

School District filed a request for a hearing. On May 9, 2023, the School District filed an amended hearing request. The matters were consolidated. On May 15, 2023, a prehearing videoconference was convened and a Conference Order was issued identifying the issues for hearing and setting deadlines for prehearing submissions. The hearing was held on May 23, 2023.

Parents Exhibits P-1 to P-245 were admitted. School District Exhibits S-23¹ to S-332, with the exception of withdrawn pages S-173 to S-175, were admitted. School District Exhibits S-A-1 to S-A-28 were admitted. School District Exhibits S-B-1 to S-B-12 were admitted. All admitted exhibits were admitted without objection. At the close of testimony, the parties jointly requested that the record remain open for the submission of written closing briefs. Each party submitted a closing brief on May 30, 2023. A Determination was issued on June 7, 2023. On June 14, 2023, the School District requested an amendment to the Determination, which is addressed in the Discussion and Conclusions sections of this Amended Determination.

II. ISSUES

By agreement of the parties, the issues for hearing are:

1. Whether the IEP Team on March 27, 2023, correctly determined that the Student's behaviors on March 16 involving a knife were not a manifestation of disability and on May 8, 2023, correctly determined that the Student's March 16 behaviors and behaviors on April 26 involving threats to kill were not manifestations of disability.
2. If the Student's behaviors were a manifestation of disability, whether a return to school that might be ordered by the Hearing Officer or otherwise required by state and federal special education laws would give rise to a substantial likelihood of injury and therefore warrant placement in an interim alternative educational setting ordered by the Student's IEP Team.

¹ There were no exhibits labeled S-1 to S-22.

III. FINDINGS OF FACT

Background. The Student is years old. (S-23.) lives with Parents within the District. (S-38.) The Student is identified as eligible for special education under the disability category of Other Health Impairment on the basis of a diagnosis of Attention Deficit Hyperactivity Disorder - Combined Type (“ADHD”). (S-38.) The Student has also been diagnosed with Oppositional Defiant Disorder (“ODD”). (P-231.)

A 2015 psychological evaluation of the Student concurred with prior diagnoses of ADHD and ODD for the Student. (P-231.) A 2018 Functional Behavioral Assessment completed noted that the Student had a long history of significant behavioral concerns dating back to prior to kindergarten. (P-240.) The Student frequently required support from staff to help problem-solve and navigate social relationships. (P-240.) was engaging in non-compliance to adult directives and exhibited difficulty with attention at times. (P-240.) The Student presented with poor emotional regulation and engaged in escalated anger for minor situations. (P-240.) The Student displayed an excessive temper, demanded attention through both positive and negative behaviors, acted out in social situations, and was unable to trust others or make friends. (P-240.) The Student presented with distress out of proportion to the situation at times, which impacted social interactions with others. (P-241.) The Student was noted to become explosive when constantly redirected for interfering behaviors and that escalated when redirected. (P-241.)

In late 2020, a psychological evaluation of the Student was conducted by _____, Ph.D. (S-23.) Dr. _____ concluded that the Student met the criteria for ADHD and that _____ social and behavioral difficulties partially derived from that diagnosis. (S-33.) She noted that in the structured day treatment program, which _____ attended starting in _____ grade, the Student benefited from a concrete behavior management plan with built-in rewards for on-task and thoughtful behavior. (S-34; Testimony of _____.) The Student acknowledged that _____ success in the classroom was dependent on the relationship that _____ constructed with the teacher. (S-34.) Therefore, it was recommended that the IEP Team should be especially thoughtful about teacher selection. (S-34.) Dr. _____ recommended that the Student remain in the day treatment program to solidify behavioral gains. (S-35.)

During the Student's _____ grade year, 2021-2022, _____ engaged in interfering behaviors that became significant and concerning; the behaviors included threatening, bullying, yelling, verbal aggression, threats of harm, intimidation, and a lot of non-compliance and refusal to follow directions. (Testimony of _____.)

The Student has attended the _____ to _____ grade day treatment program for _____ grade year, the 2022-2023 school year. (S-42.) The Student begins _____ day at _____ School and at 11:30 each day is transported to _____ School for lunch and group projects with general education peers. (Testimony of _____.) Support is pushed into the _____ School classrooms with the Student and a small group of peers from the day treatment program. (Testimony of _____.) The Student goes home from _____ School at the end of the day. (Testimony of _____.)

During the lunch period, two Behavioral Health Professionals are present monitoring the Student's behavior. (Testimony of .)

2021-2022 School Year. In February 2022, when School District staff attempted to calm the Student down during an altercation with another Student, the Student stated, "I don't use strategies the way you think. Shooting an animal, shooting a target, or burning things are ways I calm myself and feel good. I don't like to do things that are kind. If I do it hurts in my gut to do kind things." (S-159.)

On May 25, 2022, the Student's IEP Team met to discuss possible transition to mainstream programming at School. (S-46.) The Team decided that the Student's IEP did not need any changes. (S-47.) The Student's Father requested trauma-based therapy for the Student due to family being concerned about increasing behaviors. (S-47.) felt that the Student's critical needs at home were not being addressed at school. (S-47.) The Student's Father was upset that he had been contacted to discuss placement options for the Student. (S-47.) The Student's Stepmother indicated that she felt that the Student needed a structured environment with staff to help meet needs. (S-47.) She expressed a desire for the School District to help more at home. (S-47.) The Student's Father indicated that he was willing for the Student to try the day treatment program at his wife's suggestion but as soon as there was a problem, he would remove the Student from school. (S-47.) The Student's Special Education Teacher noted that the Student's argumentative behavior and inability to self-regulate had escalated. (S-47.) The Student had stated that did not need to follow classroom rules. (S-47.) Behavioral data indicated an increase in argumentative behavior, non-compliance, threats, and defiance towards one-to-one staff. (S-47.) It

was noted that the Student made threatening statement towards a mainstream peer, asking him if he had a death wish and threatening to meet him outside of school and shoot him in the eye with a bb gun. (S-47.) The Student had also put hands on a female peer when she tried to walk away from a conversation. (S-47.) It was noted that when School District staff engaged to coregulate with the Student, was not receptive to strategies. (S-47.) The clinical report indicated that the Student continued to need support accepting limits, hearing answers did not like, being flexible, and knowing how to manage emotions if was upset about something. (S-47.) The Team determined that the Student would be placed in the day treatment program rather than at School with a one-to-one aid because the Student needed staff interventions to coregulate behaviors. (S-48.)

On May 31, 2022, the Student made comments about wanting to stab a School student. (S-A-2.)

2022-2023 School Year. On September 15, 2022, the Student was involved in an altercation with a peer in which told the staff member who was intervening not to touch and not to get in way and then pushed and punched the other student, who had made a provocatory statement. (S-A-3.) On October 25, 2022, the Student brought a metal dart to school and told a staff member that a named person was lucky that the Student did not stab him. (S-A-5.) On October 31, 2022, the Student threatened to choke someone. (S-A-6.) When the Student's Father arrived to take home, the Student refused to leave the classroom. (S-A-6.)

(S-A-6 & 8.)

The Student's November 2022 Individual Treatment Plan identified behavioral health goals and objectives for the Student. (P-162-164.) The Student's long-term goals were to continue participation in day treatment and work towards more time doing

School inclusion and mainstreaming and to emotionally regulate and not become stuck when facing stressors. (P-162-163.) The Student would be discharged when reached and generally maintained Level 3 programming and mainstreaming in a regular education classroom for three months or if it was determined that the day treatment program was no longer a match for educational, social, behavioral, and emotional needs. (P-163.)

On December 5, 2022, the Student's IEP Team convened at the Parents' request for a program review. (S-73.) The Team discussed the Student's presentation in the day treatment setting, in which the Student showed the ability to complete grade level assignments but behaviors and emotional regulation impacted ability to access the education. (S-73.) The Team determined that the School District's grade day treatment program, the most restrictive program available within the School District, was unable to meet the academic or behavioral needs of the Student and it was recommended that outplacement options be considered. (S-73.) The Team strongly recommended an outplacement setting, which it felt would better meet the Student's needs and support academic success. (S-73.) The Parents expressed a belief that the Student was not successful in the day treatment program because teachers wanted to stay out of school. (S-74.) They shared that they were struggling to manage behaviors, which

were escalating, at home. (S-74.) The Parents were proceeding with neurological testing and seeking case management services, and they expressed concern about academic achievement. (S-74.) The Parents indicated they were considering outplacement but had been advised by a lawyer and the neurologist to wait until the neurological examination was done. (S-74.)

On December 19, 2022, the Student locked a peer in the safe space and would not move away from the door when instructed to. (S-75.)

On December 20, 2022, the Student took a peer's chair, recruited other students to taunt the peer, kicked walls, used the class phone without permission, kicked the divider and almost hit staff, swore, threatened staff, put hands on an administrator, refused to do work, and stuck middle finger out at staff. (S-79.) During the incident, the Student said would "hit and stab" all of the staff in the face. (S-77.) also indicated that Father was going to sue the School District and could do what wanted when wanted. (S-77.)

On January 3, 2023, the Student told a peer that was going to punch him "in the balls." (S-96.) The Student was throwing paper airplanes across the room, called Clinician a "dumb bitch," engaged in vulgar/sexual conversations with a peer, swore, and threatened Clinician that if she did not give computer back, she was "not going to like" . (S-96.)

On March 14, 2023, conducted a screening tool pursuant to a risk assessment at which time the Student reported that had been suicidal a month prior and planned to stab in the neck with a pocket knife but ended up stabbing the wall 16 times instead. (S-296.) The Student's Parents reported that the Student had

ongoing issues with neighborhood kids, including engaging in physical and verbal altercations. (S-312.) The Student's Father reported that the Student was fascinated with weapons including any knife that could get hands on. (S-312.) Although the Father reported locking up knives that he found, the Student had been seen by police walking down the street with knives. (S-312.) The Parents also reported that the Student had experienced high levels of lead in blood as an infant. (S-312.) During the interview, the Student engaged in arguments with Parents that the Parent's contributed to. (S-312.) The Student was classified as being a "High Suicide Risk." (S-299.) The Student's Father reported that he would like the Student to be able to manage impulsive behavior and aggression and would like to have an in-depth assessment and neurological evaluation conducted to ensure that services matched the Student's needs and to confirm a proper diagnosis to be able to explore mediation as a form of treatment. (P-301.)

On March 15, 2023, the Student was given an office discipline referral for swearing, yelling at teacher, and misusing computer by watching inappropriate content regarding guns and knives; when the counselor questioned the Student as to why was being rude to the teacher, responded that "nice people get killed." (S-130.)

On March 16, 2023, the Student threatened Clinician by stating "I'm going to kill you, you're dead," while yelling and swearing. (S-131.) Administration was called to the day treatment program room for assistance. (S-132.) The Student was escalated and upset with Clinician and told her to "stop talking or I'll stab you." (S-132 & 165.) An administrator asked the Student to step outside with her and she called the School Resource Officer at School to assist. (S-132.)

The School Resource Officer was advised that the Student was extremely agitated and was being disruptive, threatening, and swearing at staff, which was common conduct for . (S-195.) He was asked to transport the Student home as was not fit to complete the day at school. (S-195.) The Student was extremely defiant and was refusing to cooperate with staff or administrators. (S-195.) The School Resource Officer asked the staff to leave the area for a moment since he had a good rapport with the Student and felt he could calm down. (S-195.) After the Student had vented for a moment, stated that “didn’t know what the big deal was” because “it’s not like I pulled out my knife.” (S-195.) The School Resource Officer then asked the Student if had a knife and the Student produced a folding pocket knife from pants pocket. (S-195.) The School Resource Officer asked the Student why would bring a knife to school. (S-195.) The Student responded that was walking to brother’s apartment, in a dangerous neighborhood, after school. (S-195.) then stated that no one needed to worry about having a knife, except for the School Resource Officer at (S-165 & 195.) The School Resource Officer felt that the comment was made in jest but advised the Student that threatening comments were taken seriously, which the Student indicated understood. (S-195.) The School Resource Officer advised the Student as to why it was dangerous to bring any weapons to school and the Student again stated that understood. (S-195.)

The School Resource Officer and another Police Officer escorted the Student home without incident. (S-195.) After taking the Student home, the School Resource Officer was advised of the threats made by the Student while in the classroom,

including threats that referenced knife. (S-195.) Although there was a well-documented history of the Student's violent and threatening comments towards staff, the Superintendent requested that no criminal charges be pursued against the Student at that time. (S-195.) The Student was suspended for ten days as a result of this conduct violation. (S-157.)

On March 17, 2023, the Student's Special Education Teacher reported to the Special Education Director that the Student's behaviors had become increasingly threatening and aggressive in the day treatment program over the last two weeks, to the point that was consistently and constantly swearing and yelling throughout all spaces and at students and teachers. (S-A-18.) For example, when the Special Education Teacher prompted the Student to turn off an inappropriate video, told her to off, I will watch what I want." (S-A-18.) When the Teacher provided further explanation, the Student responded, "You don't know what the you're talking about." (S-A-18.) The Student continued to yell and swear at the Teacher before leaving the room. (S-A-18.) When the Teacher was out of the room, the Clinician asked why would talk to the Teacher that way when she was being nice to , to which the Student responded "Nice people get killed." (S-A-18.) The Student was constantly loud and swearing all day, eventually leaving with the School Resource Officer. (S-A-18.)

Also on March 17, 2023, the Clinician reported to the Special Education Director that the Student had reverted to calling teachers names, swearing, threatening, punching things, not going to class, and being disruptive. (S-A-19.) The prior week, during a phone conversation between the Student's Father and a staff member, the Student got very upset and escalated to the point that broke the wall divider by punching it and

told staff that [redacted] wanted to punch the Clinician's head into the ground until her skull cracked open and [redacted] wanted to slit her throat. (S-A-19.) The Student had become very belligerent, yelling and swearing, while completing a required interview with the Clinician. (S-A-20.) [redacted] yelled at the Clinician to get away from [redacted] and attempted to leave the school when [redacted] was not authorized to, kicking the door. (S-A-20.) As the Student walked back into the school, [redacted] was pointing and walking fast towards the Clinician stating, "don't ever [redacted] talk to me again. I'm going to [redacted] kill you, you're dead." (S-A-20.) The Student then left with the police. (S-A-20.) The Clinician expressed concern for the Student's safety, the safety of staff, and the safety of peers. (S-A-20.)

On March 27, 2023, the Student's IEP Team met and conducted a manifestation determination regarding [redacted] conduct on March 16, 2023. (S-133.) The Team determined that the behaviors that resulted in the Student's out of school suspension were not due to [redacted] disability and also that the behaviors were not a result of the School District's failure to implement the Student's IEP. (S-134.) The Team reached this determination by reviewing the events of the day, prior disciplinary actions, the Student's attendance, prior evaluations, and the Student's IEP. (S-135.) The Student's Parents did not agree with the manifestation determination made by the Team. (S-135.) The Student was due for triennial testing in December 2023. (S-134.) Because of an increase in the Student's behaviors and the likelihood that updated testing would give the Team a more accurate view of [redacted] needs, the Team agreed to complete updated testing early, including a psychological evaluation, academic testing, behavior rating scales, and observations, and reconvene within 45 school days to review the updated testing. (S-134.)

During the March 27, 2023, IEP Team meeting, the Student's Parents indicated that the Student should not be sent home from school due to behavioral issues. (S-135.) They also indicated a feeling that there was not enough communication with them regarding the Student's IEP and daily behaviors. (S-135.) The Student's Stepmother indicated that more support was needed within the home to help the Student transfer skills was learning at school, noting that they were working with a community case manager to obtain more in-home services. (S-136.) The Parents agreed to tour potential outplacement settings. (S-136.)

On the morning of April 3, 2023, two days after returning from suspension, the Student was given an Office Discipline Referral for saying, referring to prior suspension for having a knife at school, that "if I was unsafe, [the Assistant Principal for Special Education] and [the School Resource Officer at School] would have felt the tip of my knife." The Student then told Clinician that she was "lucky I didn't do anything to you that day." (S-137.) When the Clinician told the Student that statement sounded threatening and attempted to redirect , the Student said "that's because it was a threat." (S-138.)

Also on April 3, 2023, the Student was given an Office Discipline Referral for coming into school and refusing to go with administrators so they could complete a search, which was a requirement upon return to school. (S-139.) The Student went under the stairs and continued to scream and swear at administrators, stating that did not agree to be searched and would punch the staff if they tried. (S-140.) The Student continued to yell and swear but eventually went with administrators, but stated would not do it again. (S-140.) During the search, the Student would not fully empty

pockets or lift up pant legs, stomping out of the office while yelling and swearing. (S-140.)

The Student's individual crisis and behavior management plan, updated on April 3, 2023, due to the knife incident, identified current issues that were potential triggers for the Student, high risk behaviors, proactive strategies staff could use to deescalate, baseline presentation triggering/agitation behaviors, escalation, outbursts, and recovery/calming. (S-B-1 to 3.)

On April 10, 2023, the Student received an Office Discipline Referral for leaving classroom and threatening to punch teacher in the face, continuing to talk loudly to peers in the classroom, and refused to do work after being asked several times. (S-142.) On April 11, 2023, the Student received an Office Discipline Referral for refusing to attend English class. (S-145.)

On April 26, 2023, an Office Discipline Referral was issued for the Student after scared several students whom was sitting with in the cafeteria by telling them that was going to shoot them. (S-150.) The Student told Clinician at the end of the day that had "scared a bunch of kids at lunch." (S-157.) When the Clinician asked why the students were scared, the Student responded, "Because I told them I was going to shoot them." (S-157.) Students who were interviewed indicated that the Student said, "I wish I had a gun so I could kill you guys," and "I would probably bring a knife instead because it's easier to get." (S-157.) The Student also stated that if brought a gun to school, would "target the school cop." (S-157.) The Student was given a ten-day out-of-school suspension for behavior. (S-150.)

On May 8, 2023, the Student's IEP Team met to conduct a manifestation determination because the Student had again been suspended for 10 days. (S-151.) The Team, with the exception of the Student's Parents, determined that the April 26, 2023, behaviors that resulted in the Student's out-of-school suspension were not due to disability. (S-152.) The Team, including the Parents, did not find that the Student's behaviors were due to a failure to implement the Student's IEP. (S-152.) The Student's Team changed the Student's placement because of inability to safely access education and a concern that posed a risk of injury to self or others. (S-152.) the Student's new placement was two hours per day of tutoring and one hour per week of social work. (S-152.) The Student would receive special educational services through work packets created by a special education teacher and counseling by telephone. (S-152.) The work packets would be paper because the Student's Stepmother did not want the Student to have a computer at home, which she feared would destroy. (S-153.)

The Student's Team agreed to continue working towards an outplacement option for the Student since required a more restrictive setting due to increased behaviors. (S-153.) The Student's Parents had not completed application packets. (S-153.)

The Team also reviewed the prior assessment of the Team and, with the exception of the Student's Parents, concluded that the Student's behavior on March 16, 2023, was not a manifestation of ADHD or ODD. (S-153.) Dr. , who had known the Student since early elementary school through evaluations, explained how the Student had not demonstrated remorse for actions which were not impulsive. (S-153.) She noted that it was alarming that the Student had held onto the knife all day, because typically would tell on because was impulsive and did not keep secrets

well. (S-153.)

(S-153.)

(S-153.)

(S-153.)

(S-153.) The Student's Stepmother was visibly upset and stated how inappropriate the Student's behavior was, expressing concern that she would now be target if were not in school. (S-153.) Dr. indicated that even if the Student's threats to other students that day began with impulsivity, continued to make statements about shooting and killing students at school multiple times and even bragged about scaring kids later in the day. (S-154.) She noted that a Student with ADHD would typically show regret and not brag or be happy about their behavior. (S-154.)

The Student's Clinician reported that did not seem upset by the fact that had scared other students when was talking to her late in the day. (S-154.) She questioned the Student's impulsivity. (S-154.) The Clinical Supervisor shared with the Team her opinion that due to the fact that the Student's statements kept going on, they were not impulsive, noting that flipped back and forth in conversation with students between threats with guns and knives and appeared proud of . (S-154.) The Team noted

that a Behavioral Health Professional was nearby observing the Student's behavior but no longer sits directly with the Student because of the Student's desire for space. (S-154.)

The Student's Stepmother shared that the Student, who she had lived with since [redacted] was 15 months old, had destroyed parts of her home, stabbing the walls with a knife repeatedly, which [redacted] seemed to feel proud about. (S-154.) She indicated that [redacted] did not face consequences so [redacted] felt [redacted] could get away with anything, stating that [redacted] should be brought to the police. (S-154.) She noted that the Student bullies other students, threatens others, and does not follow directions. (S-154.) The Student's Stepmother opined that the Student should attend a residential placement and she was concerned about [redacted] risk. (S-154.) She noted that she was trying to find in-home supports for the Student, which the School District indicated it would support through documentation of school incidents in any way that it could. (S-154.) The Student's Stepmother reported that the Student had twice been taken to the hospital during the 2022-2023 school year, but [redacted] was not admitted. (S-154.)

(S-154.)

The Team ordered additional testing to ensure that all of the Student's needs were known and could be properly supported. (S-155.) The Parents had already signed consents for a psychological evaluation, behavior rating scale, academic assessment, and a classroom observation. (S-155.)

On May 10, 2023, [redacted], Psy.D., NCSP, issued a Risk Assessment regarding the Student. (S-157.) She reviewed the Student's behavioral history. (S-158.) In addition to a very large number of Office Discipline Referrals in grades [redacted] through [redacted], which were the result of physical aggression such as punching, slapping,

kicking, tripping, and pushing other children, there were also threats to bring a gun to school and shoot a student or kill a couple of other students. (S-158.) In grade, the Student had a BHP in the classroom and began attending the day treatment program. (S-158.)

Dr. noted that in the current school year, the Student had displayed behavior such as ongoing threats, intimidation, defiance, classroom disruption, and bullying. (S-159.) She also utilized the SAVRY Risk Factors Analysis, which looked at historical factors, social factors, individual factors, and protective factors related to risk. (S-160.) With regard to historical factors, Dr. found that the Student had committed more than three acts of violence and more than five acts of non-violent offenses, had exhibited an early initiation of violence,

(S-160.)

With regard to social factors, Dr. found that the Student was associated with troubled peers, experienced moderate rejection from peers, exhibited stress and poor coping skills, experienced poor parental management, and had inconsistent personal/social support. (S-160.) With regard to individual factors, she noted that the Student had an attitude condoning violence, anger management problems, limited remorse and empathy, ADHD, ODD, and low interest in completing schoolwork. (S-160.) Regarding protective factors, Dr. identified the Student's lack of strong social support, strong attachment to father, negative attitude toward authority, and lack of school motivation. (S-160.)

Dr. noted the Student's externalizing behaviors of engaging in argumentative behaviors, defiance, threatening of others, refusal to take advice, bullying

of others, using others' things without permission, and acting out of control. (S-161.) She noted internalizing behaviors of being pessimistic, negative, and sad at times, with clinically significant depressive symptoms. (S-161.)

Dr. concluded that the Student was at high risk for future violence. (S-163.) She found that clinical risk factors that might be considered critical, based on high-risk profile, included thoughts condoning violence, obsession with weapons, obsession with computer/technology, poor anger management, limited empathy, lack of positive and lasting social relationships, access to weapons, high cognitive functioning, strong problem-solving skills, , and need to be correct. (S-163.)

Dr. recommended considering the results of the risk assessment when planning for the Student's educational future. (S-163.) She suggested that the Student's IEP Team would want to discuss the best educational setting for the Student that would ensure the safety of staff and peers, noting that would require high levels of supervision in order to deescalate when frustrated, redirect any threatening/unsafe/aggressive behaviors, and support improvement in participation in academic assessments. (S-163.) She indicated that two adults would be needed to search belongings before entered the educational setting. (S-163.) Dr. observed that the Student would benefit from participating in evidence-based anger management programming for adolescents and could also benefit from wrap around services in the community and at home, noting that behaviors at home included threatening behavior, high defiance, and leaving without permission. (S-163.) Finally, she suggested that the Student's

Parents search [redacted] and [redacted] belongings prior to [redacted] leaving the house, remove weapons from the home, and lock up any items that could be used as dangerous weapons. (S-164.)

The DSM-5 identifies the diagnostic features of ADHD as a persistent pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development. (P-197.) Inattention manifests behaviorally as wandering off tasks, lacking persistence, having difficulty sustaining focus, and being disorganized. (P-197.) Hyperactivity referred to excessive motor activity when it is not appropriate or excessive fidgeting, tapping, or talkativeness. (P-197.) The DSM-5 identifies the functional consequences of ADHD as reduced school performance and academic attainment, social rejection, and development of conduct disorders in adolescence. (P-199.)

The DSM-5 identifies the essential features of ODD as a frequent and persistent pattern of angry/irritable mood, argumentative/defiant behavior, or vindictiveness. (P-190.) The DSM-5 identifies the functional consequences of ODD as frequent conflicts with parents, teachers, and peers. (P-192.)

Hearing Testimony. Dr. [redacted] has had significant contact with the Student through multiple evaluations and a functional behavioral assessment. (Testimony of [redacted].) In conducting the May 10, 2023, Risk Assessment, she concluded that the Student's behavior had been building since kindergarten and that [redacted] behavioral history showed that [redacted] March and April behaviors at issue were not one-time occurrences. (Testimony of [redacted].) She found that the Student routinely exhibited conduct that was unsafe, dangerous, and violent to solve problems. (Testimony of [redacted].) She noted that the Student's behavior of bringing a knife to school and stating later that [redacted] could have used it showed thought rather than impulsiveness. (Testimony of [redacted].)

Dr. _____ acknowledged that the Student's Father reported that knives at home were locked up but expressed concern that _____ was able to get them either at home or elsewhere, noting that _____ brought knives to school in both 2020 and 2023. (Testimony of _____.)

.) She noted the Student's history of assaultive behavior at school and aggressive behavior at home, including stabbing a knife in the wall many times. (Testimony of _____.)

.) Dr. _____ observed a connection between

and the Student's understanding of how to solve problems. (Testimony of _____.)

.) She noted that the Student's anti-social behavior ratings of 90 from the Parent and 113 from the Special Education Teacher were exceptionally high scores that were concerning. (Testimony of _____.)

Dr. _____ analyzed that the Student's persistent and repeated patterns of violating social norms and personal boundaries was not caused by ADHD, which manifested as daydreaming, zoning out, not starting tasks on time, getting out of _____ seat, and blurting out responses. (Testimony of _____.) Likewise, Dr. _____ analyzed that the Student's violation of social norms and rules or personal boundaries was not consistent with the symptoms of ODD of irritability and not complying with school-based or parental directions. (Testimony of _____.) She noted that the Student's threats on April 26 were not related to any escalation in the conversation and included a thoughtful plan as to who _____ would target, what _____ would use, and how _____ would do it; _____ intent seemed purely to instill fear in others. (Testimony of _____.) Dr. _____ concluded that the Student was exhibiting social maladjustment characterized by a consistent and repetitive pattern of breaking the norms and rules. (Testimony of _____.)

With regard to the issue of whether the Student was exhibiting symptoms of lead poisoning in behavior, Dr. agreed that lead poisoning had an impact on brain development but noted that the Student's cognitive development through the years had been in the average range. (Testimony of .) She opined that if lead poisoning were present, it would not lead the Student to bring a knife to school. (Testimony of .)

In terms of testing, the Student's Parents submitted a behavior rating scale and their comments at IEP Team meetings were also noted. (Testimony of .) Dr.

did not interview the Student because of the history available in the Student's record, including previous psychological evaluations. (Testimony of .)

, LCPC, a Clinical Supervisor for the School District, testified to her opinion that the Student presented a substantial risk to or others if returned to school based on history. (Testimony of .) She noted that had been getting some form of mental health programming since kindergarten yet behaviors had increased in duration, intensity, and frequency, and there was nothing to indicate that the behaviors were going to decrease with the programming currently being offered in the day treatment program. (Testimony of .)

Ms. noted that when disclosing on March 16 that had brought a knife to school, the Student was calm and was not escalated. (Testimony of .) She expressed concern that the Student continued to find ways to bring weapons to school. (Testimony of .)

Ms. explained that ADHD could lead an individual to act impulsively and inattentively, for example, by socially intruding or taking over a conversation, but

act of bringing a knife to school, including predetermining where to get the knife and where to hide it until [redacted] went to the [redacted] school, required significant executive functioning. (Testimony of [redacted].) She also opined that ODD would look like a temper tantrum, not aggressive behavior; she noted that the Student had a history of telling staff they could not make [redacted] do something and refusing to follow directions and when [redacted] was held accountable, [redacted] would swear, refuse to comply, and yell. (Testimony of [redacted].) She concluded that bringing a knife to school was not conduct with a direct and substantial relationship to ODD. (Testimony of [redacted].) Ms. [redacted] opined that the Student's IEP Team then needed to look at a conduct disorder and social maladjustment as the cause of [redacted] behavior intended to cause fear and violate the rights of others without any apparent remorse. (Testimony of [redacted].)

Ms. [redacted] opined that the Student's ADHD was also not related to [redacted] making threats to other students and reporting it to School District staff in a proud manner. (Testimony of [redacted].) She noted that the Student kept going with [redacted] threat, even as the other students expressed fear and worry at [redacted] comments. (Testimony of [redacted].) She also opined that ODD was not the cause of the Student's April 26 threats because the threats were made against [redacted] peers and [redacted] was not rebelling against a limit of authority. (Testimony of [redacted].) Ms. [redacted] noted that the Student was calm, laughing, and joking when [redacted] made the threats, and that [redacted] high-fived the Clinician on [redacted] way out of the classroom after explaining the threat [redacted] had made. (Testimony of [redacted].) She noted that the Student had indicated that [redacted] feels it is [redacted] First Amendment right to make threats and scare people. (Testimony of [redacted].) Ms. [redacted] explained that she was unaware of instances in which the Student showed remorse for [redacted] threatening behaviors,

further confirmation that s threats were meant to intimidate and were not impulsive. (Testimony of .) Ms. also noted that two or three times the School District has called for a mobile crisis assessment of the Student, which resulted in a recommendation that go to a local hospital; on one occasion the Student went to the hospital and on another was taken home and School District staff is unsure of whether was ultimately taken to the hospital. (Testimony of .)

LSCW-c, was the Student's Clinician in the day treatment program during the 2022-2023 school year. (Testimony of .) She testified that at the end of the day on April 26, the Student was leaving for the day, approximately two hours after had made the threat during the lunch period, and told her had had a pretty good day. (Testimony of) The Student went to give her a high five, which they frequently did, and stated that had scared of bunch of kids in the cafeteria; when Ms. asked what meant, indicated that had threatened to shoot them. (Testimony of .) The Student did not indicate that was angry when said it and did not appear to be discussing an altercation. (Testimony of .) Ms. is concerned that if the Student were to return to school, she could not protect , peers, or the staff. (Testimony of .) She differentiated intentional and calm behaviors on March 16 and April 26 from incidents where the Student made threats in anger. (Testimony of .)

Ms. concurred with the manifestation determinations of the Student's IEP Team regarding March 16 and April 26 behaviors. (Testimony of .) She also opined that the Student posed a substantial likelihood of injury to other students or staff based on the number of threats has made to her, to students and to other staff; the

incident where [redacted] brought a knife to school; and her understanding of [redacted] behavior at home according to [redacted] Parents. (Testimony of [redacted].) She observed that the Student issued threats both when angry and when calm. (Testimony of [redacted].)

[redacted], the Special Education Director, testified to her opinion that the Student presented a substantial risk of injury to [redacted] or other students if [redacted] were to return to school. (Testimony of [redacted].) Ms. [redacted] was present the day that the Student returned to school following the March 16 knife incident; on that date, the Student refused the agreed-upon weapons search for a couple of hours and was hitting the lockers. (Testimony of [redacted].) Ms. [redacted] felt that it was too much to expect staff and students to witness the situation. (Testimony of [redacted].) She noted that historically the Student would tell School District Staff immediately when [redacted] had done something wrong but in the case of bringing a knife to school, [redacted] did not tell them immediately.

(Testimony of [redacted].) Ms. [redacted] opined that the Student bringing a knife to school did not have a direct and substantial relationship to ODD, which was more about defying authority. (Testimony of [redacted].) Ms. [redacted] opined that the Student's action of bringing a knife to school was also not a manifestation of ADHD. (Testimony of [redacted].)

Regarding the April 26 threat in the cafeteria, Ms. [redacted] was informed by administrators that the students in the lunchroom who heard the Student's threat were scared. (Testimony of [redacted].) She perceives that the Student has an obsession with hurting others, not having empathy, and harming animals and property. (Testimony of [redacted].) Ms. [redacted] has watched video of the Student researching weapons the night before [redacted] made the cafeteria threat on April 26. (Testimony of [redacted].)

Ms. [redacted] believes that the Student has a higher level of need than [redacted] peers in the day treatment program and leaving [redacted] in the day treatment program is not providing [redacted] with FAPE. (Testimony of [redacted].) She noted that School District staff really cared about the Student and had tried a number of different strategies to assist [redacted]. (Testimony of [redacted].) She believes that the Student has a social maladjustment disorder. (Testimony of [redacted].) Ms. [redacted] reviewed all the Student's records before the IEP Team's manifestation determination meetings. (Testimony of [redacted].)

At the May 8, 2023, IEP Team meeting, the Student's IEP Team ordered tutoring services and social work, both of which are being provided by telephone due to the risk of [redacted] hurting someone in the provision of in person services. (Testimony of [redacted].) Ms. [redacted] has assisted the Parents in obtaining a neurological evaluation for the Student by producing documents that [redacted] needed. (Testimony of [redacted].) In the past, the Parents have asked that the School District drive the Student to the police station when [redacted] misbehaved. (Testimony of [redacted].)

At the May 25, 2023, IEP Team meeting, the Student's Stepmother said she would help the Student do assigned work at home. (Testimony of [redacted].) Ms. [redacted] asked School District staff to email work packets to the Student's outside case manager, who would provide them to the Stepmother. (Testimony of [redacted].) She was not aware of the Student completing any of the assigned work. (Testimony of [redacted].)

[redacted], Assistant Principal for Special Education at [redacted] School, testified that she had worked with the Student during the 2022-2023 school year. (Testimony of [redacted].) There were times when the Student would not go into a unified art or physical education class so she would try to help get [redacted] into those classes.

(Testimony of .) She has been called to classroom at times because was refusing to go into class, yelling, and swearing. (Testimony of .) She observed the Student yelling and screaming in the school break room and refusing to come out on one occasion. (Testimony of .)

The Student most recently threatened Ms. upon return to school following the knife incident suspension when was supposed to be searched.

(Testimony of .) The Student refused to work with her and the other Assistant Principal to conduct the search; was yelling and swearing and stated that if she came any closer to , would hurt her. (Testimony of .) The Student was yelling through the hallways while others students were present and having to move out of the way. (Testimony of .) The Student's Stepmother has shared her concerns about the escalation of violence by the Student at home. (Testimony of .) She noted that the Student's behavior was only written up when it was extreme. (Testimony of .)

IV. ARGUMENTS OF THE PARTIES

Parents' Argument:

The Parents contend that the IEP Team was incorrect when it determined that the Student's behaviors on March 16 and April 26 were not manifestations of disability and that the Student's return to school is not substantially likely to result in injury to the Student or others. The Parents argue that a review of the Student's educational records sufficiently demonstrates that the Student's conduct on March 16 and April 26 was a manifestation of disability. They contend that they had not been given full access to the Student's educational records and therefore were not able to review all the materials

prior to the manifestation determination. The Parents also maintain that the Student's IEP Team did not adequately address their concerns about lead paint poisoning.

The Parents note that the Student's IEP stated that when the Student was unable to self-regulate, it could be seen as yelling, defiance, non-compliance, verbal aggression, and aggression towards peers and staff, which they argue is a direct connection to the Student's behaviors for which [redacted] was suspended. They also point to the language in the 2015 psychological evaluation of the Student performed by [redacted] stating that the Student's behaviors meet the diagnostic criteria of ADHD, such as non-compliance and defiance, physical aggression, and verbal disruption, which they argue is inconsistent with her testimony regarding how the Student's ADHD manifested in [redacted] behavior.

With regard to the issue of whether the Student's return to school would give rise to a substantial likelihood of injury, the Parents note that Dr. [redacted] had not spoken to the Student about the incidents nor had she interviewed [redacted] Parents, who could have given clarifying information. The Parents contend that the School District was not authorized to remove the Student to an interim alternative educational placement. Although the Student had brought a weapon to school on March 16, 2023, the Student had returned to school following [redacted] suspension, and had not brought a weapon to school since that time. The Parents conclude that the School District relies on speculation and a demonstrably biased risk assessment in support of its position that the Student's return to the day treatment program results in a substantial likelihood of injury to anyone.

School District's Argument:

The School District argues that the Team made a reasonable determination that the Student's behaviors on March 16 was not a manifestation of [redacted] disability. The

School District contends that the Family has failed to demonstrate by a preponderance of the evidence that the Student's "impulsivity" problem would manifest itself in a decision to put a knife in pocket to protect on walk home and there was no evidence that the Student was emotionally dysregulated when brought the knife to school. The School District notes that witnesses at the hearing unanimously testified that the Student's March 16 behavior was not a manifestation of ADHD. The School District also contends that the Student's March 16 behavior was not a manifestation of ODD as supported by the testimony of Dr. . The School District maintains that the Student's IEP Team also reasonably determined that the Student's behaviors on April 26 were not manifestations of ADD or ODD, maintaining that the threat was calculated and intended to install fear in others.

With regard to whether the Student's return to School would give rise to a substantial likelihood of injury, the School District argues that Dr. thorough evidence-based risk assessment was supported by a prior determination that the Student was a high suicide risk and history of demonstrating the ability to plan to hurt someone on several occasions. The School District also notes that no one challenged the contents of the Student's behavior/crisis plan, which was regularly utilized and updated.

Finally, the School District argues that the Student's current placement is an appropriate interim alternative educational setting while noting that the parties agree that the Student needs a more restrictive day treatment setting, with the School District submitting applications to multiple special purpose private schools.

V. DISCUSSION AND CONCLUSIONS

A. Burden of proof.

Although the Individuals with Disabilities Education Act (“IDEA”) is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses “if the evidence is closely balanced,” lies with the party seeking relief. Schaffer v. Weast, 126 S.Ct. 528, 537 (2005). The burden of persuasion on the first issue for hearing rests with the Parents while the burden of persuasion on the second issue for hearing rests with the School District.

B. The IEP Team on March 27, 2023, correctly determined that the Student’s behaviors on March 16 involving a knife were not a manifestation of disability and on May 8, 2023, correctly determined that the Student’s March 16 behaviors and behaviors on April 26 involving threats to kill were not manifestations of disability.

School personnel may remove a child with a disability who violates a code of student conduct from current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change in placement under § 300.536). MUSER XVII.1.B(1). After a child with a disability has been removed from current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (D) of this section. MUSER XVII.1.B(2).

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the child’s IEP team (as determined by the parent and

the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (2) if the conduct in question was the direct result of the school district's failure to implement the IEP. MUSER XVII.1.E.

In addition, for disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (E) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. MUSER XVII.1.C.

The Student is identified for special education on the basis of diagnosis of ADHD, under the category of Other Health Impairment. The DSM-5 identifies the diagnostic features of ADHD as a persistent pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development. It further notes that inattention manifests behaviorally as wandering off task, lacking persistence, having difficulty sustaining focus, and being disorganized while hyperactivity manifests as excessive motor activity when it is not appropriate or excessive fidgeting, tapping, or talkativeness.²

² Although the Parents rely on the 2015 psychological evaluation of the Student performed by Dr. to include defiance, physical aggression, and verbal disruption as manifestations of ADHD to be considered, Dr. report does not clearly identify those behaviors as manifestations of ADHD but instead they are referenced in a paragraph discussing both ADHD and ODD.

March 16, 2023. The Student brought a knife to school on March 16, 2023, and maintained it on [redacted] person throughout the morning at [redacted] School. The Student's behavior that day included the planned action of bringing a knife to school. There is no evidence that [redacted] was acting impulsively when [redacted] made that decision. The Student was removed from the day treatment program due to making threats, which included stabbing [redacted] clinician. Although no one else was aware at the time, the Student knew when making that threat that [redacted] had a knife on [redacted] person. The Student suggested that [redacted] had a knife to the School Resource Officer, who then asked [redacted] if [redacted] had a knife, to which the Student responded affirmatively. The Student then extended [redacted] threats with the knife to include the School Resource Officer at the [redacted] School. Although the Student may have threatened the Clinician during a time of agitation, [redacted] referenced a means of attack using a weapon [redacted] had packed during a period of non-escalation. Furthermore, when [redacted] was with the School Resource Officer, [redacted] had calmed down and was not in an escalated state when [redacted] explained that [redacted] had a knife and threatened the School Resource Officer at [redacted] School.

Moreover, on April 3, 2023, after returning from suspension, the Student stated that if [redacted] had been unsafe on March 16, 2023, two named staff members would have felt the tip of [redacted] knife. The Student then reminded the Clinician that she was "lucky" that [redacted] did not do anything to her on March 16 when the knife was in [redacted] pocket; when the Clinician responded to the Student that [redacted] statement sounded like a threat, the Student responded, "that's because it was a threat." Again, the Student's behavior does not appear to be impulsive but instead appears to constitute calculated and repeated threats intended to cause fear. In addition, the Student did not appear to feel any remorse for

bringing a knife to school, which agreed was wrong, and making the threats made on March 16. Instead, reiterated and reminded staff of the threats when returned to school, underscoring that could have used the knife on March 16 against a variety of staff members.

With regard to the Student's March 16 behaviors as possible manifestations of ODD, which is not the disability upon which eligibility for special education is based, the DSM-5 identifies the essential features of ODD as frequent and persistent patterns of angry/irritable mood, argumentative/defiant behavior, or vindictiveness. The DSM-5 identifies the functional consequences of ODD as frequent conflicts with parents, teachers and peers.

The Student's behavior on May 16, 2023, of concealing a knife in pocket throughout morning at school was a planned and executed action that was not reflective of the manifestations of ODD. The record reflects that the Student's ODD presents as impulsive responses to authority and to demands placed on . On March 16, however, the Student brought the weapon to school for a preplanned reason and then, while holding the knife on person, made threats to Clinician and, after turning in the knife, against the School Student Resource Officer. Although the threats to the Clinician appear to have occurred when was in an agitated state, threat regarding the School Resource Officer occurred after had calmed down.

The preponderance of the evidence does not support a conclusion that the Student's actions of obtaining a knife and carrying it with at School throughout the morning on March 16, 2023, and making threats about what would do

to staff members with the knife on that day and on subsequent days were manifestations of ADHD or ODD.

As such, I find that the preponderance of the evidence in the record does not support a conclusion that the Student's behavior on March 16 was caused by, or had a direct and substantial relationship to, conditions of ADHD or ODD. Moreover, the Parents have not argued that the Student's behaviors were caused by the failure of the School District to implement the Student's IEP. In addition, the Student's IEP met the requirements of MUSER XVII.1.E by conducting an adequate review of the relevant information in the record, the Student's IEP, staff observations, and Parent input in determining that the Student's behavior on March 16 were not manifestations of disabilities.

April 26, 2023. On April 26, 2023, the Student told several students in the cafeteria that was going to shoot them. At the end of the day, indicated to Clinician that had had a pretty good day and high fived her, while stating that had scared a bunch of kids in the cafeteria. When asked what meant, the Student disclosed that had threatened to shoot them. The Student was not agitated or escalated when made this threat or when reported it in a positive light to the Clinician at the end of the day.

There is no indication in the record that the Student's ADHD, which could cause inattention and/or hyperactivity-impulsivity that interferes with functioning or development, wandering off task, lacking persistence, having difficulty sustaining focus, being disorganized, excessive motor activity when it is not appropriate or excessive, fidgeting, tapping, or talkativeness, were the cause of threats to the other students.

Even if the Student made the threat impulsively, carried on the conversation with the other students by explaining in further detail the nature of the threat. More importantly, treated the threat as a success, sharing it with Clinician at the end of the day as an example of why had had a good day.

With regard to ODD, the DSM-5 indicates a range of manifestations of ODD to include frequent and persistent patterns of angry/irritable mood, argumentative/defiant behavior, and vindictiveness, as well as frequent conflicts with parents, teachers and peers. The Student's April 26 threat to fellow students was not made in the context of any disagreement or altercation with other students nor was it made in the context of the Student responding to demands from staff, the more frequent manner in which ODD manifested.

As such, I find that the preponderance of the evidence in the record does not support a conclusion that the Student's behavior on April 26 was caused by, or had a direct and substantial relationship to, conditions of ADHD or ODD.

Material Reviewed. The Parents take issue with the particular documents reviewed by the members of the Student's IEP Team. MUSER XVII.1.E. requires the review of all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. The Parents were provided sufficient opportunity to provide relevant information. Although they disagreed with the determinations that the Student's actions on March 16 were not a result of ADHD or ODD, they also requested that the Student not be sent home for behavioral issues and the Student's Stepmother expressed concern that they needed more support within the home. At the second IEP Team meeting at which the Student's March

16 conduct was reviewed, the Student's Stepmother stated how inappropriate the Student's behavior was and expressed concern that she would now become target if were not in school and directing anger at others.

In terms of the materials that the IEP Team members reviewed, Dr. had conducted a complete file review in completing the risk assessment. Ms. had also reviewed all the Student's records before the IEP Team's manifestation determination meetings. Ms. reviewed the Student's treatment plan and crisis plans. As such, I find that sufficient information was reviewed and discussed by the Student's IEP Team, meeting the requirements of MUSER XVII.1.E.

C. Even if the Student's behaviors were a manifestation of disability, a return to school would give rise to a substantial likelihood of injury and therefore warrant placement in an interim alternative educational setting ordered by the Student's IEP Team.

A school district that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others may appeal the decision regarding placement by requesting a hearing. MUSER XVII.3.A. When a hearing is requested, a hearing officer may return the child with a disability to the placement from which the child is removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability or order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. MUSER XVII.3.B(2).

In the present case, the Student's behaviors at issue were correctly determined by

the Student's IEP Team to not be a manifestation of disabilities. Nevertheless, if the behavior had been determined to be manifestations, the School District had a reasonable belief that maintaining the Student's placement in the day treatment program in the School District was substantially likely to result in injury to the child or others.

As the Special Education Director noted, the Student's needs exceeded those of peers in the day treatment program. The record also indicates that there was no indication that the Student's behavioral plan and crisis management plan, amended each time there was a significant incident, were going to successfully curb increasingly aggressive behaviors.

Since grade, the Student has been placed in a day treatment program. During grade, the Student routinely engaged in interfering behaviors that became significant and concerning, including threatening, bullying, yelling, verbal aggression, threats of harm, intimidation, non-compliance, and refusal to follow directions. In February 2022, informed School District staff that shooting a target, shooting an animal, or burning things were self-soothing measures undertaken. In May 2022, the Student's IEP Team rejected the possibility of transitioning him into mainstream programming at School because even with a one-to-one support person, the Student's needs could not be met; the Student continued to require staff interventions to coregulate behaviors, which required to remain in the day treatment program. Data reviewed at the May 2022 meeting noted the Student's threatening statements to a peer, including asking if he had a death wish and threatening to shoot in the eye with a bb gun. In addition, data exhibited that the Student had shown an increase in argumentative behavior, non-compliance, threats, and defiance towards one-to-one

staff.

Over the year since that time, the Student has engaged in threats of peers and staff on many occasions. In June 2022, the Student reported that wanted to stab a fellow student. In September 2022, the Student threatened School District staff not to touch during altercation with a fellow student in which pushed and punched the student. In October 2022, the Student brought a weapon to school, a metal dart, and informed staff that a certain individual was lucky that the Student had not stabbed him. Also in October 2022, the Student threatened to choke someone. As of December 2022, the Student's IEP Team determined that interfering behaviors and emotional dysregulation impacted ability to access education to the extent that the day treatment program could no longer meet needs and required referral to an outplacement program.

Also in December 2022, the Student locked another student in a safe space and would not move when directed to do so by staff. The same month, the Student threatened to hit and stab staff members in the face. In January 2023, the Student told a fellow student that would punch him in the genitals, called Clinician a "dumb bitch," and threatened Clinician that she would not like if she did not give computer back.

The Student observed and shared videos about weapons on a regular basis, with Father reporting that was fascinated with weapons, including any knife that could get hands on. Although the Father reported locking up weapons at home, he also disclosed that the Student was seen carrying knives on the street by police.

In early March 2023, the Student escalated to the point that broke a wall divider by punching it and told School District Staff that wanted to punch the Clinician's head into the ground until her skull cracked open and wanted to slit her

throat. On March 14, 2023, the Student was deemed at high risk for suicide by an outside agency, with the Student reporting that [redacted] had developed a plan to stab [redacted] in the neck with a pocket knife. On March 15, 2023, the Student threatened [redacted] Special Education Teacher by stating that “nice people get killed,” in response to a question from [redacted] Clinician about why [redacted] was treating the Special Education Teacher so badly when she was being nice to [redacted]. On March 16, 2023, the Student again threatened to kill [redacted] Clinician.

Dr. [redacted] May 2023 Risk Assessment was a comprehensive evaluation of the risk posed by the Student, with Dr. [redacted] conducting a file review, clinical interviews, rating scales, and a structured assessment of violence risk. In [redacted]-grade year alone, the Student had displayed ongoing threats, intimidation, defiance, classroom disruption, and bullying. Dr. [redacted] reviewed historical factors, social factors, individual factors, and protective factors in conducting the SAVRY Risk Factors Analysis. The risk analysis concluded that the Student was at high risk for future violence. She found that [redacted] clinical risk factors that might be considered crucial, based on [redacted] high-risk profile, included [redacted] thoughts condoning violence, obsessions with weapons, obsession with computers/technology, poor anger management, limited empathy, lack of positive and lasting social relationships, access to weapons, high cognitive functioning, strong problem-solving skills, [redacted], and need to be correct. Dr.

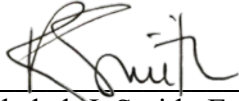
[redacted] risk assessment was thorough and evidence-based.

As such, the School District proved by a preponderance of the evidence that returning the Student to [redacted] placement in the day treatment program was substantially likely to result in injury to the Student or others.

Further, the School District requests an order of a change of placement to a 45-school day interim alternative setting. Pursuant to MUSER XVII.3.B(2)(b), a Hearing Officer who determines that maintaining a student's current placement is substantially likely to result in injury to the child or to others, may order a change of placement to an appropriate interim alternative educational setting. The interim alternative placement ordered by the Student's IEP Team consisted of two hours per day of tutoring and one hour per week of social work. Because the Parents do not want the Student to be issued a school computer, the Student received special educational services through work packets created by a special education teacher, which stepmother indicated she would implement with the Student. The Student was also offered telephonic counseling. This interim alternative placement was appropriate for the Student under the circumstances

VI. ORDER

The Student's IEP Team on March 27, 2023, correctly determined that the Student's behaviors on March 16 involving a knife were not a manifestation of disability and on May 8, 2023, correctly determined that the Student's March 16 behaviors and behaviors on April 26 involving threats to kill were not manifestations of disability. Further, if the Student's behaviors were a manifestation of disability, a return to school that would give rise to a substantial likelihood of injury and warranted the Student's IEP Team determination of an interim alternative educational setting. Finally, the Student's placement is changed to the 45-school day interim alternative educational setting previously determined by the Student's IEP team, which is determined to be appropriate.



Rebekah J. Smith, Esq.
Hearing Officer