff and Stewart developed a plan for how and when he could leave the classroom. Given Stewart's preference for communication through hand signals or foot tapping in place of words, he and Ms. Medvedeff created a system whereby he could utilize a magnet to identify which of three places he would go when he left the classroom, so that the staff knew where he was at all times: taking a movement break, or in either Ms. Medvedeff's room, or Mr. Amitrano's office. Under this system, initially a timer would be set for three to five minutes when Stewart left the classroom, but he could use functional communication to request additional time.¹⁹ Stewart's Team hoped that if Stewart became more comfortable eating at school, he could ultimately spend less time out of the classroom. (P-14, P-19; Medvedeff, II: 123-27, 211, 222-24, 285-86)
20. On December 18, 2019, Ms. Medvedeff contacted Mother to request a meeting to discuss Stewart's challenges and successes, and a meeting was scheduled for the afternoon of December 20, 2019. (S-24; Medvedeff, II: 228-30)

¹⁸ Mother testified that Stewart had eloped from the school in mid-December, at which time he was chased by a police officer. (Mother, I: 113-15) There is no documentation or other evidence to support this allegation.

¹⁹ Dr. O'Connell, an independent psychologist who evaluated Stewart in the summer of 2020, testified that during her observations of Stewart, the timer appeared to trigger him rather than lead him to success. (O'Connell, III: 58-61)

21. Stewart had a challenging day at school on December 20, 2019. He was non-compliant in the morning, tearing up a writing assignment then becoming increasingly unsafe for approximately 45 minutes as he ripped a folder apart and swung the metal hanging portion around. The CIT was called to help de-escalate him. Stewart then engaged in non-compliance and unsafe property destruction in Ms. Medvedeff's classroom again from approximately 1:00 to 4:00 PM, knocking over cabinets full of puzzles, games, and learning manipulatives, much of which had to be thrown away. When staff attempted to block him from continued unsafe property destruction, Stewart used his shoulder to push past them forcefully. Due to his dysregulation, Stewart was unable to spend much time in the classroom. (P-57, P-59, P-92, P-118, P-121; S-43, S-44; Mother, I: 122-23; Medvedeff, II: 128-29, 132-33, 231-35, 237-38, 241; Schneider, V: 13-16)
22. While Stewart was engaging in property destruction, Ms. Medvedeff called Mother to discuss Stewart's behavior. Both she and later, Ms. Schneider, asked Mother to pick him up.²⁰ (Mother, I: 116-17, 191; Medvedeff, II: 131, 239-42; Schneider, V: 16-17)
23. Mother did not arrive at the school until 4:00 PM, at which time she was brought to Ms. Medvedeff's classroom, where Stewart remained. Stewart had been asked to work with the adults to clean up some of the property he had destroyed as a way to help him acknowledge what had happened and have closure, but he had not done so. Ms. Medvedeff testified that Mother walked into the room, asked whether her child had done this, and started cleaning. Mother was asked to encourage Stewart to clean up the mess, but he was still too upset and he did not respond.²¹ Mother left with Stewart at 4:25 PM. (P-57, P-92; S-43; Medvedeff, II: 132, 242-44, 247; Schneider, V: 20-24, 63-64)
24. No Team meeting was convened after Stewart's behavioral dysregulation on December 20, 2019, as it was the last day of school before winter break. Staff stayed to clean up the classroom materials after Mother and Stewart left. They left a few puzzle pieces out, however, as Ms. Medvedeff, Ms. Bova, and Ms. Imperato-McCammon believed it would be appropriate to ask Stewart to put these items away when he returned to school, as a way to participate in the cleaning. They viewed him as a child who held on to things, and they believed having him participate in cleaning up the mess when he returned to school would provide him the closure he needed to move forward. (Mother, I: 122; Medvedeff, II: 134-36, 247-51, 295-98; Schneider, V: 23-27, 55, 65-67, 76)
25. Mother emailed Stewart's teacher, Ms. Bova, on January 2, 2020, informing her that Stewart would not be in school that day and requesting that she send schoolwork for him to do at home. Mother did not provide a reason for Stewart's absence. Ms. Bova

²⁰ During this call Mother requested that Stewart be allowed to bring work home to finish it, as it took him longer to process. Ms. Medvedeff and Mother also spoke giving Stewart writing prompts in advance to reduce his anxiety about writing in his journal. (Medvedeff, II: 239-41) Although she testified that Stewart was upset that day because a student had called him "fat," Mother did not communicate to Ms. Medvedeff during this telephone call that she believed his anxiety stemmed from being bullied. (Mother, I: 122-23, 231-33)

²¹ Both Ms. Schneider and Ms. Medvedeff testified that Mother helped to clean up the room, but neither of them had asked her to do so. Mother testified that she continued to clean until Ms. Schneider told her it was "good enough." (Mother, I: 117-19, 121, 194; Medvedeff, II: 132; 242, 244, 247-48; Schneider, V: 20-21)

responded by describing the content they had covered, explaining that second graders were not assigned homework, and offering to catch Stewart up when he returned to school. (P-40; S-25; Mother, I: 123, 194-95; Medvedeff, II: 251-53)

26. Stewart was late to school on January 3, 2020. When he entered Ms. Medvedeff's classroom, she asked him to put away the 4-5 puzzle pieces that had been left for him. To minimize expectations, Ms. Medvedeff offered to do it with him. In response to this request, Stewart left the classroom and was found in the stairway. He began aggressing towards Ms. Medvedeff, at which time she called the CIT for support. Mr. Amitrano arrived and used various prompting strategies to get Stewart to return to Ms. Medvedeff's classroom. When Stewart returned, Ms. Medvedeff asked him again to put the puzzle back together. Instead, Stewart threw the puzzles pieces, dumped a bin of manipulatives, and pushed over a bookcase. After spending some time in the "Chill Zone" on his own initiative, Stewart again threw objects and kicked Ms. Medvedeff.²² Eventually, Stewart was able to regulate, utilizing the "Chill Zone" and other strategies to calm himself successfully, and he permitted Ms. Medvedeff to join him there. He then put away the puzzle pieces and returned to his general education classroom. The entire incident lasted from 9:30 to 11:15 or 11:30 AM. (P-22, P-39, P-59, P-122; S-44; Mother, I: 123; Medvedeff, II: 137-43, 253-55, 297; Amitrano, IV: 131-38; Schneider, V: 26-28)
27. Due to the extent of Stewart's behavioral dysregulation, he did not attend his writing support period in the Learning Center that day. He was, however, able to complete the work he had missed later that afternoon in the Resource Room with a special education assistant. In accordance with Mother's request that she be apprised of Stewart's presentation in school, Ms. Schneider emailed Mother at approximately 10:30 AM to let her know what was happening, and again an hour later to update her that the situation had resolved. (P-39, P-57, P-59, P-122; S-26, S-43, S-44; Mother, I: 123-24; Medvedeff, II: 141, 253-55; Schneider, V: 27-29, 71-74)
28. In response to Stewart's dysregulation on December 20, 2019 and January 3, 2020, the BCBA developed a Behavior Support Plan on January 3, 2020, to target non-compliance, aggression, property destruction, and bolting. The Plan was first implemented on January 8, 2020. At the time, a Rubik's Cube had already been introduced as part of an intervention to encourage Stewart to enter school on time. According to the Plan, prompts, reminders, and subtle praise were to be used in the event of noncompliance. Property destruction, yelling, crying, loud disruptive noises, etc. would lead to CIT involvement, following Safety Care procedures. In the event of bolting, staff members were to alert the CIT, position at doorways and stairwells, direct Stewart in a neutral tone to return to class, and utilize planned ignoring for other challenging behaviors.²³ In conjunction with the Plan, staff working with Stewart were to collect daily antecedent-behavior-consequence (ABC) data. (P-116, P-121, P-124; S-116)

²² The "Chill Zone" is a section of Ms. Medvedeff's classroom that contains bean bags, visual supports, and other strategies to encourage students' self-regulation. (Medvedeff, II: 197-98)

²³ The plan is dated January 3, 2019; this is presumed to be an error, as it refers to Stewart's transfer from the Merriam to the Gates in the fall of 2019. (Medvedeff, II: 171)

29. On January 6, 2020, Stewart had a successful day at school, transitioning independently, participating in instruction, and engaging with his peers. At the end of the day, the BCBA shared Stewart's new Behavior Support Plan with staff. (P-57, P-122; S-27, S-43; Medvedeff, II: 149, 171, 255)
30. On January 7, 2020, Stewart first interacted in school with Acton Police Department (APD) Detective Tyler Russell,²⁴ who serves as a School Resource Officer (SRO) within ABRSD.²⁵ The SRO Program, a partnership between ABRSD and APD, is governed by a Memorandum of Understanding (MOU) signed by both entities. Among other things, the MOU specifies that the partnership exists to maintain "a safe, secure, and violence-free school environment [and] ensure that non-violent infractions of school rules and policies not amounting to criminal or delinquent conduct such as tardiness, use of profanity, and disruptive or disrespectful behavior remain the sole responsibility of school administrators." To this end, SROs are to "refrain from being involved in the school's handling of such violations or misbehavior except, as asked or needed, to support school staff in maintaining a safe school environment." (P-8; S-57; Medvedeff, II: 256)

The MOU explains that SROs are not school disciplinarians, enforcers of school regulations, or to be used in place of mental health professionals. SROs are directed not to use police powers to address traditional school discipline issues, including "non-violent disruptive behaviors." The MOU recognizes, however, that police officers may, at times, be involved in situations involving emergency mental health issues, including applications for involuntary commitment pursuant to M.G.L. c. 23 § 12(a) [hereinafter "Section 12"]. (P-8; S-57)

31. Section 12 permits involuntary commitment of an individual when, in the judgment of a qualified mental health professional, the failure to hospitalize such individual would create a likelihood of serious harm to himself or others by reason of mental illness. The MOU between ABRSD and APD specifies that in these cases, individuals may be restrained while the application for an involuntary hospitalization is sought. If a qualified mental health professional is unavailable, police officers may restrain students and apply for the Section 12. School medical personnel are to initiate the application unless there is an immediate risk of harm to the student or others, in which case the police department is contacted and assumes responsibility for initiating commitment proceedings. School officials are expected to seek alternate emergency response before seeking police intervention. (P-8; S-57)
32. Detective Russell has been a police officer for eight years and an ABRSD SRO for two years. Among other things, he has been trained in working with students with disabilities

²⁴ Detective Russell first encountered Stewart at some point earlier in 2019, in his role as a patrol officer in response to a crisis call in the community. A police report was not filed for this incident, as Stewart was already in the care of a therapist and had been evaluated and found not to be in immediate need of intervention for safety. At Hearing, Detective Russell could not recall the date of this interaction. (Russell, III: 106-07)

²⁵ Pursuant to the Memorandum of Understanding (MOU) between ABRSD and the Acton Police Department (APD), School Resource Officers (SROs) are employees of the APD who "coordinate with school officials" while on school grounds. (P-8; S-57)

and he holds certifications in the use of restraints. Although Detective Russell has not been Safety Care trained, he is familiar with Safety Care Restraints. As an SRO, Detective Russell is assigned to six elementary schools in the ABRSD, one of which is Merriam Elementary. As part of his daily duties, Detective Russell visits these schools during drop-off and recess to interact with students. As a courtesy to police dispatch, when he makes these school visits, he writes a police report indicating where he is and that he will be away from the cruiser radio. Consistent with the MOU, Detective Russell wears his police uniform while in the schools. (P-8; S-57; Russell, III: 102-05, 108-110, 124-27)

33. At the time of his interactions with Stewart, Detective Russell was not aware of the nature of his disabilities, nor had he attended Stewart's IEP meetings or read his Behavior Support Plan. (Russell, III: 109-10)
34. On the morning of January 7, 2020, Stewart refused to exit Mother's vehicle for more than two hours after they arrived at school, which Mother attributed to the bullying he had experienced, discussed earlier, although she did not mention it to any school staff on this day. She again called Mr. Amitrano for assistance. He responded with Katie Turner, the school guidance counselor, and provided Stewart with options such as eating breakfast in his office or working in the office until he was ready to go to class. Stewart told Mother he did not want to get out of the car because of the kids playing outside, but after the car was moved, Stewart still refused to exit. Ms. Imperato-McCammon arrived, but was unable to get Stewart to leave the car. At this point, Mr. Amitrano believed Stewart had locked himself inside the car with Mother's keys; Mother was outside of the vehicle.²⁶ (P-46, P-57, P-59, P-111, P-122; S-32, S-43, S-44; Mother, I: 124-26, 196-97)
35. Mr. Amitrano explained to Mother that sometimes when students refuse to go to school, the school may call an SRO for support.²⁷ Ms. Imperato-McCammon believed this would be a good course of action, and Mother agreed. Mr. Amitrano contacted Detective Russell to request assistance for a student who had locked himself inside a vehicle with the keys.²⁸ Although Stewart was already late for school when Detective Russell arrived on the scene, he viewed the situation as a safety concern and not a matter of tardiness. Detective Russell hoped he would be able to get Stewart to open the door or hand over the keys, but when he was unsuccessful, he left to give Stewart some space. Detective Russell prepared a police report for this incident. (P-11, P-59, P-111; S-32, S-44, S-57; Mother, I: 198-99; Medvedeff, II: 257-58; Russell, III: 111-15)

²⁶ The staff involved in the situation were particularly concerned, as they believed Stewart had the only set of car keys with him. Mother testified, however, that she had another set of keys on her at all times, though she did not communicate this to the school staff. (P-46; Mother, I: 198; Medvedeff, II: 151; Russell, III: 115; Schneider, V: 80)

²⁷ According to Mother, Mr. Amitrano told her that when children refuse to go to school, administrators can call the SRO to "help and scare" the children. (Mother, I: 126-27) This was not consistent with Mr. Amitrano's statement regarding the events of January 7, 2020. (P-46) Moreover, Detective Russell testified that he assisted the school in this situation due to safety concerns, not to intimidate Stewart. (Russell, III: 111-17)

²⁸ Detective Russell testified that he has been called several times to help get students out of the car when they are refusing to go to school. (Russell, III: 114-15)

36. At one point, Mother went back to the car to retrieve a jacket, and Stewart hit her. Ms. Medvedeff came outside, as sometimes having a different staff member was a helpful strategy for Stewart. Ms. Medvedeff tapped on the window to get Stewart's attention. Several times, Stewart opened the door, kicked Ms. Medvedeff, slammed the door shut, and locked the car from the inside. Stewart also threw objects out of the van and continued to kick Mr. Amitrano, Ms. Turner, and Ms. Medvedeff when they approached. Members of the CIT were particularly concerned, as they believed Stewart had the only set of car keys with him. At some point Stewart decided he needed to use the restroom so he exited the car on his own and entered the school building. After using the restroom, Stewart did not want to go to class. He went to Mr. Amitrano's office, where he completed work; his teacher, Ms. Bova, came to help him for some of that time.²⁹ Stewart returned to his class for the remainder of the school day at approximately 2:00 PM. (P-38, P-46, P-59, P-122; S-32, S-44; Mother, I: 127-28, 196-98, 256-58; Medvedeff, II: 149-53, 256-59)
37. Mother emailed Mr. Amitrano that evening to ask about the rest of Stewart's day. Mr. Amitrano responded within the hour. (P-38; S-28)
38. Given the extent of Stewart's dysregulation on January 7, 2020, Ms. Medvedeff became concerned about Stewart possibly trying to leave the building, which posed a greater safety concern given the proximity of the school to the highway and the woods. She formulated a plan to implement in the event Stewart were to bolt, which included obtaining walkie-talkies for CIT members. (P-122; Medvedeff, II: 259-60)
39. On January 8, 2020, Stewart's new Behavior Support Plan was implemented for the first time. He arrived at school and had breakfast in Mr. Amitrano's office. He did not want to go to class afterward. Mr. Amitrano requested Ms. Medvedeff's assistance with the transition. A timer was set, but when it went off, Stewart became non-compliant. He slammed the door shut, swiped his breakfast from the table, flipped a table, and threw chairs. He then banged his head against a whiteboard, wall, floor, and door, more than 65 times. The CIT responded and tried to keep Stewart safe by guiding him away from the door and putting cushions in front of his head, but Stewart aggressed toward CIT members. Consistent with Stewart's Behavior Support Plan, staff did not block the door because they did not want him to feel trapped, and they believed that if he left the office, he would just walk around inside the building as he had in the past. Stewart ran out of the office and, though the CIT attempted to block the doors leading outside, Stewart exited the building. CIT members positioned their bodies to block access to escape routes by way of highways and the woods. Ms. Medvedeff ran ahead of Stewart, redirecting him back toward the school building. Once he returned to the building, he knocked on the school door and an assistant let him in. When he reentered the building, Stewart returned to Mr. Amitrano's office, locked himself in, and threw a chair. (P-46, P-57, P-59, P-121, P-122, P-124; S-32, S-43, S-44; Mother, I: 128-29, 199; Medvedeff, II: 154-57, 171-72, 261, 263-68; Amitrano, IV: 100-03) As Stewart had already bolted out of the building,

²⁹ Ms. Medvedeff was in IEP meetings for the remainder of the day and was not able assist Stewart. (Medvedeff, II: 256-57)

staff began blocking doors, and Stewart attempted to kick and push them away. (P-46, P-57, P-59, P-122; S-32, S-43, S-44; Amitrano, IV: 140-41)

40. Mr. Amitrano contacted Mother to let her know what was happening. He explained that he was contacting the SRO³⁰ and that although the CIT would aim not to restrain Stewart, that would occur if he became an immediate risk to himself or others. (P-46, P-57, P-59; S-32, S-43, S-44; Mother, I: 130-31)
41. Ms. Medvedeff called Mother for permission to contact Advocates Mobile Crisis team at Emerson Hospital (Advocates or Mobile Crisis), a group that may be called by a school or parent to evaluate a child and support his mental health. Mother gave permission and reported that she had called Mobile Crisis herself. Detective Russell called Advocates, but no Team was available to respond at the school.³¹ (P-57, P-59, P-122; S-43, S-44; Mother, I: 132; Medvedeff, II: 269-70; Russell, III: 160-61; Schneider, V: 11)
42. At some point, Stewart wrote a note that he needed to use the bathroom. Staff immediately opened the door for him to go. Stewart began to cry and spent the next 15-20 minutes cleaning the room by picking up the books he had thrown to the ground, although he was not instructed to do so by any CIT member.³² He then went to the bathroom. (P-46; S-32; Mother, I: 130; Amitrano, IV: 103-06, 141-42)
43. Mother testified that Stewart shared with her that he was told to clean up before he went to the bathroom. Ms. Medvedeff and Ms. Schneider both testified that this did not happen, and Stewart was not denied access to the bathroom. (Mother, I: 128-31; Medvedeff, II: 238; Schneider, V: 20)
44. Stewart's agitated state lasted approximately 90 minutes. Once he had calmed, Stewart had a snack in Ms. Medvedeff's room, then completed a behavior map with her before rejoining his class. At Hearing, Ms. Medvedeff described this as a tool for Stewart to communicate his ideas, thoughts, and worries, since he had difficulty expressing them in words. Stewart communicated, via the behavior map, that he was confused because he thought he could stay in Mr. Amitrano's office. After completing the behavior map and attending recess, Stewart went to Ms. Medvedeff's classroom and made-up work, at which time he was "happy, humorous, and calm." (P-37, P-57, P-112, P-122; S-32, S-43; Medvedeff, II: 165-67, 270-71; Amitrano, IV: 100-04)
45. Mr. Amitrano called Mother to let her know that Stewart was working calmly, but that if he escalated again that day, she would need to pick him up. Mother reported that she had

³⁰ By the time Detective Russell responded to Mr. Amitrano's call, Stewart was back in the building and the situation was under control. Detective Russell remained outside of the office for a period of time in the event his services might be needed, but they were not. As such, Stewart had no contact with Detective Russell on January 8, 2020. (P-11, P-46, P-111, P-112; S-32; Medvedeff, II: 271-72; Russell, III: 119-20)

³¹ According to Ms. Medvedeff, Detective Russell made the call to Mobile Crisis. (P-57; S-43; Medvedeff, II: 269-70)

³² Although Mother testified that Stewart shared with her that he was told to clean up before he went to the bathroom, Ms. Medvedeff and Ms. Schneider both testified that this did not happen, and that Stewart was not denied access to the bathroom. (Mother, I: 128-31; Medvedeff, II: 238; Schneider, V: 20)

spoken with Mobile Crisis, who contacted the school to find out what had happened.³³ Although no one was available to see Stewart at school, Advocates staff met with Stewart in the home later that day. At the time, he did not meet the criteria for acute hospitalization. (P-18, P-101, P-102; S-29, S-32, S-48; Mother, I: 131-32, 161-62; Amitrano, IV: 100)

46. Throughout this incident, the CIT followed the Behavior Support Plan and prompted appropriate replacements for Stewart's maladaptive behaviors, such as passing notes. (P-116, P-122; S-32; Medvedeff, II: 154-57, 262-69; Amitrano, IV: 101-03)
47. Although ABRSD did not convene a Team meeting immediately after the events of January 8, 2020, Ms. Medvedeff, Ms. Bova, Ms. Imperato-McCammon, and Mr. Amitrano met that afternoon to map out Stewart's morning routine, which included a "Zones of Regulation" check-in and the opportunity to earn a reinforcement. Ms. Medvedeff previewed the plan with Stewart at school, and she e-mailed Mother asking her to do the same at home, so that he knew his expectations for the school day. (P-22, P-37, P-46, P-59; S-29, S-32, S-44; Mother, I: 131; Medvedeff, II: 149, 165, 255-56, 260-61; Amitrano, IV: 142-43)
48. Ms. Schneider responded to an email from Mother to Mr. Amitrano the morning of January 9, 2020, to request that Mother copy Ms. Schneider when she reached out, particularly as Mr. Amitrano was out of the building that day at a conference. Mother expressed that she and Stewart were more comfortable with Mr. Amitrano. (P-11, P-48; S-30, S-32; Amitrano, IV: 107; Schneider, V: 17, 90-91)
49. Stewart was particularly excited about going to school on January 9, 2020. He arrived on the bus and followed the new morning routine. Due to Mr. Amitrano's absence, Stewart could not eat breakfast in his office. Early in the day, Stewart was able to utilize strategies with Ms. Medvedeff's assistance when he encountered challenges. At about 11:30 AM, Ms. Medvedeff saw Stewart in the stairwell, when he was supposed to be outside at recess. He then went to Mr. Amitrano's office and was initially non-compliant when asked to leave. Eventually Stewart walked to Ms. Medvedeff's classroom, but then used the magnet sign-out system to indicate that he was returning to Mr. Amitrano's office to eat his snack, though he had been told he was not permitted to be there that day. When Ms. Medvedeff was prompting Stewart to leave the office, the timer went off. Stewart hid under the table and started crying. During this time, Stewart was not receptive to any of the strategies Ms. Medvedeff employed. (P-19, P-36, P-53, P-55, P-57, P-59, P-122; S-39, S-41, S-43, S-44; Mother, I: 132; Medvedeff, II: 165-69, 272-75)
50. Ms. Schneider asked Ms. Medvedeff whether she needed the CIT's assistance; Ms. Medvedeff declined this offer initially. Stewart continued to cry under the table, and at some point, he put his hood on. Ms. Medvedeff continued prompting Stewart neutrally as

³³ Asked what school officials could do if Stewart were to become unsafe again, Advocates personnel told Mr. Amitrano that it would be appropriate to call for medical support by ambulance in the event of an ongoing, immediate safety risk. (P-46; S-32)

dismissal approached. (P-45, P-56, P-57, P-59, P-122; S-42, S-43, S-44; Medvedeff, II: 173-74; Schneider, V: 32-33)

51. When dismissal was announced over the loudspeaker, Stewart stood up, flipped the table, and started to rip the leg off forcefully. When Ms. Medvedeff blocked Stewart's access to the table leg, Stewart started punching and kicking her, and Ms. Medvedeff called for the CIT. Ms. Schneider arrived first, and Stewart kicked her. Due to Stewart's targeted, forceful aggressions, Ms. Schneider and Ms. Medvedeff decided that they needed to put Stewart in a Safety Care two-person stability hold, which lasted approximately one minute.³⁴ (P-45, P-51, P-53, P-56, P-57, P-59, P-122; S-37, S-39, S-42, S-43, S-44; Medvedeff, II: 174, 273-78; Schneider, V: 32-34)
52. Shortly afterward, Ms. Washburn, Ms. Padera, Ms. Turner and Ms. Imperato-McCammon arrived. The hold was not stable, and CIT members decided to transition the restraint to a Safety Care two-person seated hold. Because Stewart was swinging his head toward staff, pushing, and kicking off the floor, a leg wrap had to be added. Stewart began breathing heavily, then hyperventilating. Ms. Imperato-McCammon and Ms. Padera attempted to help him regulate his breathing, and the CIT released the hold. (P-45, P-47, P-49, P-51, P-52, P-54, P-56, P-57, P-59, P-121; S-33, S-35, S-37, S-38, S-40, S-42, S-43, S-44; Medvedeff, II: 176-80, 276)

Once released, Stewart ran into the corner and started hitting his head against the wall in excess of 25 times, with increasing force. Although Ms. Schneider and Ms. Washburn attempted to block access to the wall with their hands, Stewart punched Ms. Schneider's hand and continued to hit his head. Ms. Medvedeff communicated to Ms. Schneider that she believed Stewart needed to be evaluated. (P-45, P-47, P-49, P-50, P-51, P-52, P-54, P-56, P-57, P-59, P-121, P-122; S-33, S-35, S-36, S-37, S-38, S-40, S-42, S-43, S-44; Medvedeff, II: 181-82; Schneider, V: 32-33, 37-39) Given Stewart's behavior and the risk of imminent danger, Ms. Schneider asked her administrative assistant to contact Detective Russell. (P-47, P-49, P-50; S-33, S-35, S-36; Schneider, V: 34, 37-38)
53. Around this time, Ms. Schneider stepped out of the room to call mother and apprise her of the situation. Mother reported that Mobile Crisis had been at the house the previous night, offered to call them again, and stated that she would come to the school. (P-56; S-42; Mother, I: 133-34; Schneider, V: 35-36)
54. Because the CIT was still unable to block Stewart's self-injurious behavior, members determined that a further restraint was necessary.³⁵ Initially, Ms. Medvedeff and Ms. Padera began a standing restraint, but they then asked for a chair for a Safety Care two-person seated stability hold and Ms. Washburn held his shoulders. Detective Russell

³⁴ According to Ms. Medvedeff, this Safety Care hold involves two CIT members standing back-to-back with the student under their arm; the hold continues until the student demonstrates calm. (Medvedeff, II: 175)

³⁵ Ms. Medvedeff originally testified that there were two restraints, one each on January 8 and 9, 2020. (Medvedeff, II: 157-58) On cross-examination, she clarified that both restraints took place on January 9, 2020. (Medvedeff, II: 261-63), which is consistent with her written statement. (P-122) There are some inconsistencies within the evidence as to whether Stewart hyperventilated during the first leg wrap or the second, and who relieved whom at what time during the restraint, but because they do not impact my conclusions, I need not reconcile them here.

arrived shortly thereafter, at which point Stewart began kicking off the floor with his feet. (P-59, P-113; S-44, S-45; Russell, III: 124-27) The CIT determined that a leg wrap should be added, and someone asked Detective Russell to secure Stewart's legs, which he did. (P-11, P-47, P-51; S-33, S-37, S-44, S-45; Medvedeff, II: 182-83, 277; Russell, III: 124-27; Schneider, V: 39)

55. Detective Russell made several attempts to release the leg wrap, but each time Stewart would brace his feet on the floor and try to kick out of the chair or swing his body to hit his head against the chair or other staff members. (P-58, P-59, P-113, P-122; S-44, S-45; Medvedeff, II: 180)
56. Ms. Medvedeff testified that the second restraint lasted probably two minutes. (Medvedeff, II: 184, 276; Russell, III: 136-38) According to Detective Russell's contemporaneous statement, he assisted staff members with restraining Stewart for 20 minutes. (P-58, P-113; S-45)
57. When Stewart's body calmed and he stopped kicking, his legs were released first. The remainder of the hold was released, at which point Stewart ran to the corner of the room, where he cried and hid his face in his hood. Ms. Medvedeff offered Stewart a snack, which they brought to the table together. The two passed notes while he ate. Stewart indicated, by way of pen and paper, that he needed to use the bathroom. When Stewart returned from the bathroom, he continued to eat at the table. Stewart allowed Ms. Medvedeff to sit with him, and they continued to communicate through behavior maps and notes. (P-47, P-51, P-52, P-57, P-59, P-122, P-123; S-33, S-37, S-38, S-43, S-44; Medvedeff, II: 185-86; Schneider, V: 109)
58. Ms. Schneider, Ms. Imperato-McCammon, and Detective Russell discussed whether Stewart should be evaluated in a hospital pursuant to Section 12, given his dysregulation that day, particularly in light of his escalation over the preceding days. Although Stewart had calmed down by this point, Ms. Imperato-McCammon believed Stewart's self-harming and aggressive behavior indicated that he needed to be evaluated, Detective Russell was concerned that he was in crisis, and Ms. Schneider did not feel comfortable sending him home, given the violent behavior he had displayed toward Mother at her car two days prior. Ms. Schneider called Advocates and learned that Mobile Crisis could not send a team to the school. As such, they determined that an ambulance should be called to take Stewart for a mental health evaluation, even if this course of action was not in accordance with Mother's wishes. Detective Russell called the ambulance and completed the application for involuntary commitment pursuant to Section 12, relying on information from Ms. Imperato-McCammon.³⁶ Detective Russell contacted his supervisor, Sergeant Howe, to inform him of the situation and request assistance. (P-11, P-54, P-56, P-58, P-113; S-40, S-42, S-45; Medvedeff, II: 162-64, 186-87, 278-80; Russell, III: 138-41; Schneider, V: 36-37, 39, 42-46, 97, 105, 116-17, 120-21, 128)

³⁶ Ms. Schneider testified that it was Detective Russell's decision to take Stewart to the hospital, but that she agreed with the decision due to Stewart's self-injurious behavior. (Schneider, V: 42)

59. When Mother arrived, at the end of the school day, to take Stewart home, Ms. Schneider informed her that she, Ms. Imperato-McCammon, and Detective Russell felt Stewart needed to be evaluated, and that because Mobile Crisis had not been able to see him, he would be transported to the hospital. Mother became emotional and demanded to see her son. Detective Russell informed her that because Stewart was already in crisis, as he had dysregulated three days in a row, she would need to calm down before going in the room. (P-56, P-58, P-113; S-42, S-45; Mother, I: 137-38; Russell, III: 142-143; Schneider, V: 39, 42-43, 45)
60. In the meantime, Stewart heard his mother in the hallway, said “mama,” and became visibly more distressed. After Mother had calmed down, Detective Russell allowed for her to walk in the hallway with Stewart, who appeared calm at the time. (P-47, P-51, P-58, P-78, P-113, P-122; S-37, S-45; Mother, I: 137-40, 160-63, 167; Medvedeff, II: 185-87; Russell, III: 141-44) Once Stewart had returned to Mr. Amitrano’s office, Mother demanded that he be released to her.³⁷ Mother testified that she had called Mobile Crisis and was told that the school did not have the right to take Stewart to the hospital. Instead, she could take him home and Advocates could evaluate him that night. (P-54; S-40; Mother, I: 140-42, 165, 170-71; Russell, III: 141-42; Schneider, V: 40-41, 111-12, 136-37)
61. When the paramedics arrived, Stewart banged his head and refused to get onto the stretcher, or even come out from under the table, for about 20 minutes. One of the paramedics asked Stewart if there was a teacher that he would like to help him on the way to the hospital, and he named Ms. Medvedeff. Emergency Medical Services was on scene for over an hour before Stewart would allow himself to be transported to the hospital. (P-54, P-103, P-122; S-40, S-47; Medvedeff, II: 188, 281)
62. Stewart was accompanied to Emerson Hospital by Ms. Schneider, Ms. Imperato-McCammon, Ms. Medvedeff and Detective Russell. Mother had been arrested for disturbing the peace and could not go with him. School staff provided information about Stewart to the hospital staff and contacted the Department of Children and Families (DCF) instead of Stewart’s emergency contacts, as Mother was in custody, rendering Stewart and his brother unaccompanied.³⁸ (P-48, P-49, P-54, P-56, P-58, P-62, P-113, P-122; S-35, S-40, S-42, S-45; S-56; Mother, I: 144-47, 167-68; Medvedeff, II: 165-69, 188, 281; Russell, III: 129-30; Schneider, V: 137)
63. At the hospital, Stewart’s demeanor changed. He was talking about his Rubik’s Cube, teaching Ms. Schneider how to solve it, responding to the doctor’s questions, smiling, and making eye contact. At one point, however, Stewart appeared to forget what he was saying. During his assessment, Stewart presented as sad, made almost no eye contact, and would not communicate with the evaluator. Emerson personnel determined that Stewart was at risk for elopement, harm to others, and uncooperative/out of control behavior and

³⁷ Mother began videotaping the incident around this time, alleging that this would not have happened if her son were white. (P-48; S-56)

³⁸ The Department of Children and Families (DCF) investigated the report and found that allegations of neglect were unsupported. (P-62, P-63; Mother, I: 148)

that he met criteria for inpatient level of care. Within hours of arrival, Stewart attempted to elope and required much redirection back to the exam room. After 24 hours, however, he was released to Mother, who was no longer being held in custody. The Discharge Summary indicates that Stewart was released because no beds had become available, his behavior remained stable, and Mother maintained that she did not want him admitted to a psychiatric hospital.³⁹ (P-54, P-57, P-65, P-102, P-103, P-122; S-40, S-43, S-47, S-48; Mother, I: 147-48; Medvedeff, II: 281-82)

64. Although parents/guardians are to be notified of any restraints, in accordance with the District's restraint policy, Ms. Schneider did not provide documentation to Mother regarding the events of January 9, 2020. At Hearing, she explained that this was because she had been told not to communicate with Mother, but she could not recall the source of that directive. (Mother, I: 134; Schneider, V: 109-10) Mother was informed verbally that Stewart had been restrained that day, but she was not told that the SRO had been involved, nor did Mother receive a restraint report from the school. (Mother, I: 134)
65. Mr. Amitrano collected reports from individual members of the CIT and developed a Record of CIT Calls ("Record"). He then entered the information regarding the use of Safety Care Restraints on Stewart into a Log of Student/Staff Restraint Injury Reports ("Log") on the PowerSchool System to be sent to District administrators, and later filed with DESE.⁴⁰ Among other things, the Log indicates that the restraint took place on school grounds during school hours; that police were involved; that the restraint was necessary because of imminent risk of physical harm to self and others; that the restraint began at 12:15 and ended at 12:30; and that a seated hold was used because Stewart was unstable on his feet due to kicking.⁴¹ The Log omits any reference to hyperventilation, although the Record Mr. Amitrano compiled mentioned that Stewart had responded to being held with short breathing, consistent with hyperventilation.⁴² Although the names and job titles of staff involved are required by the restraint policy, the Log appears to call for only the name and title of the person who verbally reported the restraint to an administrator. As such, the names of the CIT members who assisted in the Safety Care restraint do not appear on the Log, nor does it indicate that Detective Russell assisted. (P-45, P-59, P-122; S-31, S-44; Amitrano, IV: 108-09, 111-23)
66. The APD conducted an investigation regarding the involvement of the police department in the events that transpired on January 9, 2020 at Merriam Elementary. Investigators concluded, among other things, that the actions of Detective Russell and Sergeant Howe at the Merriam were generally consistent with police department policies and procedures, and that there was no evidence to support a finding that the officers' actions were discriminatory in nature. (P-11)

³⁹ Mother testified, to the contrary, that she went to the hospital and Stewart was released after she provided a medical history. (Mother, I: 147-148)

⁴⁰ Although Mr. Amitrano could not testify that this was the final form filed with DESE, he did testify that this was the report he filed. (Amitrano, IV: 117-19)

⁴¹ Mr. Amitrano testified that the 15-minute period may have referred to the duration of Stewart's escalation, not just the hold. (Amitrano, IV: 130-31)

⁴² At Hearing, Mr. Amitrano attributed this omission to clerical error. (Amitrano, IV: 117, 120-21)

67. ABRSD commissioned its own independent investigation of the January 9, 2020 incident at Merriam, which included the following findings and conclusions: there was no direct or circumstantial evidence to suggest that the decisions or actions of any school administrators related to Stewart's treatment on that date was racially motivated; the actions of school staff and administrators that led to the application for a Section 12 commitment were reasonable, non-discriminatory, and performed in accordance with regulations; and District regulations were appropriate and were properly followed. (S-46)
68. Stewart did not return to Merriam Elementary after January 9, 2020; Mother testified that he did not want to go back. Ms. Schneider believed that given Stewart's escalating violence, from December 20, 2019, through January 9, 2020, the Merriam School could no longer meet his needs without medical support or additional information about him. ABRSD administrators discussed the situation and determined that a Team meeting should be convened to consider appropriate next steps, including a possible extended evaluation. (P-43, P-44; Mother, I: 171; Schneider, V: 140)
69. Mother brought Stewart to his pediatrician, Dr. Ristaino, on January 16, 2020 because he was experiencing flashbacks and nightmares. Mother informed Dr. Ristaino that Stewart was anxious about what had happened the prior week, was not sleeping well, and was fearful of returning to school. According to Dr. Ristaino, before his hospitalization in January, Stewart was quiet and seemed shy, but he had never observed any significant red flags indicative of a problem.⁴³ When Stewart arrived for the appointment on that day, he appeared fidgety, agitated, and withdrawn. His body language and facial expressions suggested that he was upset. Dr. Ristaino testified that Stewart's presentation was consistent with a student who had been bullied.⁴⁴ (Mother, I: 171-72; Ristaino, II: 13-16, 27, 36-37)
70. On January 16, 2020, Dr. Ristaino wrote a "To Whom It May Concern" letter asserting that he had followed Stewart since birth, that he had "never been concerned about [Stewart]'s mental health," that Mother was a caring and nurturing caretaker, and that he had no concerns about Stewart's care at home. (P-66, P-102; S-50; Ristaino, II: 40)
71. On January 17, 2020, Dr. Ristaino wrote a second letter requesting that Stewart be excused from school to permit him to recover from the "emotionally traumatic" events of the prior week. The letter, which contained no time frame,⁴⁵ stated that Stewart was

⁴³ On cross-examination Dr. Ristaino was asked about an Individual Educational Medical Plan Assessment, completed for Stewart on February 17, 2016, that mentioned trauma and some behavior issues and appeared to include his signature. Dr. Ristaino could not recall completing the form or listing a history of trauma or acting out for Stewart, but testified that it was possible. (Ristaino, II: 27-28) Dr. Ristaino also testified that the document had his correct phone number and address, but that the handwriting was not his own. He further testified that staff members often complete the demographic information on forms such as these, after which they are provided to the doctor to review and sign. However, when Dr. Ristaino's attention was turned to the signature and date page of the document, he testified that it was not his signature, despite his name being on the signature line, nor did he recall examining Stewart on the listed examination date of December 11, 2015. (S-60; Ristaino, II: 31-34, 72-73)

⁴⁴ At Hearing, Dr. Ristaino explained it was Mother who reported issues of bullying, not Stewart directly. (Ristaino, II: 15, 35-36, 120)

⁴⁵ Dr. Ristaino testified that it was common practice for him to write notes to excuse students' absences for an unspecified period of time because "there's such a wide variety in terms of how long it takes for certain conditions

suffering from the effects of bullying and witnessing his mother's arrest, that the family's privacy should be respected at this time, and that home visits would be harmful.⁴⁶ At Hearing, Dr. Ristaino testified that in his medical opinion, going to school at that point would be traumatic for Stewart, who would likely be unable to focus and be productive. Although he acknowledged that Stewart was experiencing school avoidance, Dr. Ristaino believed this was secondary to a significant amount of anxiety.⁴⁷ At no time did Dr. Ristaino review Stewart's IEP or Behavior Support Plan. Additionally, Dr. Ristaino never spoke with any District staff, relying solely on Mother's information in his assessment of Stewart. (P-67, P-99, P-102; S-48, S-50; Mother, I: 172; Ristaino, II: 16-17, 38-42, 65-68)

72. Upon receipt of Dr. Ristaino's letter, Merriam administrators requested additional information. They sent releases to Mother and later, Dr. Ristaino, to permit direct communication between the District and Stewart's pediatrician. Mother never signed the release. Dr. Ristaino could not recall why Mother did not want to sign the release, but he did remember they had talked about whether it was wise for him to converse with the school and she indicated that she did not want him to do so. He did not press Mother to sign. (P-29, P-91; S-50; Mother, I: 172; Ristaino, II: 42-44, 44-46)
73. In the meantime, a meeting was scheduled for January 17, 2020 to determine next steps to get Stewart back to school. Mother emailed the day before to ask that the meeting be rescheduled, and several days the following week were offered. (P-31; S-22; Dixon, V: 152)
74. On January 17, 2020, an APD detective visited the home, as Stewart had not attended school for a week (nor had his brother), and Mother's cell phone appeared to be turned off. When Detective Eracleo arrived at the home, he found the children to be happy. Mother indicated that she was tired, that the children would not be returning to Merriam Elementary, and that she hoped they could re-enroll at the Gates. Detective Eracleo noted that if the children were not back in school the following week, the SRO or the school should file with DCF for neglect/failure to educate. (P-28, P-31, P-42; Mother, I: 172)
75. Deborah Dixon, Director of Special Education, called Mother on January 21, 2020 to discuss the children's return to school. (Dixon, V: 153)
76. On the same date, Stewart was evaluated by Advocates again, presumably at home, and was found not to meet the criteria for acute hospitalization. (P-67, P-88; S-50)

to improve . . . and we don't want to be held to a specific requirement when the patient may not be ready." (Ristaino, II: 41)

⁴⁶ Dr. Ristaino testified on cross-examination that in a general sense Mother provided input as to what she wanted to be contained within the letter. Mother had told Dr. Ristaino that DCF was involved and that Stewart was feeling anxious and afraid that he was going to be taken away from the house, as police officers had visited as well. However, Dr. Ristaino maintained that he was not directed by Mother to specifically write in a certain way. (Ristaino, II: 38-39)

⁴⁷ At Hearing, Dr. Ristaino acknowledged that excusing a child with school avoidance from school may not be in the best interest of the child, but opined that it might be medically necessary if attending school would exacerbate the student's symptoms. (Ristaino, II: 41-42)

77. On or about January 27, 2020, Ms. Dixon, Mother, and Counsel for both parties met to discuss this issue further. Given Stewart's increased social-behavioral needs and the degree to which his emotional presentation had changed since his three-year reevaluation the previous year, the District proposed an independent clinical psychological assessment. ABRSD hoped such an evaluation would enable the Team to determine whether, given Stewart's increased behaviors in school since November 19, 2019, there were any underlying disabilities causing this behavior and what, if any, additional interventions may be needed in the school environment to support him. (P-12, P-16, P-100) On or about January 27, 2020, ABRSD provided Mother with a consent form for this assessment. The District also proposed an out-of-District extended evaluation at this time.⁴⁸ (P-16, P-114; S-6; Mother, I: 202; Dixon, V: 154-58, 172)
78. Stewart transferred to Conant Elementary School on January 28, 2020 and was assigned to Jenna Zamarly's classroom. Ms. Zamarly holds a bachelor's degree in elementary education and a Master's degree in moderate disabilities. She has been teaching at Conant for five years. At the time Stewart was assigned to her second-grade classroom, Ms. Zamarly had twenty-two students and a part-time general education classroom assistant, Michele Kenerson. Ms. Zamarly was made aware Stewart was joining her class the day before, and she reviewed his IEP. Ms. Zamarly emailed Mother on Stewart's first day to establish contact. That day, Stewart left the classroom before Ms. Kenerson arrived. Ms. Zamarly had to call for another classroom assistant to watch her class while she followed him. (S-51; Mother, I: 173, 209; Zamarly, IV: 76-82, 89, 91; Dixon, V: 158, 160-61)
79. At Conant, Stewart demonstrated difficulty participating in class. He required frequent adult support to follow classroom expectations and complete assignments. He often left class to take a break, particularly in response to academic demands other than math, or to work in the hallway. At other times, he would run out of the classroom, and was frequently non-responsive to staff efforts to engage him. He would occasionally hide under a table in a school conference room and refuse to come out or go to class. (P-12; Mother, I: 173-74; Zamarly, IV: 81, 89-91)
80. Ms. Zamarly spoke with Damian Sugrue, then principal at the Conant, about getting additional assistance. Principal Sugrue was also concerned about Stewart's history of eloping. Moreover, the staffing of Ms. Zamarly's room was inadequate for Stewart to receive the 450 hours per week of in-class support required by the B-grid of his IEP. As such, ABRSD hired Nick Cabana. (Zamarly, IV: 80, 92; Dixon, V: 158-61)
81. Shortly thereafter, Mr. Cabana began working with Stewart to facilitate a positive, safe transition from the Merriam to the Conant. He assisted Stewart and other students in the classroom. When he was present, Stewart tended to participate more. (Zamarly, IV: 80-84;

⁴⁸ There is no written documentation of this offer in the evidence. At Hearing, Mother did not recall being offered an independent or out-of-district extended evaluation, but she also testified that her lawyer was handling school issues at this time. Dr. Ristaino was not aware that Mother had been offered either option. Dr. O'Connell, the psychologist who evaluated Stewart independently in the summer of 2020, testified that she was aware that Mother had been offered an extended evaluation, which she would have recommended, but had rejected it. (Mother, I: 202-06; Ristaino, II: 52; O'Connell, III: 83)

Dixon, V: 158-61) Mr. Cabana was also seen several times accompanying Stewart in the cafeteria and the hallway. He facilitated Stewart's conversations with other students about basketball and appeared to foster Stewart's relationships with peers. Similarly, Ms. Zmary testified that Mr. Cabana strengthened Stewart's ability to make friends, and that the two had a positive relationship. When Stewart left the room for breaks, which occurred three or four times a day for period of 15 to 20 minutes, Mr. Cabana, Ms. Zmary, or Stewart's special educator, Jennifer O'Brien, would accompany him.⁴⁹ (Harriott, III: 168, 172-76, 184, 186; Zmary, IV: 80-84, 86-89, 93)

82. The evidence does not provide a clear picture of Mr. Cabana's role at the Conant. According to Ms. Dixon, although Mr. Cabana was hired to cover Stewart's in-class support hours, he was not hired as a one-to-one. Mr. Sugrue viewed Mr. Cabana as a "transitional intervention" of sorts to address safety concerns related to Stewart's history of elopement. Ms. Zmary, however, believed he was a one-to-one aide assigned to Stewart. (P-23; S-53; Zmary, IV: 80-81, 95; Dixon, V: 159-63)
83. No Team meeting was convened before Mr. Cabana began working with Stewart. (Mother, I: 175; Dixon, V: 159)
84. On February 13, 2020, Ms. O'Brien e-mailed Mother to inform her of Stewart's progress at Conant. She reported that Stewart was doing more classwork and taking fewer breaks outside of the classroom. On that date, however, a whole school meeting disrupted Stewart's routine and he took a break in the conference room next to the office early in the morning. Staff asked him to return to class periodically, but he remained in the conference room all day. (P-27)
85. Ms. O'Brien emailed Mother again on February 26, 2020 to let her know that Stewart was having a great day and had volunteered to play drums in front of his classmates in music class. She also indicated that Mother should expect to receive the attendance sheet for a Team meeting scheduled for March 20, 2020. Mother requested a change of date, which the District accommodated. (P-95; S-7)
86. Over the course of his time at the Conant, Stewart met with School Psychologist Evelyn Harriott three times. For the last meeting, Stewart opted to bring friends; Mr. Cabana accompanied him to the office, then left. Stewart was talkative as they played games. (P-89; Harriott, III: 168-70, 184)
87. On February 27, 2020, Mother emailed Dr. Harriott to ask how Stewart was doing. Dr. Harriott responded that day to schedule a meeting for the following week, but in the meantime, she provided positive reports from herself and other staff members. (P-89; Mother, I: 176-77; Harriott, III: 172)

⁴⁹ Ms. Zmary, Ms. O'Brien, and Mr. Cabana provided behavioral management and instructional support for Stewart. According to Ms. Zmary, Stewart was taking breaks from the room any time an academic demand was placed on him. It is not clear from the evidence whether these breaks were structured, as they had been at the Merriam through the magnet sign-out system. (Zmary, IV: 81, 88-89)

88. According to Mother, Stewart told her that Mr. Cabana followed him everywhere at school. When she asked about him, she was told that he was an assistant teacher. She objected to Mr. Cabana, whom she viewed as a one-to-one aide that had been assigned to Stewart without her consent or involvement. At Hearing, Mother testified that Mr. Cabana made Stewart feel discriminated against and anxious, because Stewart had learned that Mr. Cabana was there to find out about him in order to trigger him so he could be taken back to the hospital. (Mother, I: 174-76, 178-79)
89. During a meeting between Mother and Mr. Sugrue on Friday March 6, 2020, Mr. Sugrue explained that Mr. Cabana was assisting Stewart in his transition to Conant. Mother requested that Stewart be permitted to leave the classroom alone for breaks. In an email he sent over the weekend, Mr. Sugrue agreed to Mother's request and asked that she discuss with Stewart the importance of letting someone know where he is going when he leaves the classroom, either verbally or through an alternative method. (P-25; Mother, I: 173-77)
90. Also on March 6, 2020, Mother brought Stewart to see Dr. Ristaino, who again observed that Stewart was very quiet and seemed withdrawn. Mostly through Mother, Stewart expressed that he was not happy with his current situation at school.⁵⁰ According to Mother, Stewart felt uncertain about interacting with students and others, as he always had an aide with him. She reported that Stewart was complaining of anxiety, panic attacks, worry, and flashbacks in which he relived being brought to the hospital and seeing his mother arrested. Dr. Ristaino viewed Stewart's symptoms as consistent with PTSD.⁵¹ (P-102; S-49, S-50; Mother, I: 178-79; Ristaino, II: 18-20) Dr. Ristaino and Mother discussed having Stewart continue in-home therapy and potentially see a psychiatrist. Dr. Ristaino did not know whether Stewart had actually seen a psychiatrist, but testified that it would be advisable for a student with Stewart's profile and PTSD to have a psychiatric consult and attend therapy regularly. (Ristaino, II: 21, 82-83)
91. Stewart's medical records from Emerson Hospital do not indicate diagnoses of anxiety or PTSD, instead specifying "aggressive behavior in pediatric patient." (S-50) Dr. Ristaino's formal medical records suggest that he diagnosed Stewart with anxiety on or about March 6, 2020, but there is no reference to PTSD. (P-102; S-48, S-49)
92. Following the appointment, Dr. Ristaino wrote a letter, dated March 6, 2020, asserting that Stewart had expressed concern about the stress of having one-to-one supervision through the day, which interfered with his ability to establish social connections with peers. He recommended that Stewart not be required to have such supervision. At Hearing, Dr. Ristaino testified that Mother had given him the impression that Stewart was paired with a one-to-one aide throughout the school day, and that Stewart had indicated

⁵⁰ Dr. Ristaino relied on Mother as a source of information during his appointments with Stewart; he viewed this as appropriate because it may be difficult for an eight-year-old to articulate feelings. (Ristaino, II: 18, 19-20)

⁵¹ At Hearing, Dr. Ristaino testified that he has diagnosed other patients with anxiety and PTSD based on their history and whether they meet criteria under the DSM-V. Asked what tools he used to diagnose Stewart, Dr. Ristaino responded that he asked questions directed to Stewart, but they were answered primarily by Mother. (Mother, I: 172; Ristaino, II: 65-67)

that he did not want to go to school under these circumstances. (P-102; S-49; Ristaino, II: 18-19, 48-50)

93. That Sunday, March 8, 2020, Mother emailed Ms. O'Brien to request a meeting as soon as possible. (P-95; S-7) A meeting was scheduled for that week. (P-25, P-26; S-8)
94. On March 9, 2020, Dr. Ristaino wrote a letter to "certify that allowance of [Stewart] to attend school in another town/district is medically necessary" given his anxiety following a traumatic event that had occurred at a prior school in Acton, leading to panic episodes and flashbacks consistent with PTSD. (P-68, P-102; S-49, S-50; Ristaino, II: 51-52)
95. On the same date, Dr. Ristaino wrote a letter to the school excusing Stewart for the next week, for "illness."⁵² Dr. Ristaino noted that Stewart presented with a headache due to school-related stress. He believed Stewart's anxiety made it impossible for him to focus, pay attention, and complete schoolwork, and also served as a barrier to communication with teachers and positive peer relationships. As such, Dr. Ristaino felt a break would be good for Stewart and would give the District time to develop an arrangement to replace the one-to-one supervision. (P-69, P-102; S-49; S-50; Mother, I: 178-79, 208-09; Ristaino, II: 21-24, 50-52, 82-83)
96. On March 9, 2020, Dr. Harriott saw Mother at school. Mother expressed her concerns and her belief that the assignment of Mr. Cabana to Stewart would exacerbate his anxiety. Dr. Harriott noted that this could be true. At that time, however, Dr. Harriott was not aware of Stewart's history of eloping or the reasons Mr. Cabana was working with Stewart. At Hearing, Dr. Harriott testified that Mr. Cabana appeared to have a good relationship with Stewart and seemed comforting to him. Although Mr. Cabana may have eased Stewart's transition to a new school, she opined that this arrangement may have made Stewart stand out from his peers. (P-89, P-125; Harriott, III: 177-81)
97. ABRSD sent a second consent form for an independent clinical psychological evaluation to Mother on March 10, 2020, as the initial one remained unsigned. Once again, Mother did not respond.⁵³ (P-115; S-9; Dixon, V: 172)
98. ABRSD closed on March 12, 2020 due to the COVID-19 pandemic. Once remote learning commenced, Stewart did not participate consistently. Even so, Mr. Cabana continued to participate in his classroom.⁵⁴ (S-4; Harriott, III: 181-183; Zmary, IV: 82-85)

⁵² At Hearing and in Stewart's medical record, Dr. Ristaino asserted that this illness was a nonintractable headache, unspecified chronicity pattern, and anxiety, but Mother testified that the illness consisted of nightmares and flashbacks. (P-69, P-101; S-50; Mother, I: 178-79, 208-09; Ristaino, II: (50-52)

⁵³ Mother testified that she did not remember receiving this consent form either. According to Mother, at the time another attorney was representing her and all IEP and school matters were going through him. (Mother, I: 205-06)

⁵⁴ Mother testified that after receiving the letter from Dr. Ristaino, the school removed the one-to-one for Stewart, at the end of March. (Mother, I: 179-80)

99. On March 26, 2020, Ms. O'Brien contacted Mother to let her know that Stewart's IEP meeting would be rescheduled for early May, when school was expected to resume. (P-24; S-52)
100. Mother responded that same day with an email expressing disappointment in Ms. O'Brien and Mr. Sugrue's hiring of Mr. Cabana without her input. She accused Mr. Sugrue of lying to her; accused Ms. O'Brien of covering up something; and indicated that that she had lost trust in the Acton Public Schools. She also emailed Ms. O'Brien, telling her to leave her and her children alone and that they just needed a break until May.⁵⁵ (P-24; S-52; Mother, I: 210)
101. In or about March 2020, Stewart resumed In-Home Therapy with IHT-Metrowest Community-Based Services.⁵⁶ His clinician was unable to obtain diagnostic clarity regarding his presentation as he was "significantly avoidant of therapeutic intervention strategies" and refused to participate in Telehealth sessions. The family was ultimately discharged in or about June 2020 due to inconsistency. (P-12, P-100)
102. In May 2020, Conant personnel proposed some changes to Stewart's IEP. (P-100)
103. During the summer of 2020, Mother, through Counsel, sought a private neuropsychological and educational evaluation of Stewart by Dr. Samantha O'Connell. Dr. O'Connell, who has a PhD in Clinical Psychology and has been licensed as a psychologist in Massachusetts since 2011, is the Chief Psychologist and Director of EAP Services at the Aspire Health Alliance/South Shore Mental Health. Throughout her career, Dr. O'Connell has worked on behalf of schools, agencies, and individuals, evaluating children across many settings. Over the past ten years, she has completed upwards of five-hundred neuropsychological evaluations. (P-13; O'Connell, III: 6, 9-11, 13-16, 18)
104. Due to the timing of this evaluation, neither Merriam nor Conant staff were aware of Dr. O'Connell's findings or recommendations during the 2019-2020 school year; his Team did not have the opportunity to consider this report during the time period relevant to this decision. (P-100)
105. In preparation for her evaluation, Dr. O'Connell reviewed Stewart's IEPs from March 28, 2019 forward; his discharge summary from IHT; pediatric records; and discrimination complaints filed by Parent against ABRSD. She did not speak with school personnel. Her evaluation consisted of direct clinical observations of Stewart, and standardized testing over the course of five to seven hours. (P-12, P-100; O'Connell, III: 8, 18-22; 53-56, 74-77, 79-80)
106. When Dr. O'Connell met with Stewart the first day, other family members provided background information, as Stewart appeared disengaged. He displayed marked

⁵⁵ On cross-examination Mother testified that she did not recall the email exchange. (Mother, I: 208-10)

⁵⁶ Records indicate that Stewart was receiving in-home therapy and/or seeing the school guidance counselor in or about the fall of 2019 for generalized anxiety disorder, unspecified. (P-102; S-48, S-49)

indicators of stereotypy and generally seemed resistant to engage in tasks he could not complete with precision. At times during testing, Stewart shut down, demonstrated selective mutism, and hid under a table. (P-12, P-100; O'Connell, III: 25-76)

107. At Hearing, Dr. O'Connell described these actions and inactions not as misbehavior, but as anxiety responses to stimuli, communicating that Stewart wants to get away. She testified that as such, Stewart's responses should not be treated as behaviors requiring rewards and punishments. Instead, he should be made comfortable in his environment, allowed to showcase his strong skills, and encouraged to develop authentic, appropriate peer connections. (P-12, P-100; O'Connell, III: 26-32, 64-66)
108. Cognitive testing revealed at least average intellectual skills, but inconsistent application of these skills. Stewart's qualitative language skills were functional and within normal limits, but his pragmatic skills were below average. Academically he displayed average math skills but demonstrated behaviors reflecting a deep desire to avoid reading tasks. According to Dr. O'Connell, Stewart is intellectually capable when information is presented in an organized manner and willing to push even beyond what is required when a task relies on visual-spatial abilities, is structured, and has a clear answer. He struggles, and may become unresponsive, however, when tasks are presented verbally. Stewart displayed anxiety as well as social emotional challenges. As a "body-based kid," Stewart has difficulty communicating his fears and anxieties verbally; instead, he may experience tummy troubles, headaches, appetite changes, and sleep disturbances. Stewart performed within the average range on measures of lower-level executive functioning skills involving attention, regulation of body and sensory control, inhibiting, regulating emotions, and processing material. He demonstrated difficulty on open-ended tasks. (P-12, P-100; O'Connell, III: 26-29, 41-49, 53-55)
109. Dr. O'Connell diagnosed Stewart with Specific Learning Disabilities in Reading and Writing and Higher-Level Executive Dysfunction. She concluded that he likely meets criteria for Social Anxiety Disorder and provided a provisional diagnosis of Unspecified Anxiety Disorder (mostly of the reactive type). Dr. O'Connell noted that Stewart may have Autism Spectrum Disorder (ASD), but she deferred the diagnosis given the limited information she had regarding his early history. (P-12, P-100; O'Connell, III: 41-44, 58-61) Dr. O'Connell did not diagnose Stewart with PTSD. At Hearing, she distinguished between PTSD and a developmental stress or trauma disorder that could lead to an anxiety response, and explained that she would be unable to diagnose Stewart with PTSD without additional information. (O'Connell, III: 84-86)
110. According to Dr. O'Connell, Stewart's strong desires to be accurate and to be viewed as capable suggest that when he avoids a task or flees a room, these are anxiety reactions rather than behavioral problems. She recommended that his IEP be offered under either the neurological or the specific learning disability (reading/writing) category and contain goals in academic areas and broad-based executive functioning, social connections/understanding, emotional support, and behavioral shift. Among other things, Dr. O'Connell recommended a calm, structured learning environment with a small student-to-teacher ratio and access to psychologically and behaviorally minded

professionals; multi-sensory teaching methods; modeling; an intensive phonics-based program; and scaffolding, particularly around writing; interventions to address deficits in organization, planning, integration, and social pragmatics; and a Behavior Support Plan crafted by a BCBA.⁵⁷ (P-100; O’Connell, III: 52-53, 63-64)

111. Stewart did not attend school between September and November of 2020. Dr. Ristaino testified that he was under the impression that the family had relocated to Alabama and the children were in enrolled in a school there. Although Mother confirmed that the family was in Alabama during this time and that she was in the process of enrolling them in school, it appears that Stewart never actually attended school there. (Mother, I: 223-26; Ristaino, II: 54-58)
112. On or about November 20, 2020, Stewart enrolled at the Douglas Elementary School in Acton. (Mother, I: 226)
113. In September 2020, Dr. Ristaino completed a Physician’s Affirmation for the Need of Temporary Home and Hospital Education for a Medically Necessary Reasons form for Stewart, at Mother’s request, as Stewart was “having issues.” In this affidavit, Dr. Ristaino requested that Stewart remain out of school for an undetermined period of time and participate in remote-only instruction because he had suffered from bullying at school and witnessed traumatic events that rendered him unable to be in a school environment at the time. Dr. Ristaino testified that he was not aware Stewart had failed to participate in remote instruction the previous spring. (P-70; P-50; Mother, I: 223-225; Ristaino, II: 54-58)
114. On April 27, 2021, Dr. Ristaino wrote another letter excusing Stewart from school for three weeks. Dr. Ristaino testified that he met with Stewart before writing this letter and that Stewart directly stated he was feeling anxious and fearful of going to school. Dr. Ristaino acknowledged that he was aware Stewart was now at Douglas Elementary School. The letter specifically stated that Stewart needed to be excused “due to his long-standing history of anxiety and PTSD which has escalated in recent weeks.” Again, Dr. Ristaino did not speak with anyone at ABRSD about his concerns or request that Mother sign a release to permit him to speak directly with the school. At the time, he understood that Mother would try to enroll the children in a different school district because she did not feel safe sending them back to school. Although he was concerned about the large periods of time Stewart was missing from school, Dr. Ristaino believed that Stewart’s anxiety would prohibit him from learning, even if he were to attend. (S-50; Mother, I: 223; Ristaino, II: 60-63)

DISCUSSION

It is not disputed that Stewart is a student with a disability who is entitled to special education services under state and federal law. To determine whether Parent is entitled to a

⁵⁷ Dr. O’Connell also recommended individual and family therapy and access to a developmental pediatrician, among other things. (P-100)

decision in her favor, I must consider substantive legal standards governing special education. As the moving party in this matter, Parent bears the burden of proof.⁵⁸ To prevail on her claim pursuant to § 504 of the Rehabilitation Act of 1973, she must prove – by a preponderance of the evidence – that during the specified time period, the District discriminated against Stewart in violation of the statute by altering his IEP without parental consent between January and March 2020; involving an SRO in response to his dysregulation on January 9, 2021; and/or imposing inappropriate consequences and punishment of Stewart for manifestations of his disability between December 2019 and January 2020. To prevail on her FAPE claim, Parent must prove – by a preponderance of the evidence – that the District failed to implement Stewart’s IEP, dated March 28, 2019 to March 27, 2020 (2019-2020 IEP) by utilizing an SRO in response to Stewart’s dysregulation on January 9, 2020; altering his IEP or special education services without parental consent between December 2019 and March 2020; and/or failing to utilize positive behavior interventions and instead imposing inappropriate consequences between December 2019 and January 2020.

I address the delineated issues below.

I. Legal Standards

A. *Section 504*

Pursuant to § 504 of the Rehabilitation Act of 1973, “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency . . . ”⁵⁹ To prevail on her claims under § 504, Parent must establish that (1) Stewart is a “handicapped individual”; (2) Stewart is “otherwise qualified” for participation in the program; (3) the program receives federal financial assistance; and (4) Stewart was “denied the benefits of” or “subjected to discrimination” under the program.⁶⁰ Only the fourth element is at issue in this matter – whether Stewart was denied “the benefits of” or “subjected to discrimination” in his education.⁶¹

In the context of special education, a violation of § 504 is “something more than a mere violation of IDEA.”⁶² According to the United States District Court for the District of Massachusetts, to prevail on an educational disability claim under § 504, a parent “must demonstrate that a school district acted with bad faith or gross misjudgment.”⁶³ I explored this subject in detail in my 2018 decision, *In Re Adam and Taunton Public Schools*, where I

⁵⁸ See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008).

⁵⁹ Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

⁶⁰ *Darian v. University of Mass.*, 980 F. Supp. 77, 84-85 (D. Mass. 1997) (internal citations omitted).

⁶¹ *Id.* at 85.

⁶² *Wenger v. Canastota Cent. Sch. Dist.*, 979 F. Supp. 147, 152 (N.D.N.Y. 1997) (internal citations omitted).

⁶³ *Nickerson-Reti v. Lexington Pub. Sch.*, 893 F. Supp. 2d 276, 300 (D. Mass. 2012) (internal citations omitted); see *Monahan v. Nebraska*, 687 F.2d 1164, 1171 (8th Cir. 1982) (“either bad faith or gross misjudgment should be found before a § 504 violation can be made out, at least in the context of education of handicapped children”); *K.D. v. Starr*, 55 F. Supp. 3d 782, 788 (D. Md. 2014) (in context of education of handicapped children, “a finding of discrimination based on disability requires a showing of bad faith or gross misjudgment by the school system”).

concluded that “in order to prove bad faith or gross misjudgment, the moving party must establish that the school’s actions ‘depart[ed] substantially from accepted professional judgment, practice or standards [so] as to demonstrate that the person[s] responsible did not base the decision on such judgment.’”⁶⁴ Courts have found that “statutory noncompliance alone does not constitute bad faith or gross misjudgment;”⁶⁵ it is a high standard to meet.⁶⁶ For example, parents’ claim that the district removed a student from honors classes, removed a writing fluency goal from his IEP, and failed to incorporate recommendations from an independent educational evaluation necessary for the student to receive a FAPE, in violation of § 504, was dismissed on summary judgment for failure to demonstrate gross misjudgment.⁶⁷ Similarly, parents’ § 504 claim regarding, among other things, a district’s failure to comply with certain regulations implementing § 504 and the ADA did not survive summary judgment because the facts, even construed in the light most favorable to parents, did not suggest that the district “deviate[d] so substantially from accepted professional judgment, practice, or standards as to demonstrate that the defendant acted with wrongful intent.”⁶⁸ On the other hand, the exclusion of a child from school and other educational activities because of his disability, if proven, would constitute a violation of § 504,⁶⁹ and allegations that a school district discriminated against a student with mobility issues in violation of § 504 by failing to maintain physical accessibility of programs, facilities, and activities were sufficient to survive a motion to dismiss.⁷⁰ A school district may rebut the allegation of discrimination by providing a reasonable explanation for the action or inaction that the moving party is alleging to be discrimination.⁷¹

B. Claims Involving Implementation of an IEP

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].”⁷² FAPE is delivered primarily through a child’s IEP, which must be tailored to meet a child’s unique needs after careful consideration of the child’s present levels of academic achievement and functional performance, disability, and potential for growth.⁷³ As summarized by the United States Supreme Court in *Endrew F. v. Douglas County School District*, the IEP must “describe how the child’s disability affects the

⁶⁴ BSEA #170888 (Reichbach 2017), quoting *B.M. ex rel. Miller v. S. Callaway R-II Sch. Dist.*, 732 F.3d 882, 887 (8th Cir. 2013) (internal citations omitted); see *Monahan*, 687 F.2d at 1171 (stating that there is no discrimination under Section 504 “[s]o long as the state officials involved have exercised professional judgment, in such a way as not to depart grossly from accepted standards among educational professionals”).

⁶⁵ *Miller*, 732 F.3d at 887-88.

⁶⁶ See *D.N. ex rel. Christina Nolen v. Louisa Cnty. Public Sch.*, 156 F. Supp. 3d 767, 776 (W.D. Va. 2016).

⁶⁷ See *Doe v. Pleasant Valley Sch. Dist.*, 2017 WL 8792704 at * 4 (S.D. IA 2017) (unpublished).

⁶⁸ See *Miller*, 732 F.3d at 887-88.

⁶⁹ See *Bess v. Kanawha*, 2009 WL 3062974 at *10 (S.D. W.V. 2009) (unpublished).

⁷⁰ See *McKay v. Winthrop Bd. of Educ.*, Civil No. 96-131-B, 1997 U.S. Dist. LEXIS 23372, at *4, *5 (D. Me. 1997) (unpublished).

⁷¹ See *Zdrowski v. Rieck*, 119 F.Supp.3d 643, 667-68 (E.D. MI 2015) (granting district’s motion for summary judgment because even in light most favorable to parents, a teacher dragging a student down the hallway a single time using a hold other than the one recommended for struggling students did not constitute a violation of § 504 where teacher explained she took such action to prevent additional stress and harm to student). The court also held that the failure to replace a classroom aide did not exemplify bad faith or gross misjudgment where, among other things, no aide was required under the student’s IEP. See *id.* at 668.

⁷² 20 U.S.C. §1400 (d)(1)(A).

⁷³ See *Endrew F. v. Douglas Cty. Reg’l Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *D.B v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012).

child's involvement and progress in the general education curriculum, and set out measurable annual goals, including academic and functional goals, along with a description of how the child's progress toward meeting those goals will be gauged.”⁷⁴ “To meet its substantive obligation under the IDEA, a [district] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.”⁷⁵ The goals of all students should be “appropriately ambitious . . . just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom.”⁷⁶

Where an IEP has been accepted, the analysis shifts to implementation. “To provide a free and appropriate public education to a student with disabilities, the school district must not only develop the IEP, but it also must implement the IEP in accordance with its requirements.”⁷⁷ The United States Court of Appeals for the First Circuit has not elaborated on what constitutes implementation of an IEP, but several courts within the First Circuit have done so. The United States District Court for the District of Massachusetts has linked the failure to implement an IEP to the failure to permit a student to benefit educationally – or in other words, to provide a FAPE.⁷⁸ In a subsequent case, the United States District Court for the District of Puerto Rico relied on the generally adopted standard articulated by the Fifth Circuit in *Houston Independent School District v. Bobby R.*, requiring “more than a *de minimis* failure” to prevail on an implementation claim under the IDEA.⁷⁹ The court summarized the analysis as follows:

. . . a court reviewing failure-to-implement claims under the IDEA must ascertain whether the aspects of the IEP that were not followed were “substantial or significant,” or, in other words, whether the deviations from the IEP's stated requirements were “material.” A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. This standard does not require that the child suffer demonstrable educational harm in order to prevail; rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.⁸⁰

⁷⁴ 137 S. Ct. at 994 (internal quotation marks omitted), citing 20 U.S.C. §§1414(d)(1)(A)(i)(I)-(III).

⁷⁵ *Endrew F.*, 137 S. Ct. at 999.

⁷⁶ *Id.* at 1000.

⁷⁷ *Colón-Vazquez v. Dep't of Educ.*, 46 F. Supp. 3d 132, 144 (D. P.R. 2014).

⁷⁸ See *Doe v. Hampden-Wilbraham Reg'l Sch. Dist.*, 715 F. Supp. 2d 185, 198 (D. Mass. 2010); see also *Ross v. Framingham Sch. Comm.*, 44 F. Supp. 2d 104, 118 (D. Mass. 1999) (“when presented with a claim that a school district failed to implement a student's IEP, a district court must determine whether the alleged failure to implement the IEP deprived the student of her entitlement to a ‘free appropriate public education,’ as defined under the applicable federal and state prescriptions.”)

⁷⁹ *Colón-Vazquez*, 46 F. Supp. 3d at 143-44 (Under *Houston Indep. Sch. Dist. v. Bobby R.*, “to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP”) (citing 200 F.3d 341, 349, 5th Cir. 2000), *cert denied*, 531 U.S. 817 (2000)).

⁸⁰ *Id.* (citing and quoting *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007) and *Garmany v. District of Columbia*, 935 F. Supp. 2d 177, 181 (D. D.C. 2013) (internal citations and quotation marks omitted)); see *Van Duyn*, 502 F.3d at 815 (“We hold that when a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP”).

As the First Circuit has yet to address this question, I find it appropriate to follow the United States District Court for the District of Puerto Rico in adopting the approaches endorsed by the United States Courts of Appeals for the Fifth, Eighth, Ninth, and Eleventh Circuits, as well as the United States District Court for the District of Columbia.⁸¹

II. *Application of Legal Standards*

A. ABRSD Did Not Violate Section 504 or Materially Fail to Implement Stewart's 2019-2020 IEP by Removing Him from Class or Adding a One-to-One Aide.

Parent alleged that ABRSD changed Stewart's IEP by removing him from his general education classes and adding a one-to-one aide without parental consent, and that these actions constituted both a violation of § 504 and a failure to implement his IEP. I address these allegations in turn.

i. *Removal from Class*

Pursuant to the 2019-2020 IEP, Stewart participated in a full-inclusion program, with limited pull-out services. Parent does not allege that the District failed to offer these services; she argues that Stewart missed them during his time outside of the classroom. The evidence establishes that Stewart did, in fact, spend time outside of his classroom regularly during the relevant time period, but it also shows that with the exception of January 3, 2020,⁸² Stewart left the classroom of his own accord each time. He often did this when a non-preferred task was presented – a pattern that was observed at the Merriam and persisted at the Conant. No evidence was presented, through testimony or through documents, that Stewart was actually removed from the classroom by a staff member at either building. Instead, staff permitted Stewart to take breaks consistent with the accommodations contained in his IEP, then worked to calm him and encouraged him to return to the classroom whenever he eloped.

Additionally, as school staff are not permitted to physically assist a student in returning to the classroom,⁸³ in response to Stewart's frequent elopements from the classroom, ABRSD worked, consistent with the supports set forth in Stewart's IEP and Behavior Support Plan, to decrease the frequency of his elopement and the amount of time he spent out of the classroom, as

⁸¹ See *Van Duyn*, 502 F.3d at 815; *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (noting that courts cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education where “there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit”); *Bobby R.*, 200 F.3d at 349; *Garmany*, 935 F. Supp. 2d at 181. See also *L.J. by N.N.J., v. Sch. Bd. of Broward County*, 927 F.3d 1203, 1211 (11th Cir. 2019) (“[W]e conclude that to prevail in a failure-to-implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; *de minimis* shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP.”)

⁸² As Stewart did not leave the classroom of his own accord on this date, I analyze it separately.

⁸³ See 603 CMR 46.00.

well as to keep him safe while he was outside the classroom. At the Merriam, Ms. Medvedeff worked with Stewart to create a behavior incentive plan and the magnet sign-out system, then developed a plan for the CIT involving walkie talkies and physical positioning to attempt to prevent him from leaving the building.

Moreover, the evidence established that when Stewart did elope from the Merriam, he was able to make up his work with either Ms. Medvedeff or another staff member on December, 20, 2019, and January 3, 7, and 8, 2020.⁸⁴ In accordance with his IEP, Stewart's daily schedule included time in Ms. Medvedeff's classroom to complete work from Ms. Bova's classes, including work he missed when he had eloped from Ms. Bova's room.

After Stewart transferred to Conant Elementary School, the evidence shows that he continued to initiate his time outside the classroom by leaving; he was not removed by staff. In fact, though Mr. Cabana was hired to cover Stewart's B-grid supports, he was also utilized to assist in keeping Stewart safe in the event he were to attempt to elope from the building. At times, Stewart completed work outside of the classroom with Mr. Cabana. Although it is unclear whether Stewart was able to make up all of the work he missed when he was not in his classroom during the 11 days he attended school at the Conant, I find that his time out of the classroom at the Conant did not occur as a result of the District's actions.

In the meantime, the principal reached out to Mother to brainstorm ways to keep Stewart safe and engaged in the classroom, but it is unclear whether these ideas were implemented before schools closed in connection with the COVID-19 pandemic.

Because, with the exception of January 3, 2020, Stewart himself, rather than ABRSD, was responsible for his time outside of his classroom, and staff at both the Merriam and the Conant responded appropriately to encourage him to return to class and keep him safe in the meantime, I find that the District did not remove Stewart from his classes. As such, there was no change to his IEP services, much less one made as a result of bad faith or gross misjudgment, and no failure to implement his IEP, in this regard.

I next address the circumstances of January 3, 2020. When Stewart entered Ms. Medvedeff's classroom, he was told that he needed to clean up some puzzle pieces before he could go to Ms. Bova's room.⁸⁵ Although this may be construed as removing Stewart from the general education classroom, I cannot find that it amounted to bad faith or gross misjudgment on the part of ABRSD staff. As Mother acknowledged, Stewart may hold on to things and let them build up. Both Ms. Medvedeff and Principal Schneider credibly testified that based on what was known about Stewart's behavioral profile on this date, staff who worked with him – including the school psychologist – believed that having Stewart put away the puzzle pieces would help him achieve closure related to his significant dysregulation the previous school day. Therefore, even assuming that the actions of the District on January 3, 2021 involved removal by ABRSD staff of Stewart from his general classroom, I do not find that there were unilateral changes made

⁸⁴ Ms. Medvedeff could not recall if Stewart was able to complete his schoolwork on January 9, 2020. Because he did not return to the Merriam afterward, Stewart did not have the opportunity to make up any work he had missed on this day.

⁸⁵ My analysis as to this date is more fully set forth in Part C, addressing the claims of inappropriate consequences.

to Stewart's IEP, let alone that the District acted with bad faith or gross misjudgment, or even deviated substantially from accepted professional judgment in asking Stewart to put away some puzzle pieces before returning to his general classroom.⁸⁶ As such, Parent's claims of discrimination in violation of § 504, on this basis, fail. Further, later in the day Stewart made up the work he had missed that morning. For these reasons, and because a brief removal from the general education classroom, on one particular day, does not constitute a material failure to implement Stewart's IEP, Parent's implementation claim also fails.⁸⁷

ii. *Addition of a One-to-One Aide.*⁸⁸

Stewart was transferred to the Conant at Parent's request at the end of January, 2020. However, based on then-existing staffing, the Conant had not been identified at the beginning of the 2019-2020 school year as appropriate to meet Stewart's needs as set forth in his IEP. Stewart required 450 minutes of in-class support to be provided by either a special educator or a special education assistant. Shortly after Stewart transferred to the Conant, an additional assistant was hired to permit ABRSD to provide Stewart with his B-grid supports. Furthermore, Stewart's frequent elopements from the classroom resulted in the existing staff, who were already tasked with supporting other students in the classroom, needing to shift their attention to mitigating the safety issue posed by Stewart's actions. When Stewart left the classroom, Ms. Zamary had to either leave her students unattended (if her part-time general education assistant was not in the classroom), or allow Stewart to exit the classroom unattended, without familiarity with the building, and without indicating to anyone where he was going. Given Stewart's struggles with communication, the short time he had been at the school, safety concerns created by his frequent eloping, and the amount of service delivery time that existed in his IEP, I find that it was reasonable for the Conant to hire additional staff to support Stewart's classroom when he began attending that school, and that this decision to hire Mr. Cabana was not done so as to create a one-to-one aide for Stewart, even though Mr. Cabana did focus much of his attention on Stewart after he started.

There was undoubtedly a lack of clarity surrounding Mr. Cabana's role, as it relates to Stewart. Dr. Harriott testified that she was unaware of Mr. Cabana's role, and Ms. Zamary believed he was intended to be Stewart's one-to-one aide. Ms. Dixon and Ms. Sugrue, District administrators whose purview includes staffing decisions, characterized him otherwise, primarily as a special education assistant whose presence in the general education classroom would allow the Conant to provide the required B-grid supports for Stewart, and also to provide assistance as needed as Stewart adjusted to a new school. To the extent Mr. Cabana supported Stewart when he eloped from the classroom by following him to different locations around the school, a role he shared with Ms. Zamary and Ms. O'Brien, the evidence demonstrates that Mr. Cabana was

⁸⁶ See *Miller*, 732 F.3d at 887-88; *Monahan*, 687 F.2d at 1171.

⁸⁷ See *Colón-Vazquez*, 46 F. Supp. 3d at 143-44.

⁸⁸ In her Closing Argument, Parent raised, for the first time, a claim that by instituting a one-to-one aide for Stewart, ABRSD violated Stewart's right to a FAPE by depriving him of the least restrictive environment (LRE). As the IEP was not rejected before it expired, Parent cannot now raise LRE claims. Moreover, as this claim was not raised in the *Hearing Request* and ABRSD, consequently, had no notice of it, I do not address it further. See BSEA *Hearing Rules for Special Education Appeals* Rule I(B) ("party requesting a hearing shall not be allowed to raise issues at the hearing that were not raised in the hearing request unless the other party agrees or the hearing request is amended in accordance with state and federal law").

providing a supervisory duty that would be mandated for the teacher or paraprofessional working with any child abruptly leaving a classroom, to ensure safety, regardless of whether the student is on an IEP. That is, when Mr. Cabana accompanied Stewart outside of the classroom, he was not providing special education services; he was serving in his capacity as a classroom paraprofessional to keep a student with a history of elopement safe. Moreover, the fact that Mr. Cabana continued to work with Ms. Zmary's class during remote learning, even as Stewart was absent, supports the District's assertion that Mr. Cabana was not hired as a one-to-one aide for Stewart. Based on the totality of the evidence before me, I conclude that Mr. Cabana was not hired as a one-to-one aide for Stewart, nor did he function in that capacity.

As Parent has not established that the District provided Stewart with a one-to-one aide without parental consent when he transferred to the Conant, I do not reach the question whether such a change to Stewart's IEP and/or services would constitute a violation of Section 504 or a failure to implement his IEP.

B. ABRSD's Involvement of an SRO in Response to Stewart's Dysregulation on January 9, 2020 Constituted Neither Discrimination Under § 504, Nor a Failure to Implement the 2019-2020 IEP.

i. *Section 504*

To decide whether ABRSD violated § 504, I must determine whether Parent has established, by a preponderance of the evidence, that the District acted with bad faith or gross misjudgment when it obtained the assistance of the SRO during Stewart's dysregulation on January 9, 2020.

Parent and ABRSD have offered conflicting accounts of the events of that day. Among other things, Parent contends – and has offered some evidence to support her contentions – that Detective Russell was contacted by District staff on that day to assist in managing Stewart's dysregulation; that Detective Russell participated in a Safety Care restraint, despite not being trained in Safety Care; and that Stewart was impacted negatively by this restraint. Parent submits that the District involved Detective Russell on January 9, 2020 because of Stewart's disability, that the District failed to follow appropriate reporting requirements, and that these actions and inactions constitute discrimination in violation of § 504.

The events that ultimately gave rise to what transpired on January 9, 2020, first began on December 20, 2019, the last school day before winter break, when Stewart's behavior first dysregulated to a level the school had not previously seen. Stewart was absent on January 2, 2020. Thus, by January 9, 2020, those working with Stewart only had five school days after his initial dysregulation on December 20, 2019 to respond. On four of those days, Stewart continued to escalate, culminating in the incidents that occurred on January 9, 2020. During this time, District staff, particularly Stewart's special educator Chelsea Medvedeff, developed and implemented various supports and strategies and maintained communication with Mother about what was happening. Specifically, before calling the SRO in the days leading up to January 9, 2020, the District employed a variety of less restrictive means to attempt to help Stewart regulate, including incentives, behavior maps, alternative forms of communication (i.e., foot

tapping, passing notes), Zones of Regulation check-ins, and structured breaks, all without the assistance of Detective Russell.⁸⁹ This evidence undercuts Parent’s contention, in her *Closing Argument*, that ABRSD had begun to “rely” on Detective Russell to respond to Stewart and chose to “criminalize Stewart’s behavior instead of treating it as a disability related dysregulation.”

Rather, ABRSD only contacted Detective Russell when Stewart’s behaviors became more volatile and caused him to aggress at school staff, Mother, and himself.⁹⁰ On January 8, 2020, Detective Russell did not interact with Stewart because he had already calmed by the time Detective Russell arrived. On January 9, 2020, before Detective Russell was contacted, Stewart had flipped a table, kicked at staff, and banged his head, even after a first restraint, and all available CIT staff were being utilized to respond without success in de-escalating him. As Stewart’s dysregulation rose to a level of significant concern for the safety of both Stewart and the staff working with him, the District had reason to contact the SRO when it did on January 9, 2020, as his responsibilities include “support[ing] school staff in maintaining a safe school environment.” I, therefore, conclude that Ms. Schneider’s decision to call on Detective Russell for assistance in de-escalating Stewart was appropriate professional judgement, given the information known to the school staff at that time.

Although District policy restraint regulations establish a preference to have all staff who are performing a Safety Care restraint to be Safety Care trained, they recognize and account for unexpected situations, and permit the use of an untrained “employee or agent of a public education program” in situations involving assault or “imminent, serious, physical harm.”⁹¹ Detective Russell did not participate in the first restraint at all,⁹² and then, not in the second restraint until after all available members of the CIT had responded, and was only utilized then because Stewart was in imminent danger of hurting himself, and others. As such, the participation of Detective Russell, who is trained in restraints, but is not trained in Safety Care, was both within the policy exception and appropriate given the circumstances. Therefore, the District also did not act in a manner that “departs substantially from an accepted professional judgment,” by involving Detective Russell in a restraint of Stewart, as including him was not prohibited by the restraint regulations or the District’s own restraint policy. As such, Parent has not proven by a preponderance of the evidence that Detective Russell’s participation in a restraint of Stewart on January 9, 2020 violated § 504.

Parent also asserts that the District’s failure to follow appropriate reporting procedures following the restraint, in part by failing to list all individuals who participated in the restraint,

⁸⁹ In her independent neuropsychological and educational evaluation of Stewart, Dr. O’Connell concluded that his dysregulation was emotional, rather than behavioral, and that a reward/punishment response would not be fruitful. To the extent it would have been helpful to inform Stewart’s Team, this information was not available to them on or before January 9, 2020.

⁹⁰ On January 7, 2020, Mr. Amitrano contacted Detective Russell due to a safety concern, as staff believed Stewart had locked himself in the car with the only set of keys. Detective Russell ultimately left, however, before Stewart chose to exit the car on his own, as he determined he was not able to further support the situation.

⁹¹ See 603 CMR 46.05.

⁹² Parent’s *Closing Argument* misstates that Detective Russell was involved in the first restraint to which Stewart experienced an adverse reaction. Rather, Detective Russell was not present during the first restraint, and arrived only after the second restraint was underway.

and failing to make note of Stewart's observed breathing struggles during one of the restraints, constitutes discrimination in violation of § 504. Although the Log of Student/Staff Injury Reports Mr. Amitrano entered into PowerSchool does not call for or contain all of this information, Parent did not establish that the Log constituted the entirety of the report filed with DESE. Other records maintained by the school, including the Record of CIT Calls, provide the details that were omitted from the Log, including reference to hyperventilation. As such, Parent has not established that the District "depart[ed] substantially from accepted professional judgment, practice, or standards [so] as to demonstrate that the person[s] responsible did not base the decision on such judgment,"⁹³ in relation to reporting Detective Russell's involvement in the restraint and Stewart's hyperventilation. To the extent Parent alleges that ABRSD did not meet DESE's requirements for reporting restraints, such as providing a copy of the written report to Mother, this is not the proper forum for that claim.

As to the impact of the restraint, Dr. Ristaino attributed Stewart's anxiety about returning to school after January 9, 2020, in part, to the restraints. He also testified that the flashbacks Parent reported to him that Stewart allegedly experienced after January 9, resembled symptoms of PTSD. Dr. O'Connell, however, testified that based on her training as a clinical psychologist, it would be inappropriate to diagnosis a child with PTSD based on a parental report, without gathering additional information. Dr. Ristaino did not observe Stewart in any other setting, nor did he encourage Mother to sign the release that would have permitted him to discuss Stewart with the District. Rather, Dr. Ristaino only relied on Mother's interpretation of Stewart's experiences.

Notably, I did not find Dr. Ristaino to be a credible witness. He based all of his actions and opinions on Mother's information, not even obtaining much directly from Stewart. He wrote one letter on January 16, 2020 asserting that he had never been concerned about Stewart's mental health, but the next day excused Stewart from school, for an unspecified amount of time, because – according to Dr. Ristaino – he was suffering from the effect of bullying at school and witnessing his mother's arrest. Dr. Ristaino testified to a PTSD diagnosis that is reflected nowhere in Stewart's medical record, including Dr. Ristaino's own files. Moreover, he continued to issue letters excusing Stewart from school, despite a known history of school avoidance, without ever attempting to speak with school officials. Finally, he did not pursue such communication with school officials either, instead accepting Mother's statement that she did not want to sign the release to permit him to speak with them, without inquiring even as to why. The difficult task of assessing a child with communication difficulties could have been mitigated, by conversations with District staff or other professionals who had spent time with Stewart, to ensure that Dr. Ristaino's diagnoses were accurate and that his letters granting extended absences from school after January 9, 2020, were warranted. This was not done. Given these concerning professional judgments by Dr. Ristaino, I do not credit his testimony.

Therefore, in considering what was known to the District at the time, I find that Parent has not proven, by a preponderance of the evidence, that the decision to call upon Detective

⁹³ BSEA #170888 (Reichbach 2017), quoting *B.M. ex rel. Miller v. S. Callaway R-II Sch. Dist.*, 732 F.3d 882, 887 (8th Cir. 2013) (internal citations omitted); see *Monahan*, 687 F.2d at 1171 (stating that there is no discrimination under Section 504 "[s]o long as the state officials involved have exercised professional judgment, in such a way as not to depart grossly from accepted standards among educational professionals").

Russell in response to Stewart's behavioral dysregulation generally, including on January 9, 2020, or his participation in the Safety Care restraint despite not being Safety Care trained, or the concerns Mother raised regarding the restraint reports, departed substantially from accepted judgment, practice, or standards. As such, these actions did not constitute discrimination against Stewart on the basis of his disability in violation of § 504.

ii. *Failure to Implement*

Parent alleges that ABRSD failed to follow Stewart's IEP because the use of the SRO was incongruous with Stewart's Behavior Support Plan, and because Detective Russell was involved in both the restraint and the decision to have Stewart evaluated at Emerson Hospital pursuant to Section 12, although he did not have sufficient information regarding Stewart's disabilities.

Specifically, as discussed at length above, once Ms. Medvedeff and other members of the CIT had exhausted less intrusive means to assist Stewart in de-escalating, in accordance with the 2019-2020 IEP and Behavior Support Plan, the crisis persisted. Only then was Detective Russell called to assist.⁹⁴ Contrary to Parent's assertion, the evidence demonstrates that ABRSD implemented Stewart's IEP when Stewart dysregulated on January 9, 2020. As such, I conclude that Parent failed to establish, by a preponderance of the evidence, that the use of Detective Russell in response to Stewart's dysregulation on January 9, 2020 constituted a failure to implement Stewart's 2019-2020 IEP.

C. ABRSD Did Not Impose Inappropriate Consequences and Punishment for Manifestations of Stewart's Disability Between December 2019 and January 2020 that Constituted Discrimination Under § 504, or a Failure to Implement His IEP.

Parent contends that between December 2019 and January 2020, ABRSD discriminated against Stewart in violation of § 504, and failed to implement his 2019-2020 IEP, by failing to utilize positive behavior interventions and instead imposing inappropriate consequences for manifestations of his disability. According to Mother, rather than employ the provisions in Stewart's IEP and his Behavior Support Plan, the District responded to Stewart's dysregulation, which arises from his disability, with inappropriate consequences including removing him from the classroom, denying access to the bathroom and to Mother, requiring cleaning of the classroom, restraining Stewart on January 9, 2020 and transporting Stewart to the hospital for a crisis evaluation over Mother's objection.

The record supports Parent's claim that Stewart was frequently outside of the classroom. Parent argues this was an inappropriate consequence. However, as discussed above, Parent has not established that District personnel removed Stewart from the classroom; the weight of the evidence demonstrates, instead, that Stewart was leaving the classroom on his own, not at the direction of any District staff member. Extensive testimony was offered about the methods District staff employed at both the Merriam and the Conant, including the strategies employed in

⁹⁴ Parent alleged that the District engaged in a premeditated plan to have Stewart brought to the hospital, and attempted to elicit testimony and provide evidence to support this claim without success.

his IEP and Behavior Support Plan, to manage Stewart's elopement and encourage him to return to the classroom whenever he left. Similarly, the CIT used Safety Care de-escalation strategies to work with Stewart when he was dysregulated.

Parent alleges that Stewart was inappropriately denied use of the bathroom following episodes of dysregulation, as an inappropriate consequence. The only evidence proffered by Parent that Stewart was denied access to the bathroom was Mother's testimony, which was adamantly, and credibly, refuted by the District's witnesses and documentary evidence.

Mother also argues that on January 9, 2020, Stewart was denied access to her as a punishment for his behavior. However, I credit the testimony of several people present that day, that Mother and Stewart were permitted to walk together in the hallway, unaccompanied, when they were both calm. Thus, Stewart was not so denied access to Mother.

Parent further asserts that requiring Stewart to clean up the mess he made following his dysregulation on December 20, 2019, upon his return to school January 3, 2020, was an inappropriate consequence. She also contends that he, and/or she, was required to clean it up the day it happened. However, the evidence shows that in fact it was Merriam staff that cleaned up after Stewart dysregulated and that, contrary to Mother's testimony, she was not asked to clean the room. Rather, as both Ms. Schneider and Ms. Medvedeff testified, Merriam staff left five or six puzzle pieces for Stewart to pick up after the school vacation break to provide him with the opportunity to make a "small repair" to achieve closure on the dysregulation that had occurred on the last day of school before the break. Although the extended period between December 20, 2019 and January 3, 2020 may have disrupted the link between the dysregulation and the repair, I do not find that being asked to put away the limited number of puzzle pieces constituted an inappropriate consequence.

Next, Parent alleges that the restraints that occurred on January 9, 2020 were an inappropriate consequence and constituted a punishment due to their excessive length. Although Detective Russell reported that the second restraint lasted 20 minutes, he acknowledged at Hearing that this was an imprecise estimate. Mr. Amitrano reported in the Log that the restraint lasted 20 minutes, but he was not present that day, relied on others' accounts, and posited at Hearing that the time frame may have referred to the length of the dysregulation, not a single restraint. Ms. Medvedeff believed the hold lasted two minutes; Ms. Schneider was unsure. Though evidence regarding the length of the restraint contained discrepancies, I credit the testimony of Ms. Medvedeff, as she has been Safety Care trained since 2011, was the lead on the holds, and was present the entire time (unlike Ms. Schneider and Detective Russell). Additionally, as to the argument that the restraints were punishments due to their excessive duration, again the evidence highlights that there were two restraints, by all accounts the longer one lasted less than 20 minutes, and that each was released as soon as Ms. Medvedeff believed it could be done safely. Moreover, the evidence demonstrates that the CIT restrained Stewart as a last resort, having implemented other strategies earlier that day. It was not until Stewart began to aggress toward Ms. Medvedeff and Ms. Schneider that a restraint was employed. The CIT released holds that were unstable, monitored Stewart for adverse reactions, worked with him when he had difficulty breathing, and only performed a second restraint when less invasive means of preventing Stewart from engaging in self-injurious behavior were unsuccessful.

I find that the CIT exhausted all plausible strategies before resorting to the first restraint. After the first restraint was released, the CIT returned to using non-physical interventions in attempting to block Stewart's self-injurious behavior and engaging in other de-escalation strategies; however, again when these strategies were unable to keep Stewart safe, the team began the second restraint. I find it critical that the less intrusive means of attempting to help Stewart regulate were exhausted before either restraint was utilized. For this reason, and those discussed above, I find that Parent has not met her burden to establish that Stewart was restrained on January 9, 2020 as an inappropriate consequence or punishment, or that the restraints employed were of excessive duration.

Finally, Parent alleges that the decision to have Stewart evaluated at Emerson Hospital was an inappropriate consequence or punishment for behavior that was a manifestation of his disability. Parent alleges that Stewart should have been released to his mother after he had presented calmly; however, considering the events that had just transpired, it was reasonable for staff to be concerned that he would again dysregulate significantly and that this could result in an unsafe situation for both Mother and Stewart. Moreover, due to Stewart's communication deficits, despite Ms. Medvedeff's attempts, it was hard to tell whether Stewart had truly regulated. Ms. Schneider believed she could not send Stewart home with any certainty that he would remain regulated, particularly as he had recently aggressed against Mother outside of school. The evidence supports a finding that the District was responding to a continuing crisis situation. Additionally, the APD and the paramedics who responded agreed with the District that evaluating Stewart at Emerson hospital was appropriate. Finally, according to the hospital discharge records, Stewart met the criteria for admission upon his arrival to Emerson Hospital, further justifying ABRSD's decision to have him evaluated.

For all these reasons, I find that Parent has not established by a preponderance of the evidence that ABRSD imposed inappropriate consequences or punished Stewart for manifestations of his disability between December 19, 2019 and January, 2020 in violation of § 504, or that a material failure to implement Stewart's IEP occurred through imposition of such consequences or punishment. The evidence does not support Parent's contention that Stewart was denied access to her or prevented from using the bathroom, nor does it support her assertion that ABRSD staff removed Stewart from the classroom. Further, Parent failed to establish that asking Stewart to clean up a few puzzle pieces was an inappropriate consequence, as it was a strategy based on sound and reasoned professional judgement. Additionally, the use of restraints on January 9, 2020, which I do not find to have been in excess of the legal threshold, was not an inappropriate consequence. Instead, they were utilized to address safety concerns to staff and Stewart after multiple non-physical interventions, strategies and approaches were attempted. Finally, Parent has failed to prove that the decision to require Stewart to be evaluated at Emerson Hospital was an inappropriate consequence for his behavior, or otherwise constituted a material failure to implement his IEP.

D. Parent is not Entitled to Compensatory Services.

Parent requests compensatory services for the District's failure to implement Stewart's 2019-2020 IEP and for ABRSD's discrimination against Stewart in violation of § 504. Parent has not, however, established that ABRSD failed to implement Stewart's IEP or that the District

discriminated against Stewart. Rather, the evidence shows that Mother frequently pulled Stewart out of school, and was unwilling to work with the District in its attempt to gather more information about Stewart, through an independent clinical or an extended evaluation, in light of his escalating behavior. Additionally, I find that with the exception of January 9, 2020, on the days Stewart was in school, he was able to make up work he missed due to his elopement from class. However, Stewart did not return to Merriam after January 9, 2020, rendering it impossible for the school staff to assist Stewart in making up work he had missed on this day. At all other times for which Parent requests compensatory services, Stewart was out of school pursuant to Dr. Ristaino's letters excusing him for significant amounts of time. As such, compensatory services are not warranted for any of Stewart's missed education during the relevant time frames, given that missed time occurred at the election of Parent, with the support of her chosen medical provider, and not by District action.

CONCLUSION

After reviewing the record in its entirety, I conclude that Parent has not met her burden to prove that the District unilaterally made changes to Stewart's IEP, improperly involved the SRO in responding to Stewart's dysregulation on January 9, 2020, or imposed inappropriate consequences and punishment for manifestations of Stewart's disability between December 19 and January 2020. As such, while Parent is understandably upset by the events that transpired on January 9, 2020, she failed to prove that ABRSD discriminated against Stewart in violation § 504. Moreover, Parent has failed to prove that ABRSD failed to implement an accepted, expired IEP. As such, Parent is not entitled to any relief in this matter.

ORDER

So ordered.

By the Hearing Officer:⁹⁵

/s/ Amy M. Reichbach

Dated: August 18, 2021

⁹⁵ The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Marion Schulz in the preparation of this decision.