

## **Special Education Hearing Officer Decision**

### **I. Cover Page**

- **Case Name** [Parent] v. [School Administrative Unit (SAU)]
- **Docket or Case Number** 25.108X – Consolidated Cases 25.105 X and 25.108X
- **Date of Decision:** June 20, 2025
- **Hearing Officer's Name and Title:** Jacqueline Kelleher, MA, Ph.D.
- **Jurisdiction** Maine Department of Education

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## II. Introduction / Procedural Background

The hearing was held and this decision issued pursuant to Title 20-A M.R.S. §7202 et seq., Title 20 U.S.C § 1415 et seq, and accompanying regulations. The dates of the hearing were May 28, June 2, and June 6, 2025 over Zoom from 9:00 am – 5:00 pm. Present for the entire proceeding were: parents of (“Student”/”[ ]”), [ ] and [ ] [ ] (“Parents”); Amy Phalon, Esq., counsel for the Parents; [ ], Director of Special Education for the District, and Eric Herlan, Esq., counsel for the District. Kelsie Cromie, Esq., was present as counsel for the District on May 28, 2025. Over the course of the proceedings, the following witnesses testified under oath:

[ ], Special Education Director

Dr. [ ], Ph.D. Psychologist

[ ], Special Education Teacher

[ ], 4<sup>th</sup> Grade Teacher

[ ], Gym Teacher

[ ], Parent

[ ], Parent

[ ], Clinical Supervisor [ ], [ ]

Dr. [ ], Psychology Professionals of Maine

The complaint was filed by the parents on May 2, 2025 seeking immediate return of the Student to his educational placement from which he was removed following a behavioral incident on April 9, 2025, and that the unilateral removal was inappropriate, inadequate, and without regard to the fact that the behavior in question was previously determined to be a manifestation of his disability and did not fall into any of the special circumstances allowing a 45-day removal for disability-related behavior. Subsequently, the District filed a complaint on May 6, 2025 claiming that there is a substantial likelihood of injury to the student and others if he were to return to school before Dr. [PhD. Psychologist]’s safety assessment and programmatic recommendations were considered by the IEP Team. The Parents were seeking remedies of compensatory services, revisions to the Student’s IEP, and independent evaluation at the public’s expense, immediate return to school, review/update of behavior plan, and professional development of staff; the District was seeking to maintain current educational placement pending safety assessment and follow-up IEP meeting.

On May 7, 2025 the District filed a hearing request with a motion to consolidate, and the matters of 105X and 108X were consolidated into 108X on May 12, 2025 with no objection from the parents. On May 14, 2025, a prehearing videoconference was convened and a Conference Order was issued identifying the issues for hearing and setting deadlines for prehearing submissions. Both the Parents and District provided feedback on the prehearing conference letter, which was amended and disseminated May 20, 2025. Five school days prior to the hearing, Parent Exhibits P1 – P213 were admitted and School District exhibits were disclosed and admitted without objection at the hearing [S-A-1 through S-A-1247; S-B-316; S-C-1 through S-C-163; S-D-1 through S-D-9; S-1 through S-570]. At the close of testimony, the parties

jointly requested the record remain open for the submission of written closing briefs. Each party submitted a closing brief on June 13, 2025. A Determination was issued on June 20, 2025.

### **III. Issues Presented**

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

Parents:

1. Did the District violate the IDEA by changing the student's placement as a disciplinary action without either
  - a. following the decision of the manifestation determination team meeting on March 17, 2025, that the student's disruptive behavior was directly and substantially related to his disability; or
  - b. conducting a manifestation determination to review the disruptive behavior that occurred on April 9, 2025, and determine whether it was directly and substantially related to the student's disability, or was the result of the District's failure to implement the IEP?
2. Did the District violate the IDEA when it removed the student into an interim alternative placement without the Parents' agreement with the District's decision to change the Student's placement as part of the modification of the behavioral intervention plan?
3. Was the interim alternative placement provided by the District on or about April 14, 2025, adequate to provide FAPE in the LRE to the Student?
4. Was the Student denied FAPE in the LRE from April 10 to the present date as a result of the improper change of placement and/or an inappropriate interim alternative educational placement?

District:

1. Whether there is substantial likelihood of injury if the Student returns to school prior to the District receiving the results of a safety assessment and programmatic recommendations by Dr. [Ph.D. Psychologist].

### **IV. Findings of Facts**

1. Background [Due Process Hearing Requests/Response]. The student is [ ] years old and lives with his parents in [ ], Maine. He first entered the Regional School Unit [ ] as a student identified for special education, and identified as eligible under Other Health Impairment based on a diagnosis of ADHD and oppositional defiant disorder. [student] was identified for special education by [ ] and planning meetings occurred for his entry into kindergarten. In March 2022, the student underwent a re-evaluation, and the IEP team recommended a 504 plan and removed the student from special ed settings. As a first grader, the student was found no longer eligible as qualified for special education and a 504 team found the student eligible as a child

with a disability under section 504. Through the 1st grade, 2nd grade and part of 3<sup>rd</sup> grade, he held a 504 plan until May 2024 when the IEP team found the student eligible for special education under the disability category of Other Health Impaired. The IEP team developed an IEP for the student's 4th grade year during the 24-25 school year. The student has a current IEP under the category of Multiple Disabilities.

At an IEP meeting on November 6, 2024, the team added in the use of an educational technician for [student] throughout the school day. During the start of the 2024-2025 school year, challenges continued. On top of more disruptive behaviors, there were more significant incidents. On November 20, 2024, [student] became upset with a teacher and called her "stupid" and told her to "shut up". When he was sent to the resource room, he flipped two chairs, threw his shoes, and tried to flip a table and continued to be rude to the special ed teacher. [student]'s parents placed him in a 6-week [ ] (intensive outpatient patient) program at a hospital after "instances of dysregulated behavior".

[student]'s behavioral plan was revised on January 9, 2025. On January 22, 2025, [student] became upset that another student scored a goal against him in gym class. He threw his hockey stick near other students and later stated that he hated the gym teacher and was going to kill her. He also threw his hockey stick at the bleachers and told everyone he was going to kill them, while screaming "[ ] you." As the gym teacher attempted to move students out of the setting, [student] yelled, "Get out of here you [ ]. I'm going to kill you. Get out! Get the [ ] out!"

On February 10, 2025, when the teacher tried to move students apart who were talking to each other, [student] did not comply. Another student said, "you heard [the teacher], she told you to move over to where you were". [student] then began yelling "This is so [ ]ing stupid." He stood up and threw his laptop across the room, kicked his desk toward other students sitting on the floor, and spilled its contents over them. He kicked the door as he was escorted by his educational technician. In the hall, he continued to yell "That [ ] [ ]!"

On February 14, 2025, there was an additional incident. When another student said yay the am assembly was fun, [student] responded "No it wasn't!" Then he said it was stupid and threw a pencil across the room. When the fourth-grade class was then moved into the 5<sup>th</sup> grade classroom, [student] continued to throw things and to scream. When he was picked up by his father on this date, the Superintendent witnessed the child striking his father, who had to put him into a bear hug to get him out of the building. [student] was referred for a neuropsychological evaluation in February by his doctor for suspected ASD and Tourette's (results were forthcoming at the time of the Due Process Hearing Request).

At an IEP meeting on March 17, 2025, which was considered a Manifestation Determination Review [Testimonies of [Special Education Director] and [Special Education Teacher]] the team increased the amount of time [student] would receive for socio-emotional learning from 90 minutes a week to 310 minutes per week. New goals were added to the IEP for self-advocacy, functional communication, and peer communication. More supports were added to the IEP to address the behaviors that were occurring. The team also ordered an SLP evaluation, an OT evaluation, a classroom observation, and an FBA. The team agreed that the behaviors up to this point were a manifestation of his disability, focusing on his diagnoses of ADHD and Disruptive Mood Dysregulation Disorder (DMDD). The amendments took effect the next day. [student]'s behavioral plan was revised a second time on March 21, 2025. The Parents consented to the evaluations on March 26. By mid-March, [student] had been removed from the classroom for disciplinary reasons for ten days. In a WN the

district stated that the behavior [student] was being disciplined for was related to his disability and ordered a functional behavior assessment (FBA), classroom observation, and SLP and OT evals. The Team also added services, goals, supplementary aids, and supports to [student]'s IEP.

On April 4, 2025, when a student told [student] that he was being rude, [student] became very angry. He tried to break his own glasses and then tried to break his laptop. [student] then started hitting the walls with his fists and stomping his feet. He threw a push broom and a pencil and screamed at school staff, using vulgar language. Students had to be evacuated from the classroom and he stated that he wanted to punch the teacher in the “[jing face]”. He said he had a variety of guns at home and he was going to shoot the other student in the head, and would bring the guns to school and shoot everyone in the class. He also yelled that he wanted to get suspended. These comments were heard by many students and staff. One student later approached staff and reported that she heard him yell that he was going to get guns and go to her house and “[jing shoot her]”.

Month	Parent Perspective	Document Associated	District Perspective	Document Associated
April 9 2025	On April 9, [student] had a behavioral episode during gym class. According to his para, [student] was upset when he perceived his peers playing unfairly during a game of kickball and began yelling and berating his peers and teacher. After attempting to deescalate the situation by making the student sit on the bleachers and then returning, the para observed the student becoming agitated again and threw a ball towards the wall, which proceeded to hit himself in the head. The student then threw a shovel at another student and yelled “I wish you were dead”. [student] then went into the boy’s bathroom and threw a mop sign out the door. [student] remained in the bathroom with his para until the special education teacher arrived. Following [student]'s behavioral plan, the special ed teacher brought him back to the special ed classroom and called [student]'s Parent. [student] stated he felt	Due Process Request	On April 9, 2025, another serious incident occurred during physical education class. About 15 minutes into a kickball game, [student] has the ball trying to get to his goal on the other end of the court. When [student] kicked the ball, the teacher said that it was not a goal. [student] became upset and started to cry. He yelled, “This is stupid. That was a goal.” Someone stated that [student] was not wearing his glasses so he couldn’t see well and [student] then went over to the bleachers and sat down. A staff member attempted to process the incident with [student], who was yelling that the event was “stupid” and the gym teacher was “stupid”. He also yelled at classmates to shut up. The staff member told him his language was unacceptable. [student] responded that he didn’t care. When [student] calmed down, he was permitted to continue in the game. After a few minutes, [student] got upset again and sat on the bleachers starting to hit his own forehead. He then yelled at a classmate, “I wish you were dead.” Another staff member heard him yell at two students	Answer to Hearing Request

	<p>ashamed and wanted to go home, but was persuaded to stay in school. After 9:00 PM that night, Sheriff's deputies visited [student]'s Parent's home after receiving reports of [student] had threatened to bring a gun to school to kill his classmates. The deputies did a safety check and spoke with parents who cooperated with the investigation. The school principal messaged the Parents that evening and told them that [student] had threatened his classmates and indicated to the Parents that she believed they had already known about the allegations due as [student]'s father spoke with him and the special ed teacher earlier that day. The parents discovered later that a mother of one of [student]'s classmates made a social media post claiming that their child had made a threat to bring a gun to school and went on to say the child "has a history of violent outbursts" and that the school was "not taking the safety of our children seriously". The mother admitted on Facebook to having called the police. The parents allege that this same parent and other parents also called the District.</p>		<p>who were talking to each other, "If you are whispering about me, I'll kill you." When he was asked to leave, he said no. He kicked a ball then threw it against a wall. He picked up a shovel that had been in the gym and threw it across the gym floor. He also threw the mop sign out of the door. [student] was suspended for this incident. Tutoring was offered starting April 14, which the family did not accept until April 15.</p>	
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April 10, 2025	On April 10, they received an email from the principal stating “[The Superintendent] feels that it is in [student]’s best interest to stay out of school with everything going on right now” but specified that the student was not being suspended and recommended waiting until an IEP meeting could be held for next steps. The Parents fully expected [student] to resume schooling the day after this meeting and expressed concerns to both the principal and SEA in advance of the Team meeting. However, at the Team meeting, the school declined to allow him to	Due Process Request		
April 16 2025	return. According to a WN, received by Parents on 5/1, an IEP Team/manifestation determination meeting was held on April 16. The WN indicates that the IEP determined that [student] would undergo a “safety assessment” and would enter a 3-hour/day tutoring program effective after the April school vacation. The WN states that the Parents did not object to these determination, though the Parents have a different recollection. They did not and do not agree to have [student]’s transition from a full school day to tutoring. They instead presented a written statement at the meeting, requesting a “swift return to [the school] with a mix of general ed and special ed supports...” and referred to the	Due Process Request	Following [student]’s behaviors, the IEP Team met on April 16, 2025. At the meeting, the team determined that [student] should have an evaluation to look at a variety of safety concerns. As explained at the meeting, the assessment “will be used to inform future IEP planning, support decisions related to educational placement, and determine whether additional behavioral, emotional, or environmental supports are needed to promote a safe and supportive learning environment for [student] and others.” The team appeared to all agree that the assessment was appropriate. At that time, the team also ordered that the student would continue in an alternative placement until the assessment was completed. The team ordered 1:1 tutoring for 3 hours per school day, effective after April vacation. The team ordered transportation to and	Answer to Hearing Request
	Facebook post and their frustration		from his home to the tutorial setting. [student] would	

	that that should interfere with their child's education.		continue to receive social work included in his IEP. The District has hired an independent psychologist to undertake his evaluation.	
May 2025	Parents receive the WN relating to the 4/16 IEP Team meeting. They file a request for an Expedited Due Process Hearing on May 1, 2025. As of the date of submitting the request, parents had been asked to provide their consent to the safety assessment and the school has engaged an evaluator who is unavailable. Parents were told the assessment would be done by the end of the school year and that [student] would remain excluded from school until the assessment was	Due Process Request	The District wrote a response to the Due Process Request submitted by Parents on May 8, 2025. The District is awaiting receipt of written consent from the family for evaluation as of the writing of the response. Based on the student's history, the District concluded that if [student] returns to the school without the benefit of the safety assessment, there would be a substantial likelihood of physical and emotional injury to staff and/or students, including [student] himself. The district acknowledges that the Parents deny agreeing to the Team's decision for out of school	Answer to Hearing Request
May 6 2025	completed. Parents submitted a response to the District's DPHR. In the response it states Student has been Diagnosed with Autism Spectrum Disorder "level 1" and anxiety disorder. Parents claim that [student]'s behavioral plan since May 2024 has been "sparse at best". Parents claim there is no objective evidence that the Student's return would pose a risk of injury to the child or others and that the District is capitulating to the demands	Response to District's DPHR	programming.	

of groups of people out of school.



## **2. Measurable Goals/Service Grid FROM THE STUDENT'S CURRENT IEP**

The following are Measurable Goals and a grid of Services provided by the school during the 2024-2025 school year according to the Student's Individualized Education Program, effective 08/30/2024 through 08/29/2025, amended on 04/28/2024, 11/07/2024, and 03/18/2025.

### **Measurable Goal 1:**

By 08/29/25 given specially designed instruction in social-emotional learning and social work services [student] will demonstrate an understanding of the perspectives of others and how his behavior affects them in hypothetical and natural social situations with 80% independence in four out of five opportunities as measured by direct observation and data collection.

### **Measurable Goal 2:**

By 08/29/25 given specially designed instruction in social-emotional learning and social work services [student] will identify and recognize emotional triggers and use a coping skill before becoming emotionally dysregulated with 80% independence in four out of five opportunities as measured by direct observation and data collection.

### **Measurable Goal 3:**

(GOAL ADDED 03/18/2025) By 08/29/2025 given specially designed instruction in the special education setting, [student] will express his needs and preferences across school settings, using appropriate language and strategies in 80% of opportunities over five consecutive school days as measured by teacher/ed-tech observations and data collection.

### **Measurable Goal 4:**

(GOAL ADDED 03/18/2025) By 08/29/25 given specially designed instruction in the special education setting, [student] will will [sic] use functional communication skills to request assistance, ask questions, and participate in classroom activities with minimal prompting in 80% of opportunities for five consecutive school days as measured by teacher/ed-tech observation and data collection.

### **Measurable Goal 5:**

(GOAL ADDED 03/18/2025) By 08/29/25 given specially designed instruction in the special education setting, [student] will will [sic] initiate and sustain conversations with peers on a variety of topics for at least three exchanges per interaction in 60% of opportunities for five consecutive school days as measured by teacher/ed-tech observation and data collection.

Type of Service	Position Responsible	Location	Frequency	Duration Beginning/End Date
Specially Designed Instruction	Special Education Teacher	Special Education Setting	310 minutes per week of social-emotional learning	03/18/2025 - 04/28/2025
Specially Designed Instruction	Special Education Teacher	Special Education Setting	90 minutes per week of social-emotional learning	08/30/2024 - 03/18/2025
Social Work Services	Social Worker	Special Education Setting	30 minutes per week	08/30/2024 - 08/29/2025

Transportation	Special Education Director	Special Education Setting	To and from his home to his tutoring session	04/28/2024 - 08/29/2025
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### **3. Prior to 2024-2025 School Year**

- On January 18, 2023, [student] pushed a student at school and then said he would bring a gun to school. According to the District, during the 2023-24 school year (3<sup>rd</sup> grade) these behaviors worsened. It became very difficult to keep the student on task and he would often be disruptive in the classroom. On December 11, 2023, [student] threatened to kill his teacher and himself. [Document: Answer to the Hearing Request]
- (S141) Disciplinary Referral for the student on the date on January 18th, 2023. Reason for referral was selected as ‘Violence w/o physical injury’. Action taken was In-School Suspension for a day and a half. The explanation and comment section recorded the statement: *“Student pushed student at recess and threw snow at student and other students. Student also said he would bring a gun to school.”*
- (S159) Suspension Report dated February 9th, 2024. The reason for suspension was listed as ‘Violence w/o Physical Injury.’ Explanation/Comments given were “[student] kicked classmate”. Action taken was out of school suspension for 1.5 days. The Parent testifies that she has never seen these records until now [as part of Due Process disclosure]. Testimony of the Parent.
- On February 9, 2024, [student] kicked a classmate in the side, knocking him out of his chair. This incident, as well as the December 2023 incident, resulted in another referral to special education. The team undertook a psychological evaluation, a functional behavior assessment (FBA), an academic evaluation, a classroom observation, and an occupational therapy evaluation. Through this process, [student]'s diagnoses remained ADHD and ODD. A detailed behavior plan was developed on April 21, 2024. The IEP Team met on May 29, 2024 and found [student] eligible for special education. His IEP called for him to receive 90 minutes a week of social/emotional instruction, and 30 minutes a week of social work services. [Document: Answer to the Hearing Request]
- [Special Education Teacher], the special education teacher, did not work instructionally with the student in the 2023-24 school year did so in the 2024-25 school year. She observed him in the third grade and completed several rating scales. [Special Education Teacher] has extensive experience in behavior, data collection, data analysis, conducting observations, and developing FBAs and BIPs. Testimony of [Special Education Teacher]. She engaged in these activities with the Student in 2023-24 and 2024-25. [S-190, S-183, S-184, S-188]

### **4. August 2024-December 2024**

- (SA437) Email correspondence between the parent and the student's 4th-grade teacher, dated August 26, 2024. Emails indicate that the parents initiated the email on August 26, 2024, at 10:30 AM to introduce themselves and inform the teacher about the student's new behavior plan outlined in the IEP. The teacher responded at 11:30 that they had not received the IEP and asked for the parents' input on strategies. The parents followed up, expressing concern that the teacher should read the notes on the IEP and discuss with the IEP case manager and the previous teacher.

The 4th grade teacher emailed back by 1:20 PM to say they had received and read through the IEP and discussed it with the previous teacher and that the student would have plenty of support for the School Year. The parent testified that [Special Education Teacher] assured her that there would be support for the Student. Testimony of the Mother.

- Email exchanges between the 4<sup>th</sup> grade teacher and [Special Education Teacher] such as SA437 show how [4th Grade Teacher] had reviewed the IEP and was aware of the behavior plan for the Student as early as August 26, 2025. [4th Grade Teacher] reviewed core documents with [Special Education Teacher] and “got support daily”. Testimony [4th Grade Teacher]. [4th Grade Teacher] testified on the behavior charting system that was in place for the Student after November 6, 2025, which also was the time when an educational technician started with the team. [Special Education Teacher] was often in the class and had her own classroom about “8 feet away”. Typically it was [4th Grade Teacher], the 1:1, and [Special Education Teacher] – [4th Grade Teacher] would teach and the 1:1 would support the Student, with [Special Education Teacher] would check in frequently. Testimony [4th Grade Teacher].
- The 4<sup>th</sup> grade teacher is familiar with the behavior plan [S-590] and is comfortable implementing, but assumed the 1:1 was responsible for implementing the behavior plan. Testimony of [4th Grade Teacher].
- During the fall of his 4th grade year, the student was given exclusionary discipline in the form of in school suspensions, out of school suspensions, or removal to the front office for six disruptive behavior incidents between October 4th, and November 20th, 2024. [S-261. S-233, S-254]
- The gym teacher was working on a conditional license and may have needed additional support and training to work with the student to implement the IEP, including accommodations and modifications. The 4<sup>th</sup> grade teacher was also new to elementary school teaching and working on a conditional license. Testimonies of [Gym Teacher] and [4th Grade Teacher]. While the special education teacher has extensive training in behavior, she is in her second year of teaching special education. Testimony of [Special Education Teacher]. The gym teacher recalls no training except for on boarding. Testimony [Gym Teacher]. The 4<sup>th</sup> grade teacher sought guidance, but she did not get training. Testimony [4th Grade Teacher].
- (SA441) Email correspondence from the Special Education Teacher to the mother, dated for September 2nd, 2024. Informing the parents of the student's new behavior plan, after the preference assessment was done, and the student indicated they preferred the ‘earned choices’ plan.(S415) Justification of Data Collection Methods and Intervention Development document. The document outlines the self-monitoring system put in place to define the students' behavioral expectations and a structured reinforcement system for the student that is an earned access tiered, reward-based plan. By March, the data collected was sufficient enough to consolidate the targeted behaviors into a single operationally defined behavior, Disruptive Behavior Episode (DBE), which stated that this behavior is defined in the student's Positive Behavior Support Plan (PBSP). The mother testified she did not participate in the creation of the original [PBSP], and the parent is not familiar with it. Testimony of Mother.
- The disciplinary record from October 2024 to February 2025, provided by the school district, details several incidents involving aggressive behavior and language directed toward both students and teachers. The document outlines specific occurrences of misconduct, including the nature of the aggressive actions, the context in which they occurred, and the subsequent actions taken by the school district in response to these incidents. This record serves to substantiate the patterns of behavior noted and to inform any further discussions regarding the individual’s conduct within the educational environment. (S-261.) S-264. & S-271 is a continuation of the

disciplinary record, detailing the rating scale assigned to each incident documented within. The assessment of each incident has been systematically categorized based on severity, frequency, and impact, ensuring a comprehensive overview of the disciplinary actions taken

- The 4<sup>th</sup> grade teacher remarked that the Student is a perfectionist, which can be a trigger, such as erasing an error on a paper until there is a hole in it leading to an “explosion”. Testimony of [4th Grade Teacher].
- (S233) Suspension Report date of incident reported as October 25th, 2024 at 9:15 AM. The reason for Referral selected was ‘Other (NOT drug, alcohol, Weapons, or violence related)’. The Explanation: “[student] was disrupting the class and was sent out after being sent out of the class for disruptions three times the previous day”. The action taken was: In-school suspension for .75 days). Before the suspension, the parent was emailing [Special Education Teacher] before it to discuss medicine issues and impact on behavior. [Special Education Teacher] says he needs to go back to the behavior charts. It was discussed how this is cyclic and he’s “in the honeymoon phase”. Testimony of the Mother.
- (SA505) Email correspondence between the parent and JB between October 25th, 2024, and October 26th, 2024. The email shows the parents' concern over the use of ‘in-office’ to deal with the student behavior. And that the parents would prefer the school call them to allow them to pick the student up. JB responded the following day stating “ Going forward, I will most definitely call you or (father) right away with any situations that occur and require more than just a short time out for the student”. JB also stated, “I didn’t need you to come over to take the student home because I preferred that he stay in and in-school suspension situation rather than an out-of-school suspension situation. I wanted him to understand that like in life, actions at school have consequences, both positive and negative.”
- (SA509) Email corresponds between mother and JB dated for October 26th, 2024. The email continues from JB stating “Student is capable and talented and has bright future ahead of him if he can learn to manage his emotions and behavior.” and “We appreciate your working with us toward our common goal of helping [student] to be all he can be and to learn strategies that he can call upon in difficult times to help him make good decisions”. The parent was surprised with the comments on student discipline because she believes given her child’s needs, he is not going to connect with the suspension - “his brain doesn’t work that way”. Testimony of the Mother.
- (SA512) Email correspondence between [Special Education Teacher] and the mother dated for October 27th, 2024. [Special Education Teacher] states: “ Not knowing the details of what happened, I can say that it wasn’t handled the way it typically would have been if my ed techs and I had been there implementing the behavior plan the way it should have been.” [Special Education Teacher] states that the days of concern were days in which [Special Education Teacher] and other key staff members were out sick. It was the parent’s understanding that a school staff member would be there [with [student] in school setting] at all times to help with coping skills, point out frustration, and so forth. Testimony of the Mother.
- (SB84) BH Office Note. Service date October 28th, 2024. “Patient continues to struggle with mood lability, agitation and aggression at home and at school. His behavior is unpredictable.
- (S237) Email correspondence between JP and the mother dated November 6th-13th, 2024. The email was in regards to a positive update about the students behavior. JP states “He did have ed tech support in there throughout the day, and that same person will be there with him all week.”
- (S240-241) Written Notice sent to parents on November 8th, 2024 for meeting on November 6th, 2024. The document outlined the actions as: Ed-tech support throughout the school day will be

added. [Special Education Teacher] supervises the educational technicians including the one for the student. [Testimony of [Special Education Teacher]]. This amendment will be effective 11/07/2024. All IEP team members agreed to this decision.

- (SB89) BH Office Note. Service date November 8th, 2024. “While he was in ED (emergency room) he was evaluated, and were given the option to have him go inpatient. Family reports that they are not emotionally unable to have him be apart from them to have him go to impatent.”
- (SB89) BH Office Note. Service date November 8th, 2024. “Last Thursday they had to evacuate their classroom due to [student] screaming and turning over chairs. He has made threats that he was going to blow up the school.”
- (S254) Suspension Report date of incident was for November 20th, 2024, at 9:45 AM. Referral reason selected was ‘Insubordination’. Explanation given states: “[student] was angry that the teacher wanted all of her students to sit at their own desks for snack time to settle down after P.E. class and wouldn’t let him sit with a friend. [student] yelled at the teacher, calling her to shut up and calling her stupid. Another teacher (JP) got the student into the resource room, where he screamed, tripped over two chairs, tried to tip over a table, threw his shoes, and was disrespectful to the teacher”. Action taken was ‘Out of school suspension’ for 1.5 days. The parents had determined that if the student was suspended one more time, “we will do Day treatment” and received a referral for 6-week program at [ ]. At the [ ] program, the student was not in school but had educational services by the District [provided work]. Testimony of the Mother.
- (S255-256) Written Notice sent to parents on November 22nd, 2024, for a meeting on (Blank). The document outlined that ‘No changes will be made to the student's IEP’. The meeting was requested by the parents. The manifestation determination was not discussed as the student only had “4 days of suspension”. The reason for options being rejected was: “ Since the student will be attending the Day treatment program at [ ], no changes were made to the student's IEP”.
- (SB1-3) BH Therapeutic Intervention Note. Service Date: November 26th, 2024. “Suicide/Homicidally: Denies any suicidal or homicidal ideation, intent, or plan”
- (SB2) BH Therapeutic Intervention Note. Service date November 26th, 2024. “It appears that the patient’s behaviors affect the family due to the frequency of aggression and emotional dysregulation. Patient will benefit from the intensive day treatment program to reinforce therapeutic skills an increase positive socialization.” Patient requires the Pediatric Day Treatment Program ( ) level of care due to these behaviors and concerns for safety.”
- (SB92) BH Office Note. Service date December 2, 2024. “He had an angry outburst with aggression yesterday and suicidal thoughts this morning which were triggered by consequences for his behavior.”
- (SB65) BH Therapeutic Intervention Note. Service date: December 2nd, 2024. “He presents as superficially engaged. He will continue to come daily. In the narrative section: “He states that he gets mad sometimes, and reports that he threatened dad with a hammer yesterday because they were upset a friend had to go home. Patient states that the friend wanted to go home because they felt uncomfortable but then states that it was due to dad not taking them on the snowmobile.”
- (SB93) BH Office Note. Service date December 2nd, 2024. “He hit his parents yesterday. Patient said they have had thoughts of hurting others but doesn’t usually act on his thoughts.”
- (SB69) BH Therapeutic Intervention Note. Service date December 4th, 2024. “They were mean to me”. Narrative “ Discussed his participation in the older group, and he reports that he wants to

stay in the older group because he likes the kids better. He could not identify what the lesson was yesterday, and discussed the peers being rude to him. They were unable to identify that the younger group may be a better fit due to more older kids coming in.”

- (SB51) BH Therapeutic Intervention Note. Service date December 5th, 2024. “[student] threatened dad with a hammer, and a friend had to leave after he threatened to kill them.”
- (SB54) BH Therapeutic Intervention Note. Service Date: December 17th, 2024. “[student] is heard yelling and swearing at parents as a result of this, but is able to calmly engage within 5 minutes of this.”
- (SB75) BH Therapeutic Intervention Note. Service date December 23rd, 2024. “Does not make the connection that he cannot independently use coping skills at home.”
- (SB75) BH Therapeutic Intervention Note. Service date December 23rd, 2024. “Met with T, who reports he got angry a couple times over the weekend. He states that he was having a hard time making egg nog and got frustrated, and hit his mom in the eye with a towel. Patient states that later on, dad said something that upset him and he threw a yoga ball him.”
- (SB114) BH Office Note. Service date December 30th, 2024. “Start Seroquel 12.5 at 4-5pm and bedtime for agitation and aggression.” “Patient identified having aggressive behavior, and could not remember taking his PRN Seroquel.”
- (SB41-43) BH Treatment Plan. Service date: December 31st, 2024. The document outlines that the child had maintained and or improved in all identified needs. SB42) goals are improved or maintained not Met.

## **5. January 2025 – March 2025**

- In January 2025, the Student was about to come back from [ ] and the 4<sup>th</sup> grade teacher did not raise concerns about him coming back. No changes were made to the IEP. [S-297, S-298] when the IEP team met on January 9th, 2025, to prepare for the student to return to school at the conclusion of [ ], the clinical supervisor from [ ] health attended an i.e. PT meeting to provide information about the students progress in the program and recommendations for the students IEP and return to school. The IEP team did not make any changes to the IEP as a result of that meeting, or adopt any of the clinical supervisors recommendations. [S-289, S-295, S-297, Testimony of Parent, Testimony of Clinical supervisor]
- [ ], [ ] Clinical Supervisor, worked with the Student at [ ] and participated in the IEP meeting in January 2025. provided a list of recommendations for Team consideration saying he will need the recs to be successful. She testified that the Student can identify skills but not connect [with the skills] - not making a connection between behavior and consequences. Testimony of [Clinical Supervisor]. [Clinical Supervisor] provided accommodations and they [the IEP Team] compared with plan. There were no changes but new behavior plan had been done up by [Special Education Teacher]  
–Accommodation/modification did not change. [S-590] Testimony of [Special Education Director].
- (S298-299) No changes made to IEP, the team considered making changes, but after reviewing the IEP with MV the clinical supervisor from [ ] the team determined no changes were needed at the time.

- (SB61) BH Therapeutic Intervention Note. Service date January 7th, 2025. “Clinical acknowledges that no behaviors were seen at the program, which is not uncommon due to the short nature of the program.”
- (SB63) BH Therapeutic Intervention Note. Service date January 9th, 2025. “Dad states that it is easier said than done to identify a consequence, but states that it is hard to live with the aggressive behaviors.”
- (S297) Written Notice sent to parents on January 9th, 2025, for a meeting on January 7th, 2025. The reason was selected as ‘Other’, and the description stated, “Transition back from [ ] Day Treatment Program”. No changes were made to the IEP.
- (SB49) BH Therapeutic Intervention Note. Service Date January 10th, 2025. Discharge: finished 7 weeks of treatment. Discharge diagnosis: “While in program, patient received daily group and occupational therapy, weekly individual and family therapy, and weekly medication management. Minimal progress was made on goal of identifying coping skills to replace anger and aggressive episodes.”
- (S201) Disciplinary Record for 2024-2025. The incident in question occurred on January 22nd, 2025. Stated, “Student got angry during floor hockey in gym class and threw his hockey stick, yelled, swore, and made threats.” The action taken was to place the student in the resource room for the remainder of the day.
- The gym teacher was a credible witness and attested to events leading to Dangerous Behavior forms [S-383 and S393]. Throwing the hockey stick and threatening to kill people created led to students “running, clenching, and appearing to be scared” in the January 22, 2025 incident; she stated the Student was between two whispering girls and he said “he’d kill them” leading to the incident with the thrown snow shovel, although he did not say anything about guns. Testimony [Gym Teacher].
- (P35) Behavior Data Collection dated for January 22nd, 2025. Two incidents between 9-9:30 AM listed as Other and described as “#1 bumped his ankle playing hockey (pain)-threw stick...continuation on (P36) many outburst this am during dealing, lots of reminders for [student] to stay focus. Gym class was a struggle. [student] got spoken too for throwing his hockey stick two times. And coach asked him to take a break. Once student threw the second stick, he yelled: “Stupid bitch ass gym teacher”, “I want to get hurt”, “Stupid bitch ass people” to his classmates, “I want to kill everyone”. Also “kicking the bleacher” and “hitting his hand/head of the filing cabinet”.
- (S383) Dangerous Behavior Prevention and Intervention Incident Form dated for January 22nd, 2025 at 11:24 AM. Incident report filled out by SO and sent to JB on January 24th, 2025. The incident report details the January 22nd, 2025 gym class incident where the student was described as throwing hockey sticks and stating “I’m going to kill everyone”. Ed techs and JB did not remove the student from the class.
- (SA759) Email correspondence from JB to GC and JP dated on January 22nd, 2025 at 3:04 PM. JB wrote: “She thought that it should be an automatic suspension for a threat like that, and I explained that special ed students sometimes have a different plan based on their disability and behavior plan.”
- The parent referenced the behavior data collection for January 22, 2025 and say the data show the student is completely dysregulated and that he’s having a meltdown – the response should not be disciplinary. It’s the plan not working. The parent testified to other instances such as when Ed

Tech asked for a suspension for the Student with the gym incident - “ he should not have gotten a second chance and should have been taken out of gym due to dysregulation, dysregulation which led him to throw a second stick. [She was] told mistakes were made with the Ed Tech and how the Ed Tech should have removed him. It was discussed at length at the IEP meeting - “all agreed there were issues on their part, too.” Testimony of the Mother

- The gym teacher was instructed to do or reconsider a grade change for physical education because she intended to grade him in the same way as other students based on the few classes he had attended in her class. He had taken gym in the [ ] program and was successful and the Principal needed to reinforce with the gym teacher she needed to factor that performance into her quarter grades as was past precedence and to avoid a potential for lawsuit. [S-A-528] The intent was to get him to monitor his own behavior. There were difficulties with working with the student. Testimony [Gym Teacher].
- Self-monitoring charts and their criteria [S-416 and 417] had a check-in schedule broken down by each class or subject area and an opportunity for describing the behavior during that class or subject and earning 3 points for a total of 24 points each day. To earn three points, the student had to demonstrate he was able to be safe, responsible, and respectful, with each of those expectations broken down into discrete skills. Points can be turned in for choice activities such as Mrs. P’s room with a friend, playing in the gym with a friend, playing outside with a friend, a chocolate or 3-D printer. [S-418]. At some point the points possible were changed to a total of 35 points [S-419] and then 40 points [S-420]. The parent was familiar with the documents as these data allowed her to know how the Student was doing and that it would “give her a peace of mind when things were good.” Testimony of the Mother. Behavior data collection sheets from January 22, 2025 through April 9, 2025 indicate predominantly good days based on remarks, many of which were completed by Mrs. [ ], located in Parents’ Evidence and S-416 to 417]: Behavior Data Collection sheets:

1/22/25-lists issues in gym-aggression no name who wrote

2/4/25-issue with peer escalated by staff response

2/7/25-Mrs. [ ] filled out

2/10/25- Mrs. [ ] filled out

2/24/25-no name who filled out

2/25/25-great day from Mrs [ ]

2/26/25- no name who filled out

2/27/25-Mrs [ ]- added self injury- went home early

2/28/25- lots of notes/remarks

3/4/25-Good day note [ ]



3/5/25-threw math book-some remarks

3/10/25-lots of notes

3/11/25-

3/13/25-notes good day Mrs. [ ] filled out

3/17/25(2 sheets, one with stickies one without)- notes about wanting to die- [ ]

3/18/25

3/19/25-note about positive skills for deescalating

3/20/25-

3/21/25-good day no behaviors

New form-lower the number the better

3/24/25-1/45 good day

3/25/25-7/75

3/26/25-0/75-awesome day

3/28/25-0/75-awesome day

3/31/25-1 note at end of day

4/1/25-awesme day

4/4/25-minor behaviors

4/7/25-1 issue

4/8- 0/75 great day

4/9/25-5/75= 7%

[student] daily Mood Sheet:

2/26/25-happy x2

2/27/25-[ ]-happy x 2

2/28/25- [ ]-happy x 2

3/4/25 happy x 2

3/5/25-happy x1 no afternoon

Changed to self monitoring check in:

3/6/25 32/35 point

3/17/25-40/40 points

3/18/25-missed 2 points

3/19/25- 28/30 points- great job using skills

3/20/25-33/35 points notes about doing well

3/21/25- all points notes are positive

3/24/25-all points great day-

Unknown date- 21/24 points good and challenging notes

3/26/25-23.5/24 points good and challenging notes

3/28/25-first part of day good, second part rough

3/31/25-missing 4 points lots of notes

4/1/25-all points great day talks of skills

4/4/25-missing 4 points “rough day”

4/7/25-missing 6 points “rough day”

4/8/25-34/35 points good note

4/9/25-30/40 note says used wrong form

- The self-monitoring check in was implemented by [Special Education Teacher] who has used with student who have the ability to understand the system, a system which gives her the a “good overall sense of who the Student is – it allows to collect initial data to know what [behavior] to target for reduction and is a way for [the Student] to monitor his own behavior.” Testimony of [Special Education Teacher]. [S-416]
- The Student and the Special Education teacher, [Special Education Teacher], agree on what points get assigned for the behavior plan and the ed tech supports the data collection, which makes it easier to get the data. The behavior plan is comprised of the self-monitoring check-in, criteria, and earned choices based on points. Testimony of [Special Education Teacher]. [S-571-574] After [ ] and after looking at

self-monitoring data, the Special Education teacher honed in on specific behaviors. She got ready for the student's return and had targeted specific behaviors for appropriate interventions. [S-590] "Disruptive behavior" and other behaviors with titles are defined in the Student's plan; after analyzing his data, it was determined multiple behaviors were happening consistently and serving the same function which could be clustered or classified together and can inform an understanding of the triggers, which also can help create an environment with less triggers. The teacher reported seeing success over the last few months. Testimony of [Special Education Teacher]. S-575.

- Disruptive behavior ranges 0-30% of the school day. Testimony [Special Education Teacher].
- When referencing a February 10, 2025 Suspension Report, the parent said she had never seen it before. [S-305]
- (S305) Suspension Report date of Incident: February 10th, 2025 at 10:00 AM. Reason for Referral: Insubordination. Explanation: "[student] moved his chair, and his teacher asked them to move it back to where it had been. He screamed, using obscenities, threw his laptop across the room, and kicked his desk so that all the contents fell out. He kicked the door and continued to yell "That [jing b." about his teacher." Action taken: Out of school suspension for 2 days.
- (SA830) Email from JB to GC and JP on February 10th, 2025 at 5:15PM. Stating they had tried to call the mother and that they had reached out via email to ask that the parents keep the student home for the following days.
- (SA832) Email from JB to the mother on February 10th, 2025 at 5:07 PM. JB wrote "I would like [student] to stay home tomorrow and Wednesday so that he understand that unsafe behaviors can't be allowed in our school and so that students can have some time to recover from what they witnessed. At your request, I am trying not to suspend him if we can redirect him when he begins to have a rough time and get him into an alternate space to cool down and calm himself. But when staff and students feel unsafe, I feel I need to do that." The mother followed up at 6:51 PM writing "Can you please call me?".
- (SA833) Email from the mother on February 11th, 2025 at 7:11 AM to GC. The mother states, "The father and I want to explore options for out-of-district placement for [student] asap. We strongly believe that it is in his best interest to get the support he needs."
- Parent testifies asking for an out of district placement and disagrees with their treatment of [student]. Parent has felt like the school is not supporting him in the way he needed and pulling out/removing him wasn't working. The parent does not support suspensions. Testimony of the Mother. [SA 832, 833].
- (S261) Disciplinary Record for 2024-2025 School year [last entered date with 2/14/25]. In school suspensions—¾ day Out of school suspensions—3.5 days.
- Emails document exchanges concerning the need to evacuate were reviewed such as the email between the Parent and [Special Education Teacher] in S-A-590 when he yelled at students and threw an eraser at a student and it took awhile for him to deescalate. The 4<sup>th</sup> grade teacher testified about the February 14<sup>th</sup> and the April 4<sup>th</sup> need to evacuate – there were other times they needed to evacuate but she did not write reports. Testimony of [4th Grade Teacher].
- (SB119) BH Office Note. Service date February 20th, 2025. "Mother reports that she stopped giving Seroquel because it was not helpful and she worries about metabolic side effects."
- The parent had requested the District do an assessment in the area of autism. Testimony of Mother. (P105.) The email correspondence between the Mother and the Special Education

Director, dated February 26-27, 2025, outlines key discussions regarding the organization of an Autism Assessment for the child in question. The conversations emphasize two primary points: Autism Assessment Coordination: The Director acknowledged the Mother's request for assistance in facilitating the autism assessment, indicating a willingness to discuss the specifics further over a phone call scheduled for later on February 27, 2025. Availability of School-Based Services: The Director informed the Mother that the availability of services through the Katie Beckett program had improved, allowing for increased school-based interventions. However, it was also noted that the rural geography of the school district presents limitations in the availability of these services.

- The Mother testified the District called and told the Parent they did not think it was autism - “it’s not obvious.” They are only looking at academics and may not pick up on ASD. The parent testified that the Student has not had a BCBA, OT, or SLP. Testimony of the Mother.
- (S318) IEP meeting notes from February 26th, 2025. Outlined the Changes to Discuss:
  - Additional prevention techniques or strategies for staff to better anticipate dysregulation.
    - Quicker intervention...with the first sign of trouble
    - To add to BIP-End of day outburst- next half day or full day in the resource room (depending on level of behavior) instead of suspension.
    - Social skills accommodations: seat the student close to a positive role model; provide additional personal space between desks; partner with a peer to encourage social skills; encouraging them to be social with their peers; helping them learn and identify their sensory needs.
    - Question- Difficulty with transitions?? Accommodation: allow student to finish task before moving on to the next task/Teacher to cue student before transition minute countdown.
    - Allow breaks/snacks as needed-medication and blood sugar driven.
- (S319) IEP meeting notes from February 26th, 2025. Seating issues were brought up but not addressed with a solution.
- (S314-315) Written Notice sent to parents on February 28th, 2025, for meeting date on February 26th, 2025. Listed reason “Other-parent request”. No changes were made to the IEP.
- The 4<sup>th</sup> grade teacher testified that the Student can go from “0-60 without warning which can lead to throwing objects [like] a pencil sharpener”. He can develop a quick explosion that disrupts everything and then become embarrassed, which upsets him more. In times of these explosions when the class would need to evacuate, [Special Education Teacher] would come in to deescalate while the class would evacuate to a nearby classroom with her. She testified to Dangerous Incident Report [S-384] regarding yelling and tossing a laptop “like a Frisbee” which had the potential of injuring other children. She recounted incidents of meltdowns with students impacted by his words and tone as being “traumatic – everyone feels traumatized when meltdown happen, including [the Student]”. Testimony of [4th Grade Teacher].
- [Special Education Teacher] describes the meltdowns as behavior bursts. It's quiet and then they are surprised by a big eruption, usually with the student going to lift up something or something to be thrown and it could hurt someone. No one has gotten hurt by its by chance. In addressing behaviors it is most effective to clear the room. [Special Education Teacher] will give him space and monitors him and he will deescalate through a process. When asked how does this impact other students she says that students have told her how they feel in her calming space they feel fear the fear is expressed by

crying but they also have empathy. I just never know when it's going to happen. Everyone walks on egg shells around the student and actively try not to trigger him. Testimony of [Special Education Teacher].

- (S322) Advanced Written Notice of IEP/IFSP Team Meetings date sent to parents on March 7th, 2025 for meeting scheduled on March 17th, 2025. Purpose of meeting was selected as “Other-MDR Meeting”.
- (S324) No signature from Parents/guardian. Listed attempts was “1. IEP notice on March 7th, 2025 to Mother”.
- (S322) Advanced Written Notice of IEP/IFSP Team Meeting. Date sent to parents on March 7th, 2025 for meeting on March 17th, 2025. Purpose of meeting was identified as “Other-MDR Meeting”.
- At the March 2025 manifestation determination review meeting, there was agreement the behaviors were a manifestation, but there were no conversations about a more restrictive environment nor were considerations for a safety or threat assessment raised. [S-348 through S-351] The parent reported their concerns at the MDR meeting on March 17, 2025. It’s been the same concerns since the 2<sup>nd</sup> grade that are keeping [student] in trouble. In 4<sup>th</sup> grade he had challenges with the individual teacher. The parent sees same problems with different consequences - school having more trouble with the same problems. The disabilities are not being recognized by the staff  
352] “he’s looked at as a bad kid – he is struggling with disabilities at the MDR says that.” MD consensus of the team was that his behaviors were because of his disabilities and no one dissented. The Team agreed to make significant changes, including new goals that aligned with parents’ concerns. And no one raised concerns about threats, harm, etc. - not at any of the
- meetings. Testimony of Mother.
- Manifestation Determination of March 17, 2025 – all [IEP Team] agreed behaviors were manifestations of his disability. Amendments made 90 min. and 310 min. goals for self-advocacy. Works in a little or small group with targeted lessons on needs such as self-control, teach the skill and practice generalizing the skill. It went from two days to a daily service. Testimony of [Special Education Teacher]. “We held the MDR because we were out of programming for ten days because of suspension or cumulation of “breaks” away from class – agreed based on [ ] disability and agreed to change of program days was due to disability”. Testimony of [Special Education Director].
- Meltdowns equal a behavior burst. Quiet and then surprises into a big eruption and usually going to lift up something and throw it which could hurt someone. No-one has gotten hurt but it’s by chance. [When there is] behavior what is most effective is to clear the room = diffuses quickly = identifies it is Ms. P = gives space and monitors him and he will de-escalate through a process. Testimony of [Special Education Teacher].
- [Special Education Teacher] consulted with Lora Perry who served as a Clinical supervisor on the functional behavior assessment that the March 2025 MDR team asked for. [Special Education Teacher] wrote the report and Lora edited it and provided feedback. Clinical impressions are accurately summarized as part of the FBA. The Student’s behavior escalates with setting events, the environment the student is in. Socially, if things are perceived as “unjust or Unfair” and “redirection of his behavior [during this time] may lead to challenging behaviors. He puts academic pressure on himself. Contextual factors are  
“impossible to control for – we do our best to reduce the triggers but [these] are nearly impossible to control”. Testimony of [Special Education Teacher]. [S-502, S-505-508]
- (S325) Written notice sent to parents on March 26th, 2025 for meeting on March 17th, 2025.

- (S325-329) Written Notice. Date sent to parents on March 26th, 2025 for meeting on March 17th, 2025. Purpose selected: Evaluation/re-evaluation, Amendment after the annual IEP meeting, Other-Manifestation Determination Review. Following amendment will be made to students IEP:
  - 90 minutes per week of specially designed instruction for social-emotional learning will end effective 03/18/2025
  - 310 minutes per week of specially designed instruction for social-emotional learning will be added effective 03/18/2025
  - New goals for self-advocacy, functional communication, and peer communication/conversation skills will be added.
  - The following supplementary aids, services, modifications, and/or supports will be added:
  - Provide skills posted in picture and word form for coping, listening, and using respectful words.
  - Provide brief scheduled times to meet with identified staff for support and debriefing.
  - Provide a non-stimulating area away from the group.
  - Provide non-verbal cues when possible.
  - Provide daily mindfulness exercises for regulation.
  - A pragmatic speech-language evaluation, occupational therapy evaluation, classroom observation and a functional behavior assessment (FBA) will be conducted.
  - The IEP team determined that [student]'s behavior that resulted in a change of his placement is a manifestation of his disability.
  - The amendments will be effective 3/18/25.
  - All IEP team members agreed with the decisions made in this meeting.
- (S330) Statement of student Parents Concerns Manifestation Determination Review March 17th, 2025. Statement read by the students parents at the March 17th, 2025 meeting, asked to be included in the WN. Concerns around challenging behavior, additional disabilities, social communication, Sensory Processing, Behavior Intervention Plan, Updated FBA, BCBA performed, and BCBA consultation with the team be added to the IEP.
- [ ] Comprehensive Neuropsychology Report Dated 3/27/25- Discusses ASD diagnosis and PDA profile specifically. Recommendations around BCBA and other school aspects. (P19.) The Comprehensive Neuropsychological Evaluation conducted by [ ] Neuropsychology and independently issued by T.M.'s parents on March 27, 2025, outlines the student's diagnosis of Autism Spectrum Disorder (ASD). The evaluation also identifies the presence of pathological demand avoidance, which the evaluator connects to the ASD diagnosis. Additionally, the report discusses the complexities associated with the Student's ADHD and ASD diagnoses. The Comprehensive Neuropsychological Evaluation conducted by [ ] Neuropsychology, independently issued by the student's parents on March 27, 2025, the evaluation concluded with several recommendations aimed at supporting T.M.'s development. These include access to Children's Behavioral Health Services for both home and in-school support, individual psychotherapy, and Parent Behavioral Training. Additionally, the continuation of ADHD medication was advised to address symptoms and emotional dysregulation, alongside the maintenance of an Individualized Education Program (IEP) and a Section 504 plan. Recommended school services consist of regular Board Certified Behavior Analyst support, Occupational Therapy, Speech and Language Therapy, Social Skills Training, Executive

Functioning support from teachers and staff, and regular meetings with the school social worker, counselor, or psychologist. (P20.)

- (P12-31) [ ] Comprehensive Neuropsychological Evaluation. Date of Evaluation March 27th, 2025.
  - (p19) “The consistency of ASD behaviors reported across multiple observers strongly supports this diagnosis...He also exhibit signs consistent with pathologic demand avoidance (PDA). PDA is considered related to ASD or along its spectrum, characterized by an anxiety driven need to avoid or resist everyday demands and expectations ...The interaction between [student]'s ADHD, anxiety and ASD creates a complex profile that helps explains their behavioral and emotional presentation. His ADHD affects his ability to regulate attention, impulses, and activity level, which can lead to difficulties following directions and completing tasks. This challenge with self-regulation is further complicated by his ASD, which impacts his ability to understand social cues, adapt to changes, and process sensory information.”
  - (p16) “They were administered the ADOS-2, semi-structured assessment.”
  - (p18) “Despite these many strengths, the evaluation continues to support the presence of ADHD.”
- (S362) [ ] Comprehensive Neuropsychological Evaluation. Date of Evaluation March 27th, 2025. “Moving forward, it will be helpful for his parents and school staff to understand his behavior through the lens of ASD. What may appear as defiance or intentional misbehavior often stems from ASD-related challenges with social communication, sensory processing, and adapting to change.”
- (S417) Self Monitoring Check-in: Criteria for Earning Points.
  - (S439) March 17th, 2025. Scored 30/30. “Great day”
  - (S438) March 18th, 2025. Scored 28/30. Reported to have a  $\frac{3}{5}$  on Science/Social Studies. “He did get logged off which was upsetting...He remained safe and he worked through it.”
  - (S437) March 19th, 2025. Scored 28/30. Reminders to not interrupt.
  - (S435) March 21st, 2025. Scored 30/30.
- (S504) Functional Behavioral Assessment Report. Referral for Evaluation/Assessment and Reasons: “The IEP team referred the student for FBA of disruptive behavior episodes as is required due to 10 or more school suspensions, after a manifestation meeting. The suspensions were correlated with aggressive, destructive, and threatening behaviors.”
- (S510) Disruptive Behavior Episodes: Average 1% of Measured Intervals 3/11/25-4/9/25. Shows increase between 25%-30% between February 10th-17th 2025.
- (S345) Behavior plan initiated on 4/21/2024 (3<sup>rd</sup> grade) and amendment dated for March 21st, 2025. Target Behaviors for Reduction stated:
  - Property Destruction/Misuse (Level 1)
  - Property Destruction/Misuse (Level 2)
  - Physical Aggression (Level 2)
  - Verbal Aggression (Level 2)
  - Emotional Dysregulation (Level 2)
- (S347) Behavior plan initiated on 4/21/2024 (3<sup>rd</sup> grade) and amendment dated for March 21st, 2025. The document outlines “teaching and reinforcing replacement behaviors, using differential

reinforcement, providing non-contingent sensory breaks, and offering choices to empower the student.”

- (S346) Behavior plan initiated on 4/21/2024 (3<sup>rd</sup> grade) and amendment dated for March 21st, 2025. The document states, “If the student engages in any of the level 2 target behaviors, bring him to the special education classroom and allow him time and space to regulate on his own.”

## **6. April 2025**

- Point system changed between March 21st and March 24th, 2025 from 5 points a section to 3 and the first week of April is as follows:
  - (P78) **April 1st**, 2025. Scored 24/24.
  - (P80) **April 4th**, 2025. Scored 21/24./(P81) April 4th, 2025. 1:45-2:00 PM. Peer conflict report. “Went to Mrs. P room”
  - (P82) **April 7th**, 2025. Scored 19/24. Listed as Peer Conflict. No other details included.
  - (P84) **April 8th**, 2025. Scored 34/35. “Reminders to sit quietly” /(P88-89) Positive notes to student from Mrs. C and Mrs. W.
- (S387) Dangerous Behavior Prevention and Intervention Incident Form. Date of Incident **April 4th, 2025**. Filled out by YL. Description was that the student got upset after another student said the question was rude...YL states “I had to evacuate the 4th grade class into the 5th grade room....said they had all kinds of guns at home, And I’m gonna shoot...in the head and then I’ll bring the guns to school Monday and shoot everyone in class...Many others heard him screaming and making threats.”
- (SA1083) Email correspondence between JB, JP and GC. Date sent on **April 4th, 2025**. Initial email was from JP to communicate the incident.
  - + Initial email from JP to JB and GC letting them know that the student had an incident at the end of the day. “He had a misunderstanding with a peer...screamed that he was going to kill everybody that he was going to go home and get guns and shoot everyone...he came across the hall to my room, we processed and debriefed, and I walked him out, and I told his father what happened.”
  - + JB responds, “I guess it was too good to be true that he had been doing pretty well. I know I can’t suspend him, but I feel like I’m not protecting my other students from his threats to kill them all. What else should we do?”
  - + JP responds, “He had a really good stretch!...he misunderstood a situation and got embarrassed, and then a peer called him out and told him they were rude when he was already embarrassed and really wasn’t trying to be rude. His initial knee jerk response is to be aggressive...but afterward he was sad and embarrassed and sorry.”
  - +GC responds “I did just look up the special circumstances when you could still remove a student because I thought included threats”

Emails continued between all three and focused on exceptions to remove a student.

- Students [have been impacted and] have told her how they feel/calming space = they feel fear/exposed fear (crying) but also empathy. “I just never know when it is going to happen.” – I walk on eggshells around him and actively try not to trigger him”. Staff say enough is enough.



Some express fear for themselves and students. **April 4<sup>th</sup>** he wanted friends to be afraid = he wanted to hold the room hostage and would not come with [Special Education Teacher] when other times he's gone with her. Testimony by [Special Education Teacher]

- (S388) Dangerous Behavior Prevention and Intervention Incident Form. Date of Incident **April 4<sup>th</sup>, 2025**. Filled out by JC. Description “ The class was evacuated to the 5<sup>th</sup> grade. We could hear him continue to scream. After the situation was over, we went outside. (name) approached me very upset. (name) said that they heard him screaming while in 5<sup>th</sup> grade, that he “was going to his house, get all of his [ ]ing guns, go to her house and [ ]ing shoot her.” she said that she was afraid of him. He lives next door to her.”
- IEP Team ordered **April 16<sup>th</sup>** safety assessment and tutorial. I believe it was an appropriate decision. For [student]'s safety, the current environment will trigger more meltdowns – it's not an environment. Resource Room all day - can't shelter him completely – bathroom, lunch, transitions – He cannot be sheltered from triggers. He does not want to be in my [ ] room. He wants to be with peers... extreme fear of missing out. If he is in her room and the 4<sup>th</sup> grade classroom is doing something, he could get triggered (field trip). Testimony by [Special Education Teacher]
- “He was out Thursday, Friday, Monday, Tuesday, Wednesday (IEP) = we did not have a meeting because not at the ten days, but it did not need to be an MDR. So AWN says meeting to discuss behavior and no MDR. [P-122] Didn't need to do an MDR yet, they made a placement decision on tutoring until safety assessment could be done. Five days equals three and a half hours. [ ] comes in on Friday on skills. SEL learning. Leaves material with tutor”. Testimony of [Special Education Director].
- WN – Agreed with MDR. Noted [student] is making significant progress. **April 16<sup>th</sup>** was not MDR –he hasn't been removed for ten days but it was to discuss the behavior incident and what to do about it going forward. Only decision was tutoring until IEP could meet...Talked about out of district to start exploring but not reflected in the WN. Had not made a determination of placement –that's an IEP decision. Testimony [Special Education Director].
- Behavioral incident reports show several incidents of outbursts and threatening language which frightened students and staff. [S 383-395] There were instances where teacher felt the need to evacuate students to safety as “behavior created an unsafe environment for students and staff.” Testimony [Gym Teacher].
- The gym teacher knew that the student had an IEP and behavior intervention plan, and worked closely with the [Special Education Teacher], which is where she believed the [incident] reports went, and is not sure if [Special Education Teacher] reached out after the behavior incidents which led to evacuating the class from the gym. While she was aware that the behavior intervention at Level 2 was to take him to the special education classroom [S-590] for de-escalation, she was unable to do so after he refused to leave because she could not leave the class. The 1:1 was with focused on the student and could not get him to [Special Education Teacher]. Testimony [Gym Teacher]
- The 4<sup>th</sup> grade teacher testified to the accuracy of significant behavior incidents [S387 and S-388] where one of the students heard him saying he was going to get guns. The same student heard from the 5<sup>th</sup> grade classroom that he was going to shoot her [the student] and “[ ]ing everybody”. This was not the first time the student had reported this [about guns] to the teacher. After the **April 9<sup>th</sup>** gym incident, the teacher believes the tutoring setting is “absolutely” appropriate and the student should have been removed and that “people will be harmed with his

return”. In her opinion, she “can’t believe no one has been [physically] hurt.” Testimony of [4th Grade Teacher].

- The student’s father testified about events on April 9, 2025. He received a call around 9:00 am. Mrs. P said there had been an incident in gym. The student was upset , he wanted to go home, but Mrs. P would like him to stay. The father talked to the student and encouraged him to stay. The student decided to stay. Mrs. P said good. The student was in the Resource Room and spent from 9:00 am until the end of school in the Resource Room. The father recalled the student reported having an “awesome day”. He scored 5/5 - a great day! The father thinks the student is going back to school the next day. Testimony of the Father
- After **April 9<sup>th</sup>** and the Facebook post of another parent regarding her understanding of the school incident, there were three students who attended school the next day. The day after, there were only four. “Students have been told by their parents they are not allowed to be near him if he comes to school”. Students received instructions from their parents to call home if the student returns to school and they will be picked up from school by their parents. Testimony of [4th Grade Teacher].
- The 4<sup>th</sup> grade teacher confirmed that the student never injured himself or anyone else nor were the police ever called; however, she was told by other teachers not to do this unless it was a crisis. The student was never physically restrained in the classroom. Testimony of [4th Grade Teacher].
- (P116) Text messages between JB and the mother starting at 8:36PM on **April 9<sup>th</sup>, 2025** stating that a parent had called the Sheriff’s Department, and JB “had received emails from the parents of eight students who will not be attending school tomorrow due to the threats and I expect to hear from more because they are talking to each other.” The mother responds at 8:44PM “I don’t know anything about this!!!” JB response “I assumed you knew about the incident today with them because JP would have talked with father.” (P117) JB thought the sheriff would have called the mother by now.
- (P121) Facebook post on **April 10<sup>th</sup>, 2025** to the [ ] Maine Community page by a parent of a student at [ ]. “ This child has a history of violent outbursts. The School did nothing. NOTHING. No investigation, no report to the police, no communication to parents. They ignored it...I am the one who called the police to file a report.”
- (P157) Message from Mr. [ ] Superintendent on April **10<sup>th</sup>, 2025** at 1:19 PM. “There is no reason to believe that there is any particular safety threat facing students at [ ].”
- (P171) Email correspondence between JP and the mother. Between **April 11<sup>th</sup>-12<sup>th</sup>, 2025**.
- (P173) GC included on the April 11<sup>th</sup>-12<sup>th</sup>, 2025.
  - Emails from mother express : “I didn’t know that this was an official change of placement”
  - Email from JP “ The term ‘change of placement’ in this context is just a fancy way of saying ‘not at school’. This is not a suspension”.
- (SA1176) Email correspondence from Mother to GC, JB, JP and DD, and father. Sent on **April 12<sup>th</sup>, 2025** at 2:01 PM
  - Email from mother sent at 2:01 PM “The information is appreciated and we have reviewed it. It answered some open questions for us, and I need to read it again, but today we are still not comfortable yet with anything other than [student] at [ ] or home with

us...and we have many questions and concerns and we will wait for Monday to discuss further...This means we are declining tutoring for Monday morning.”

- Email from Mother at 2:47 PM “Sorry to avoid any confusion with what I said...if we had a choice they would be at [ ] Monday.”
- (S396) Advanced written notice of IEP/ISP Team Meetings. Date sent to Parents **April 15th, 2025** for Meeting on April 16th, 2025. Reason selected: Other-discuss behavior incident from April 9th, 2025.
- (S190) Email correspondence from the mother to JB on **April 17th, 2025**. Sharing their child’s version of the events where they write “ His version of events is aligned with Mrs. L’s original statement to Mrs. P during the incident that no verbal threat was made prior to him being alone in the bathroom.”
- (SA 1222) Email corresponds from mother to JB and GC sent on **April 17th, 2025**. The email was a sharing of the child’s version of events. “He said that no verbal threats to kill anyone were made before they went into the bathroom...his version of events is aligned with Mrs. L’s original statement to Mrs. P during the incident that no verbal threat was made prior to him being alone in the bathroom.”
- (SA 1228) Email correspondence between the mother GC and JP sent on **April 18th, 2025**. Initial email was sent from the mother at 9:48 AM asking that GC and JP share the safety evaluation process, scan of WN, and the SAU’s plan for a extended schedule. GC responded at 3:51 PM, with a brief description of the evaluation process (no reference document or criteria given), WN written agreement of the effective date being April 28th, and confirmation “Starting on Monday we would like to extend his time to 10:45”.

## **7. May 2025**

- (S400) Written Notice. Date sent to parents **May 1st, 2025** for meeting on April 16th, 2025. The WN has Amendments and Other – Change of Placement – selected for the reason. The Team determined that [student] will receive a safety assessment. It stated [student] had been suspended on April 10<sup>th</sup> and 11<sup>th</sup> for an incident that happened April 9<sup>th</sup>. The following amendments will be made
  - Specially designed instruction for 310 minutes per week of socio-emotional learning will end effective 04/28/25
  - Tutoring for 3 hours a school day will be added effective 04/28/25
  - Transportation to and from his home to his tutoring session will be added effective 04/28/25
  - [ ]’s least restrictive environment will change from 82% of the week to 0% of the week.
  - The Parents did not object to the determinations.
- The parent testified about the student’s current setting for the tutorial as not being appropriate. The student has received 3 ½ hours of tutoring a day in an isolated environment in a 10x10 conference room. There are no peers. He’s in a room made for adults. His food is brought to him. There has been no misbehavior. No one wants to come see him – no one in person. He had an email that explained a music assignment, but no one came in person. The art teacher sent [student] a message for the art assignment, but he didn’t come in person. Limited visits from [Special Education Teacher]. Teachers are not seeing him in person. They are making him out to be a criminal. She doesn’t know what he has received for services. He’s been denied all access to school events at the end of the school

year – missing Walking club, exercise, peer interaction, chorus concert, STEAM night, Career Day, and the Flea Market. Testimony from the Mother.

- May 19<sup>th</sup> Access to music art (did online program). Needed a plan to bring him in well and was not going to happen successfully (transition) – concern was [student] in classroom, “we can’t predict his behavior and it might break any chance of a successful transition. I was afraid that the mixture would not be a good place for [student]...special education resource room not viable because kids are in and out of [Special Education Teacher’s] and fourth grade and no interacting. Data shows he may throw something out, not predictable when that might occur”. May first – Parents did not sign the safety evaluation consent. [S-396] Testimony of [Special Education Director].
- [Special Education Teacher] not working with [student] currently [in tutoring setting] – working with a tutor and education tech. Testimony [Special Education Director].
- (P33.) Email Correspondence from Dr. [ ] to the parent dated May 20th, 2025, regarding the removal of the DMDD diagnosis due to a lack of alignment with persistent irritability and rather situational irritability noted by the evaluator. In addition, the evaluator confirmed the ODD diagnosis for [ ].
- (S551) [ ]: Authorization to Release and Disclose Information. Signed on May 5th, 2025.
- (S568) Parental Consent for Evaluation. Date of Meeting May 21st, 2025. Date given/mailed to parent May 21st, 2025. Purpose of Evaluation selected as “Other”
- (S516-518) Parent Consent for Evaluation. Date of Meeting April 16th, 2025. Date given/mailed to parent May 1st, 2025. Purpose of Evaluation selected as “Other”. (S518) Other-Safety Assessment. No signature
- Dr. [Ph.D. Psychologist] has an extensive background in psychology and behavior and is the professional expert the District plans to employ for conducting a safety assessment, which was described more as a “risk assessment – looks at the individual student and their lives while assessing their presentation relative to known risk – it is not used to predict but rather a tool [to help] figure out what is going on or what we can do to move in the right direction”. Dr. [Ph.D. Psychologist] described the differences between a safety assessment and a threat assessment, and explained the components of a safety assessment, of which she has extensive training in. The safety assessment will determine the child’s profile, and the goal is to return to school. The setting or setting events are key factors in determining how to address A-B-C and setting events for success and planning. A setting can lead to an increase in unsafe behaviors, and a goal is not to be in crisis situations. [It’s important] to take the time to identify factors, map out the escalation cycle and get a plan in place – map out the triggers and have a plan to intervene and respond (not ignore)”. Testimony of Dr. [Ph.D. Psychologist]. “Dr. [Ph.D. Psychologist] can help with this – looking forward to having some guidance with successful re-integration”. Testimony of [Special Education Teacher].
- (S167-169) Written Notice. Date sent to parents May 1st, 2025 for meeting on April 16th, 2025. Amendment after the Annual IEP meeting, Other-Change of Placement. (P169) “ Mr. and Mrs did not object to these determinations”.
- Amendment after the Annual IEP meeting, Other-Change of Placement.
  - + Action: The IEP team determined that they will receive a safety assessment
  - + No mention of investigation

- + (S401) “While the IEP team is waiting on the results of the Safety Assessment, [student] will receive 3 hours a school day of tutoring, which will take effect on April 28th, 2025.
- + Next annual [IEP Meeting] is May 28th, 2025.

## V. Applicable Law

### Key Provisions of IDEA Regarding Manifestation Determination

Under the Individuals with Disabilities Education Act (IDEA), specifically 20 U.S.C. § 1415(k), a **manifestation determination** is a critical process when a student with a disability is subjected to disciplinary actions that may result in a change of placement. This process ensures that students are not unfairly disciplined for behaviors that are directly related to their disabilities.

#### 1. Timing of the Determination

IDEA mandates that within **10 school days** of a decision to change the placement of a child with a disability due to a violation of a code of student conduct, the local educational agency (LEA), the parent, and relevant members of the Individualized Education Program (IEP) Team must review all relevant information. This includes the child's IEP, teacher observations, and any relevant information provided by the parents. The purpose is to determine:

- **(i)** If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- **(ii)** If the conduct in question was the direct result of the LEA's failure to implement the IEP.

If either condition is met, the conduct is considered a manifestation of the child's disability.

#### 2. Actions Following a Manifestation Determination

If the behavior is determined to be a manifestation of the child's disability, the IEP Team must:

- **(i)** Conduct a functional behavioral assessment and implement a behavioral intervention plan, unless the LEA had conducted such an assessment prior to the behavior that resulted in the change of placement;
- **(ii)** Review and modify the behavioral intervention plan as necessary to address the behavior;
- **(iii)** Return the child to the placement from which they were removed, unless the parent and the LEA agree to a change of placement as part of modifying the behavioral intervention plan.

#### 3. Special Circumstances

In certain situations, school personnel may remove a student to an interim alternative educational setting for up to **45 school days** without regard to whether the behavior is determined to be a manifestation of the child's disability. These situations include when a child:

- Carries or possesses a weapon to or at school or a school function;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance at school or a school function;
- Has inflicted serious bodily injury upon another person at school or a school function.

### **Manifestation Determination Process**

The manifestation determination process is designed to protect students with disabilities from being unfairly disciplined for behaviors that are a direct result of their disabilities. It ensures that disciplinary actions are appropriate and that students continue to receive the services and supports they need to succeed academically and behaviorally. The IDEA permits the removal of a student with a disability to an IAES without parental consent in specific circumstances:

- **Special Circumstances:** If a student carries or possesses a weapon to school, knowingly possesses or uses illegal drugs, or has inflicted serious bodily injury upon another person at school, school personnel may remove the student to an IAES for up to 45 school days, regardless of whether the behavior is a manifestation of the student's disability.
- **Substantial Likelihood of Injury:** **If maintaining the current placement is substantially likely to result in injury to the student or others, a hearing officer may order a change to an IAES for up to 45 school days.**
- If the parent disagrees with the manifestation determination or any decision regarding placement, they have the right to request an expedited due process hearing. The hearing must occur within 20 school days of the request, and a determination must be made within 10 school days after the hearing. During the pendency of the proceedings, unless the parent and the LEA agree otherwise, the child remains in the interim alternative educational setting or the current placement, whichever is appropriate.

**A.P. ex rel. Pursley v. Board of Education for Tullahoma**, 160 F. Supp. 3d 1024 (M.D. Tenn. 2016), **supports the principle that emotional and psychological harm can qualify as "injury"** under the *stay-put* exception in the Individuals with Disabilities Education Act (IDEA). While the main issue in **A.P.** was whether the parent was entitled to a **stay-put order** and attorney's fees, the court discussed the broader interpretation of **"injury"** in the context of *stay-put* disputes. The court cited authority recognizing that **emotional and psychological harm** may be considered sufficient grounds for departing from the default rule of maintaining current placement. Specifically, the court acknowledged that:

*"Serious emotional or psychological harm can constitute injury under IDEA's stay-put exception, not just physical injury."*

This understanding aligns with how courts interpret IDEA's language requiring that any change to *stay-put* must be justified by showing the current placement is **"substantially likely to result in injury to the child or to others."**

The case **Light v. Parkway C-2 School District**, 41 F.3d 1223 (8th Cir. 1994), is a significant decision in special education law concerning the application of the IDEA and the procedural safeguards it provides to students with disabilities. In this case, the parents of a child with disabilities challenged the school district's decision to suspend their child for violent behavior without conducting a manifestation determination review. The court ruled that the school district violated IDEA by not conducting the required review to determine whether the child's behavior was a manifestation of their disability. The court emphasized the importance of following IDEA's procedural safeguards to ensure that students with disabilities are not unjustly disciplined. This case underscores the necessity for school districts to adhere to the procedural requirements set forth in IDEA, particularly concerning the discipline of students with disabilities. It highlights the importance of conducting a manifestation determination review before imposing disciplinary actions that may change the student's placement. The decision reinforces the principle that procedural safeguards are integral to protecting the rights of students with disabilities. **The Eighth Circuit held that a student need not have inflicted serious harm to be deemed substantially likely to cause injury.** The court emphasized that even a child whose behaviors are directly related to their disability may pose a substantial risk of injury, justifying removal to an IAES.

This case **Texas City Independent School District v. Jorstad**, 752 F. Supp. 231 (S.D. Tex. 1990), John Jorstad, a 13-year-old student diagnosed with emotional disturbance, learning disabilities, and speech impairment, exhibited severe behavioral issues that posed a danger to himself and others. Despite previous interventions, his behavior escalated, leading to incidents such as attempting to jump out of a second-story window and engaging in physical aggression towards peers and staff. The Texas City Independent School District sought a preliminary injunction to change John's educational placement to a behavioral management class or home study, pending administrative review. The court found that John's current placement in a general education setting was substantially likely to result in injury to himself or others. The school district had demonstrated:

1. **Likelihood of Irreparable Injury:** John's continued disruptive behavior posed a significant risk of harm.
2. **Likelihood of Success on the Merits:** The evidence supported the need for a change in placement to address his behavioral issues effectively.
3. **Balance of Harms:** The court concluded that the harm to John from a temporary change in placement was outweighed by the potential harm to others.
4. **Public Interest:** Ensuring a safe learning environment for all students was in the public interest.

This case underscores the application of the "stay-put" provision under IDEA, which generally requires a student to remain in their current educational placement during disputes. However, the court recognized that in exceptional circumstances, such as when a student's behavior poses a danger, a change in placement may be warranted. The decision highlights the balance between a student's right to FAPE and the safety and well-being of others in the educational environment.

In February 1997, **the School Board of Pinellas County** proposed changing the educational placement of J.M., a 12-year-old student diagnosed with autism and moderate mental retardation, from Osceola Middle School to the Paul B. Stephens Exceptional Education Center. This decision was based on J.M.'s ongoing aggressive behaviors, including hitting teachers and inappropriate physical contact. J.M.'s mother

objected to this change and requested an administrative due process hearing under IDEA. Consequently, the "stay-put" provision of IDEA prevented the school district from unilaterally changing J.M.'s placement during the pendency of the proceedings. The school district sought a preliminary injunction to enforce the proposed placement at the Stephens Center, arguing that J.M.'s current placement was substantially likely to result in injury to himself or others. The court, referencing the Supreme Court's decision in *Honig v. Doe*, acknowledged that while the "stay-put" provision generally requires a student to remain in their current placement during disputes, there are exceptions. Specifically, if maintaining the current placement is substantially likely to result in injury to the student or others, a change in placement may be warranted. The court concluded that the school district demonstrated a substantial likelihood of success on the merits, as J.M.'s aggressive behaviors posed a significant risk of harm. Additionally, the court found that the harm to the school district and other students outweighed the potential harm to J.M. from a temporary change in placement. The court also determined that granting the injunction would serve the public interest by ensuring a safe educational environment. This case underscores the balance between a student's right to remain in their current educational placement under the "stay-put" provision of IDEA and the need to protect the safety of the student and others in the educational setting. **It highlights that in exceptional circumstances, such as when a student's behavior poses a danger, a court may permit a change in placement even during the pendency of due process proceedings.** *School Bd. of Pinellas County, Fla. v. J.M.*, 957 F. Supp. 1252 (M.D. Fla. 1997)

### **Training of Staff**

"Efforts to minimize the risk of injury, should, if appropriate, include the training of teachers and other affected personnel, the use of behavior intervention strategies and the provision of appropriate special education and related services," OSEP wrote. *OSEP Memorandum 95-16*, [22 IDELR 531](#) (OSEP 1995).

*BV v. State of Hawaii Dept. of Educ.* (D. Haw. 2005) Parents argued the student needed a skilled trainer experienced with autistic children; the DOE defended that the staff was "highly qualified." The court ruled that the IEP did *not* require the absolute best-trained staff and found no FAPE violation—setting a high bar—but left open that untrained staff could, in other cases, constitute a FAPE denial. ***B.V. v. Department of Education, State of Hawaii*, 451 F. Supp. 2d 1113 (D. Haw. 2005)**

***Luna Perez v. Sturgis Public Schools* (6th Cir. 2023)** Miguel Luna Perez, a deaf student, relied on an IEP that mandated qualified sign-language interpreters. Instead, the school assigned aides without proper training or certification; one aide "essentially invented the signing system" and was unintelligible to other deaf students. The court found that the district failed to provide FAPE, noting that Perez learned almost nothing because he continuously lacked a qualified interpreter. The district misrepresented interpreter qualifications, and the inadequacy of the aides deprived him of meaningful access to education ..

Ensure services are “reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances” (from *Endrew F.*, 580 U.S. 386 (2017)). ***Doe v. East Lyme Board of Education*, 790 F.3d 440 (2d Cir. 2015).** The court found a denial of FAPE where services outlined in the IEP were not delivered due to inadequately trained staff.

### **Predetermination**

Under the IDEA, **predetermination** occurs when a school district makes decisions about a student's IEP or placement before the IEP meeting, thereby depriving parents of a meaningful opportunity to participate



as equal members IDEA mandates that each public agency must ensure that one or both parents are present at each IEP meeting or are afforded the opportunity to participate. And that the educational placement of a child with a disability must be based on the child's IEP. Predetermination undermines these requirements by effectively excluding parents from the decision-making process. Courts have consistently held that predetermination violates IDEA's procedural requirements:

- **Spielberg v. Henrico County Public Schools (4th Cir. 1988):** The court found that a school district violated IDEA by deciding on a student's placement before developing an IEP, emphasizing that placement should be based on the IEP.
- **Deal v. Hamilton County Board of Education (6th Cir. 2004):** The court ruled that predetermination occurs when a school district pre-selects a placement regardless of the student's individual needs, depriving parents of meaningful participation.
- **R.L. v. Miami-Dade County School Board (11th Cir. 2014):** The court found that a school district violated IDEA by entering an IEP meeting with a predetermined placement decision, noting that such actions deprive parents of a meaningful opportunity to participate.

### **Adequacy of Tutorial Placement**

**In the case of M.M. v. Special School District No. 1, 512 F.3d 455 (8th Cir. 2008), the Eighth Circuit Court of Appeals** addressed whether the school district provided a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) under the Individuals with Disabilities Education Act (IDEA). In this case, the court found that the school district's interim placement was inadequate to provide FAPE in the LRE. The student, M.M., had been placed in a more restrictive setting due to behavioral issues. The court ruled that the district failed to offer a placement that met M.M.'s individual needs and did not consider less restrictive alternatives, thereby violating the IDEA's requirements.

**Case Summary: Brown v. District of Columbia, 179 F. Supp. 3d 15 (D.D.C. 2016).** A student with disabilities whose Individualized Education Program (IEP) was developed by the District of Columbia Public Schools (DCPS). The adequacy of the IEP in addressing the student's Least Restrictive Environment (LRE) and appropriate placement along the continuum of placements. The court found that the IEP lacked a discussion of the student's LRE and the appropriate placement along the continuum of placements. The court emphasized that the IDEA requires that a student's IEP include a discussion of LRE and appropriate placement, and the failure to do so constitutes a procedural violation. The court concluded that the lack of LRE consideration in the IEP resulted in a denial of a Free Appropriate Public Education (FAPE). The court remanded the case to the hearing officer to make further factual findings regarding the student's LRE and appropriate placement. The decision highlighted the importance of the collaborative process between parents and schools in developing an IEP that meets the student's individual needs. This case underscores the importance of adhering to procedural requirements under the IDEA, particularly concerning LRE and appropriate placement. It emphasizes the role of parents in the IEP process and the necessity for transparency and specificity in IEPs to facilitate meaningful participation. The decision serves as a reminder that failures in the IEP process can result in a denial of FAPE, even if the substantive educational services provided are appropriate

### **Interim Alternative Educational Settings**

### 1. **20 U.S.C. § 1415(k)(1)(G) – Special Circumstances for Removal**

Under IDEA, school personnel may remove a student to an IAES for up to 45 school days without parental consent if the student:

- Carries or possesses a weapon to or at school or a school function;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function; or
- Has inflicted serious bodily injury upon another person at school or a school function.

In such cases, the IEP team determines the appropriate IAES.

### 2. **M.M. v. Special School District No. 1, 512 F.3d 455 (8th Cir. 2008)**

This case affirmed that a school district may remove a student to an IAES without parental consent if maintaining the current placement is substantially likely to result in injury to the student or others. The court emphasized that the IEP team must determine the appropriate IAES, and the district must provide prior written notice to the parents.

### 3. **OAHS Case No. 2023070764 (California)**

In this decision, the hearing officer found that maintaining the student's current placement was substantially likely to result in injury to others. The proposed IAES was deemed appropriate as it enabled the student to continue participating in the general curriculum and provided services to address the behavior that led to the removal.

### 4. **Andrew F. v. Douglas County School District RE-1, 580 U.S. 386 (2017)**

While not directly related to IAES, this Supreme Court case clarified that an IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. This standard supports the need for an appropriate and individualized educational setting, such as an IAES, when necessary to address safety concerns. *Andrew F.* redefined FAPE as requiring more than minimal progress—it must be personalized and aimed at significant growth. Schools can no longer rely on offering “some benefit” but must show that their IEPs are tailored to enable the student to advance meaningfully in both academics and functional skills. With respect to FAPE, the courts determined there must be meaningful progress based on the child’s abilities, and it requires measurable, ambitious goals tailored to the student. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The IEP must be appropriate and the setting needs to be determined around the program.

In *N.B. ex rel. Peacock v. District of Columbia* United States Court of Appeals for the District of Columbia Circuit, 682 F.3d 77 (2012). *N.B.*, a student with disabilities receiving special education services under the IDEA. The District of Columbia Public Schools (DCPS) placed *N.B.* in a certain educational program but sought to move her to a more restrictive interim alternative educational setting based on behavioral concerns. The parents challenged the placement change, arguing DCPS did not have sufficient evidence to show that maintaining the current placement was substantially likely to result in injury to *N.B.* or others, and that the move violated the IDEA’s **stay-put provision**. The court reiterated

that under IDEA, when a placement change is proposed during due process disputes, the school district has the burden to show that the current placement poses a significant risk of injury. The District must present specific, concrete evidence — such as incident reports, expert evaluations, or documented behaviors — to justify the dangerousness exception to stay-put. The court emphasized the necessity of conducting a comprehensive and individualized safety assessment before altering placement based on safety concerns. The IDEA's stay-put provision is designed to prevent arbitrary or unjustified removal from the current placement; thus, schools cannot override it without meeting the high threshold of demonstrating substantial risk. DCPS failed to meet the burden of showing that N.B.'s current placement was substantially likely to result in injury, and the court held that the stay-put provision applied, protecting N.B.'s right to remain in her then-current placement. This case protects students with disabilities from being moved to more restrictive placements without sufficient justification. It confirms that school districts must come forward with clear, substantial evidence before invoking the safety exception to stay-put. It highlights that individualized safety assessments are not just best practices but legal necessities before placement changes on safety grounds. Reinforces the strength of procedural protections under IDEA to prevent premature or unjustified placement changes.

## **VI. Discussion / Legal Analysis**

Before applying the facts to the legal standard and whether the parties met their burden of proof in presenting their evidence and witnesses, I wish to write in plain language.

At this Hearing Officer's core is her 25 years in special education as an educator, administrator, professor, evaluator, and policymaker. She's taught hundreds of teacher/administrator preparation and in-service courses, ranging from Special Education and the Law to IEP Development and Assessment. She fully knows the inner workings of schools and school communities. Further, she brings the parent perspective as a parent of four now adult children with disabilities and disorders, including identical twins with autism, ADHD, and bipolar disorder. So while she is practiced in the federal and state rules and regulations, she brings experiential knowledge from the sides of both parties that guides her discussion, legal analysis and determinations.

At the root of this case 108X, the student's IEP had flaws that led to circumstances that did not have to rise to the level they did that led to a due process hearing. There were many additional supplementary aids and services and supports, such as professional development of and consultation with staff working with the student that could have been included consistently. The IEP could have been adjusted earlier and often to address those deficit areas. In general, I do not think the placement in the regular education classroom was appropriate well before the decision to remove to a tutorial; when the parent raised concerns about alternative options, I believe there were enough quantitative and qualitative data to have those conversations and make those decisions as a Team well before the April incidents.

On the other hand, I do believe the District followed the law procedurally with respect to manifestation determination. I believe that there is cumulative cause to question the extent to which the Student's verbal threats constitute substantial likelihood of injury, either emotionally or physically, and the District was acting on that premise, essentially asking for a "pause" while they collected safety assessment data to be used to inform programmatic decisions. It's a fine line, however, because in special education, we consider program before placement – placement is the very last variable we consider. It is program first. While in tutorial, I do not believe the student was receiving his program appropriately. However, I

understand that the threats had reached a threshold of potentially endangering others and the school needed to act. I see both sides. I see two sides with the best intentions for the student. I have empathy for what both parties are going through and appreciate all that went into both parties' preparation and presentation of evidence.

Yet, a determination needs to be rendered.

Parents:

1. Did the District violate the IDEA by changing the student's placement as a disciplinary action without either

a. following the decision of the manifestation determination team meeting on March 17, 2025, that the student's disruptive behavior was directly and substantially related to his disability; or

b. conducting a manifestation determination to review the disruptive behavior that occurred on April 9, 2025, and determine whether it was directly and substantially related to the student's disability, or was the result of the District's failure to implement the IEP?

**No, I do not think the District violated the IDEA regarding items a) and b).**

**The hearing officer finds that the district followed the decision of the manifestation determination team meeting on March 17, 2025, that the student's disruptive behavior was directly and substantially related to his disability. The District conducted a manifestation determination to review the disruptive behavior that occurred before April 9, 2025, and determined whether it was directly and substantially related to the student's disability. However, the events and occurrences leading up to these dates was the result of the District's failure to implement the IEP, an IEP that may not have been adequate nor implemented consistently by all staff with responsibilities for educating the student.**

**The question is if the tutorial setting was a change in placement. A manifestation determination is required each time a disciplinary removal is considered a change of placement under IDEA. Prior MDRs do not eliminate the need for future ones if new removals occur. Even if a prior behavior was found not to be a manifestation, a new behavior must be independently reviewed if it leads to a new removal.**

**Under 20 U.S.C. § 1415(k)(1)(E), when a school district proposes a disciplinary change of placement for a student with a disability due to a violation of the code of student conduct, a manifestation determination review (MDR) must be conducted within 10 school days. This review assesses whether the student's conduct was:**

- 1. Caused by, or had a direct and substantial relationship to, the child's disability**
- 2. The direct result of the district's failure to implement the IEP**

**If either condition is met, the conduct is considered a manifestation of the student's disability, and the district must take specific actions to address the behavior. I believe this was done on those dates and there was a plan in progress [See Manifestation section of V. Applicable Law].**

**The hearing officer's conclusion that the student's behavior was a manifestation of his disability, following the March 17, 2025 MDR, is consistent with IDEA's provisions. This determination necessitates that the school district:**

- Conduct a functional behavioral assessment (FBA) to identify the underlying causes of the behavior.**
- Develop or review a behavioral intervention plan (BIP) to address the identified behaviors.**
- Implement the IEP as written, ensuring that all services and supports are provided as specified.**

**If the district failed to implement the IEP adequately, as suggested by the hearing officer, this constitutes a denial of Free Appropriate Public Education (FAPE) under IDEA. The district would be required to take corrective actions, which may include compensatory education or other remedies to address the failure.**

**I don't think the removal was because of a disciplinary action. I think the removal was over immediate safety concerns for the student and the school community while the District determines how to adjust the IEP. My concern is over the appropriateness of the IAES. I do agree with the District's decision to remove the student as there is substantial likelihood of injury if the Student returns to school at this time. I do not see a violation of Item #1.**

2. Did the District violate the IDEA when it removed the student into an interim alternative placement without the Parents' agreement with the Districts decision to change the Student's placement as part of the modification of the behavioral intervention plan?

**No, I do not think the District violated the IDEA when it removed the student to the tutorial setting or the contested interim alternative placement as part of a modification to the behavioral intervention plan. While the agreement is disputed, the prior Written Notice stands and shows that procedures were followed during a difficult time.**

**In such cases, the removal to an IAES can be for up to 45 school days, irrespective of whether the behavior is determined to be a manifestation of the student's disability. However, the school district must provide prior written notice to the parents on the date the decision is made and inform them of their procedural safeguards. If the student's behavior is not among those listed above, the school district generally cannot change the student's placement without parental consent. In situations where the school and parents disagree on the appropriateness of the current placement, the district must maintain the student's current placement under the "stay-put" provision until the dispute is resolved through due process procedures. Regarding the modification of a behavioral intervention plan (BIP), IDEA requires that any changes to the BIP be made by the IEP team, which includes the parents. If the parents disagree with the proposed changes, they have the right to dispute the decision through IDEA's procedural safeguards, including mediation or a due process hearing. [See Manifestation section of V. Applicable Law]. I do not see a violation of Item #2.**

3. Was the interim alternative placement provided by the District on or about April 14, 2025, adequate to provide FAPE in the LRE to the Student?

No, I do not think the District provided an adequate alternative placement, particularly because the individualized education program was not being met and the student did not have access to the necessary resources, specially designed instruction, including peers and social interactions, to make progress towards his IEP goals. The IEP was not meaningfully adjusted or provisions made for its implementation. The scenario described indicates the learning environment was the opposite of what might meet his educational needs. [See Adequacy of Tutorial Location section of V. Applicable Law]. Failure to provide trained, qualified staff—even if not expressly required in the IEP—can deny FAPE if it prevents implementation of IEP services. Courts balance against requiring the "perfect" teacher (as in *BV v. Hawaii*), but widespread or systemic failures to implement IEP goals *can* constitute educational deprivation. Certification or licensure is one element, but staff working with the student should be trained in disability-specific strategies if their lack of training results in failure to implement the IEP or prevents progress, and on the ability to implement the IEP - courts look at whether the *student's educational needs were actually met*. There is evidence that some staff did not understand the nature of [student]'s disability nor were they implementing the behavior plan and accommodations/modifications consistently. There were early indicators of behaviors indicating that what was in place for programming was not working, given the suspensions and requests to keep the student home. [See Training of Staff section of V. Applicable Law]. I do see a violation of Item #3.

4. Was the Student denied FAPE in the LRE from April 10 to the present date as a result of the improper change of placement and/or an inappropriate interim alternative educational placement?

Yes, I believe the student was denied FAPE in the LRE for the months he was in the tutorial setting and not being able to work on his individualized educational program designed for his educational and functional needs. The IDEA mandates that schools provide a FAPE by adhering to the IEP. Courts have consistently held that a material failure to implement the IEP constitutes a denial of FAPE. For instance, in addition to the aforementioned references in this Decision document, the Ninth Circuit in *Van Duyn v. Baker School District 5J* emphasized that a material failure occurs when there is more than a minor discrepancy between the services provided and those required by the IEP. Similarly, the Fourth Circuit in *Sumter County School District v. Heffernan* affirmed that such failures violate the IDEA. IDEA stipulates that within 10 school days of a decision to change the placement of a child with a disability due to a violation of the code of student conduct, a manifestation determination review must be conducted. This review assesses whether the conduct was caused by or had a direct and substantial relationship to the child's disability, or if it was the direct result of the district's failure to implement the IEP. In *Vilonia School District v. M.S.*, the court highlighted the necessity of this review and the implications of its findings. In *M.S. ex rel. Simchick v. Fairfax County School Board*, the Fourth Circuit acknowledged that while a school district's failure to perfectly execute an IEP does not necessarily amount to a denial of FAPE, a material failure to implement a significant portion of the IEP can. This aligns with the Ninth Circuit's stance in *Van Duyn* and the Eighth Circuit's in *Neosho R-V School District v. Clark*, which collectively assert that such failures violate the IDEA.

The Supreme Court's decision in *Endrew F. v. Douglas County School District RE-1* clarified that to meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to

enable a child to make progress appropriate in light of the child's circumstances. This underscores the importance of proper IEP implementation to ensure meaningful educational benefit. A school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. This standard also implicitly shapes what counts as an appropriate educational placement, because the placement must be capable of implementing that IEP and supporting meaningful progress. A placement is appropriate only if it allows the child to pursue challenging, measurable goals in academics and/or functional skills. Schools can't rely on a one-size-fits-all program or the most convenient or cost-effective option. The decision must consider the student's specific disabilities, strengths, weaknesses, and progress history. Simply placing a child in a standard program or space without tailoring it to their IEP is not sufficient. [See Adequacy of Tutorial Location section of V. Applicable Law]. I do see a violation of Item #4.

District:

1. Whether there is substantial likelihood of injury if the Student returns to school prior to the District receiving the results of a safety assessment and programmatic recommendations by Dr. [Ph.D. Psychologist].

Yes, I believe there is a potential for substantial likelihood of injury to others or to the student and that a safety assessment is a viable option that can lead to programmatic decisions. I do not think the student's current option [ ] is appropriate, either in the school with regular ed/resource room or in the tutorial environment. I believe that with the right supports and services and an appropriate IEP in a more restrictive setting, the Student can develop the skills to reintegrate at a later date. There should always be a reintegration plan to return the student to his home school community. Due to the number and nature of needs, I believe his program needs to be in a more restrictive setting where he has access to peers and staff with which to work on his goals that reflect social-emotional needs. I understand there was never a needs for restraint, seclusion, law enforcement, and so forth; however, I believe the threat-based behavior warranted a 'pause' to remove the Student from the triggering stimuli with the intentions of finding timely, accurate safety assessment data to ensure the program is correct and, subsequently, the placement is selected to reflect programmatic needs. The hearing officer's decision to remove the student to a more restrictive setting, pending a safety assessment, is supported by the legal precedents mentioned above. The officer's findings that there is a substantial likelihood of injury and that a safety assessment is a viable option align with the IDEA's provisions for such removals. Additionally, the emphasis on developing a reintegration plan reflects the IDEA's requirement for planning for the student's return to the home school community. The hearing officer's decision is consistent with IDEA's provisions and supported by relevant case law, ensuring that the student's educational needs and safety are appropriately addressed. [See Adequacy of Tutorial Location section of V. Applicable Law]. I do not see a violation of Item #1 (District allegation).

## VII. Conclusions of Law

- The District did not violate the IDEA by changing the student's placement as a disciplinary action without either

- a. following the decision of the manifestation determination team meeting on March 17, 2025, that the student's disruptive behavior was directly and substantially related to his disability; or
- b. conducting a manifestation determination to review the disruptive behavior that occurred on April 9, 2025, and determine whether it was directly and substantially related to the student's disability, or was the result of the District's failure to implement the IEP.
- The District did not violate the IDEA when it removed the student into an interim alternative placement without the Parents' agreement with the District's decision to change the Student's placement as part of the modification of the behavioral intervention plan. Procedural violations did not result in a denial of educational benefit or manifestation determination.
- The interim alternative placement provided by the District on or about April 14, 2025, was not adequate to provide FAPE in the LRE to the Student.
- The Student was denied FAPE in the LRE from April 10 to the present date as a result of the improper change of placement and/or an inappropriate interim alternative educational placement.
- There is substantial likelihood of injury if the student returns to school prior to the District receiving the results of a safety assessment and programmatic recommendations by Dr. [Ph.D. Psychologist].

### VIII. Order / Relief

- **Compensatory education** – The student will receive additional educational services to make up for lost instructional time due to improper IEP implementation and denial of FAPE during the two months in a tutorial setting. The district should calculate the number of minutes missed over the timeframe the student was in tutorial and provide the student with specially designed instruction prior to the fifth-grade school year, or as agreed upon by the parent.
- **Revision and convening of IEP meeting** - A revised Individualized Education Program is mandated to address the student's specific needs and ensure compliance with IDEA by July 15, 2025.
- **District training and procedural correction** for determining alternative setting placements and all staff understanding the disabilities in its school community and implementing a behavior plan prior to December 1, 2025.
- **Appropriate setting** – a meeting as soon as possible concerning an alternative placement that is more appropriate as the IEP Team awaits results of the safety assessment and programmatic recommendations by July 15, 2025.
- **Completed safety assessment and program recommendations** - complete the results of a safety assessment and develop programmatic recommendations based on the findings of Dr. [Ph.D. Psychologist] as soon as possible, preferably prior to meeting on or before July 15, 2025.



## **IX. Appeal Rights Notice**

This decision is a final administrative determination. Either party may appeal this decision by filing a civil action in state or federal court within 90 days of the date of this decision, pursuant to 34 C.F.R. § 300.516.

Respectfully submitted,

*Jacqueline Kelleher*

Dr. Jacqueline P. Kelleher, MA, Ph.D.

Impartial Hearing Officer

06/20/2025