

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

Closed Hearing

ODR No. 30892-2324

Child's Name:

G.B.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

04/10/2025

Introduction

This special education due process hearing concerns the educational rights of G.B. ("student"), a student who the North Allegheny School District ("District").¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with a health impairment (attention & focus/task-persistence/defiance) and an emotional disturbance (anger/frustration-tolerance/relationship disruption/aggression).³

As a result of a behavior incident on November 14, 2024, the District sought to implement discipline which would result in an exclusion from school in excess of ten consecutive school days. The manifestation determination ("MD") process yielded a conclusion that the behaviors were not a manifestation of the student's disability, which would allow the District to implement discipline as it might for a regular education student.

The student's parent entered into a regular education agreement involving an arrangement in lieu of expulsion from the District. The student attended an out-of-District placement through mid-February 2025. At that time, the District sought to extend the student's enrollment at the out-of-District placement. Parent disagreed with the student's continued attendance

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ Parent Exhibit ("P")-2.

at the out-of-District placement and filed the complaint which led to these proceedings.⁴ The parent seeks certain determinations related to the MD process, the MD result, and the student's placement in the out-of-District placement, in addition to having the student returned to the District.⁵

The District stands by the determination of the MD process and seeks to maintain the out-of-District placement.

For reasons set forth below, I find in favor of the parent.

Issue

Was the behavior incident on November 14, 2024
a manifestation of the student's disability?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

⁴ Because the complaint involves a disciplinary change-in-placement, these proceedings unfolded on an expedited timeline.

⁵ Parent also seeks findings related to denial of a free appropriate education ("FAPE") and a claim for compensatory education. These claims, more broad-based and non-expedited in nature, are unfolding at a separate ODR file number.

[redacted] Grade / 2017-2018 / Prior School District

1. In March 2018, the spring of the student's [redacted] grade year, the student was attending a neighboring school district. The student was first identified by this neighboring school district as eligible for special education services, as a student with a health impairment, based on a diagnosis of attention deficit hyperactivity disorder ("ADHD"). (P-36 at pages 1, 5).
2. The initial evaluation of the student in March 2018 was initiated by the student's parents because "(the student) can't sit still, has difficulty focusing, has failing grades, and constant behavioral issues." (P-36 at page 1).

[redacted] Grade / 2018-2019

3. The student enrolled in the District for [redacted] grade in the 2018-2019 school year. (P-36 at page 5).
4. In January 2019, the District issued its own re-evaluation report ("RR"). (P-36).⁶

⁶ The January 2019 RR, including content from the initial evaluation completed by the neighboring school district, is a comprehensive psycho-educational evaluation, including cognitive testing, achievement testing, specialized reading assessments, specialized mathematics assessments, curriculum-based assessment, a functional behavior assessment, a speech and language evaluation, and an occupational therapy evaluation. For fact-finding purposes, given the issue for this hearing—whether or not the behavioral incident in November 2024 was a manifestation of the student's disability—the content of this RR, and subsequent RRs, will focus only on social/emotional/behavioral input, assessment, and conclusions in those reports.

5. The District undertook its re-evaluation because “upon enrolling at (the District), (the student) continued to display behavioral difficulties across school settings...” in addition to academic concerns. (P-36 at page 1).
6. The January 2019 RR contained content from the initial evaluation report conducted by the neighboring school district in March 2018. The evaluator from the neighboring school district, in the conclusion that the student did not have specific learning disabilities, observed “(the student’s) level of hyperactivity, impulsivity, and behavior interfere with...progress across the curriculum.” (P-36 at page 8).
7. The student received intervention services in reading four days per week. In the January 2019 RR, the reading intervention teacher indicated:

“On a daily basis, throughout the course of a lesson, (the student) will choose not to respond to/participate in the task of the instruction. At least one day a week, often more, (the student) puts (rests) head on the table or in...hands during instruction. Several times a month (the student) becomes distracted with items.... For example, on several occasions (the student) has pulled strings from...clothing,...then wraps it around (the) fingers and hands, maybe a pencil if (the student) has one. If these behaviors become distracting to (the student) or others, (the student) is asked to stop. Sometimes (the student) complies when...asked to stop the distracting behaviors, and sometimes (the student) is disrespectful and (the student) does not stop.”

8. The teacher would respond by separating the student from peers. The student normally re-engaged in instruction and re-joined the group. (P-36 at page 8).
9. The teacher's input also observed that "(the student) often behaves in a manner that is distracting to both (self) and...peers. (The student's) behaviors can also be disrespectful to both the adults in the room and...peers. (The student) often does not respond favorably when asked to stop such behaviors." (P-36 at page 8).
10. The January 2019 RR noted that, as of the time of the re-evaluation, 29 instances of problematic behavior had been noted, with ten formal referrals to the school office. (P-36 at page 10).
11. The January 2019 RR contained a positive behavior support plan ("PBSP"), indicating that the student's behaviors of concern were:
 - Inappropriate language (swearing, homophobic slanders, name calling, sexual content, threats to students, disrespectful to adults)
 - Physical aggression (throwing objects, hitting with book bag, physical intimidation)
 - Refusal to comply with adult directives
 - Inattention to details (written expression)
 - Inattentive/off-task behaviors during instruction
 - (P-36 at page 10).
12. The January 2019 RR contained input from the student's teachers. (P-36 at pages 11-14).
13. The student's homeroom teacher, who also taught the student English/language arts, social studies, and science, noted academic

struggles and observed: "(The student) picks a new Study Buddy daily which helps (the student) develop better social skills with...peers. This also helps (classmates) feel more comfortable with (the student). Peer relationships are important to (the student). (The student) wants to fit in. (The student) is protective of...friends. (The student) acts out if (the student) feels overwhelmed, different, or trapped." (P-36 at page 12).

14. The student's mathematics teacher detailed classroom and instructional accommodations and observed: "(The student) has difficulty staying on task. She shares that (the student) struggles with the transition from recess to math and that (the student) often comes into the math classroom yelling at other students and perseverating over conflicts at recess. In addition, she reports that (the student) often makes noises and says inappropriate things to peers during class. This impedes (the student's) learning and the learning of others." (P-36 at page 13).

15. The student's physical education teacher noted that the student seemed to enjoy, and participate in, the class and observed: "I do have to keep my eye on (the student) to make sure (the student) doesn't go down the wrong path. If I look away (the student) tends to be a bit sneaky." (P-36 at page 13).

16. The student's art teacher noted that the student is intent on work in the class, observing that: when "listening to directions, or

transitioning from one part of the room to another...I see some off task behavior like yelling out or making noises just to disrupt the flow of the room. (The student) sometimes argues with (classmates at the student's) table team, but overall they seem to ignore (the student's) behavior and it usually doesn't escalate." (P-36 at page 13).

17. The student's library teacher indicated that the student showed improved performance and participation, observing: "Along with (the) improvements, (the student) continues to need reminders about appropriate behaviors and positive reinforcements to make better choices with...peers and classroom management." (P-36 at page 13).

18. The student's music teacher noted certain elements of achievement in music but observed the following: "(The student's) behavior is an issue of concern for me. (The student) does not get along well with...classmates; (the student) frequently bosses them around, inserts (self) into situations and conversations that do not concern (the student), frequently makes rude comments to and about other students, and I am concerned (the student's) behavior if left unchecked, will continue to isolate (the student) from...peers. (The student) feels the need to talk back and have the last word every time (the student) is given a simple directive, and generally speaks with very little respect toward myself or other students." (P-36 at page 13).

19. At the time of the January 2019 RR, the student met weekly with a school counselor for small group counseling. The counselor reported that the student engaged in the counseling dynamic with her and with the group. The counselor shared that the student was aware of coping and self-regulation skills, and sometimes employed those skills; at times, though, the student knowingly chose not to employ the skills. During these latter instances, the student purposefully chose "to continue on in a heightened state"; the student recognized the 'calm zone' but preferred "to be energetic and running/moving". (P-36 at page 14).
20. A series of observers conducted observations of the student in various academic settings. The student demonstrated elevated levels of off-task behavior during most of the observations, although the student consistently responded to teacher redirection. (P-36 at pages 14-16).
21. During two observations, by a behavior specialist, the student exhibited more elevated levels of off-task behavior. Additionally, the student exhibited more intrusive behaviors, including antagonism toward a peer, keeping hands to self, ignoring teacher directives, and disruptive behaviors. (P-36 at pages 16-18).
22. The January 2019 RR included an occupational therapy ("OT") evaluation. One aspect of the OT evaluation included assessment of

task-behavior/task-completion, including attention to/concentration on tasks, independence on tasks, asking for assistance, modifying task-approach, and responding to feedback. Based on the OT assessment, the OT evaluator opined that “These are skills in which present significant challenges for (the student).” (P-36 at page 20).

23. The January 2019 RR continued to identify the student with a health impairment. Among certain academic needs and the need to reduce reliance on prompting, the RR included the need to “to display appropriate behavior in all academic settings by refraining from using inappropriate language and keeping hands and objects to (self).” (P-36 at page 22).

24. The January 2019 RR also included recommendations for the content of a PBSP. (P-36 at page 24).

[redacted] Grade / 2019-2020

25. In December 2019, in the midst of the student’s [redacted] grade year, the District issued a revised RR. (P-35).

26. The December 2019 RR was issued as a result of concerns by the student’s parents and mathematics teacher regarding the student’s behavior and failing grades in mathematics. The RR noted that at that point in the school year, the student “continued to display behavioral difficulties across school settings”. (P-35 at page 2).

27. The December 2019 RR contained content from the January 2019 RR, as well as updated information from the [redacted] grade year. (P-35).
28. The student continued to receive intervention services in reading four days per week. In the December 2019 RR, the [redacted] grade reading intervention teacher indicated that the student was disruptive and non-compliant during some sessions, but the behaviors were not outsized. The teacher employed an ignoring strategy, which proved to be mostly successful. (P-35 at pages 4-5).
29. The December 2019 RR noted that, as of the time of the re-evaluation, 32 instances of problematic behavior (mostly work refusal) had been noted, with fifteen formal referrals to the school office. (P-35 at page 5).
30. The December 2019 RR contained the PBSP, including the same behaviors of concern, from the January 2019 RR. (P-35 at pages 6-7).
31. The December 2019 RR input from teachers. (P-35 at pages 7-8).
32. The student's math/science teacher indicated that "even with...one on one attention, (the student) struggles to meet the behavioral and academic expectations of [redacted]grade.... None of the strategies we have tried thus far have worked. (The student) already has a behavior chart in place and a team of people attempting

to help..., however the supports we are using are not working in the general education classroom....We have not found a behavioral strategy that (the student) consistently responds to." (P-35 at page 7).

33. The student's social studies teacher indicated that the student was academically succeeding in her class. She observed: "I feel that anything that (the student) has significant difficulties with could cause (the student) to act out as a defense mechanism to defray attention away from (the student) not knowing how to do it." (P-35 at page 8).
34. The student's special education teacher, delivering instruction in English and language arts, indicated that the student only occasionally engaged in defiance and work-refusal. (P-35 at page 8).
35. In [redacted] grade, the student continued to receive group counseling with the same school counselor. The counselor provided input in the December 2019 RR: "Even though (the student) can identify many coping strategies and seems genuine in...efforts, (the student) has a great deal of difficulty using these strategies in real life situations. Over the past several weeks, (the student's) behaviors have increased in the classroom. These behaviors include refusal to complete work, loudly hitting objects on (the) desk and breaking pens and pencils. On approximately ten occasions, I have been asked to

assist with de-escalation, as (the student) refuses to use...strategies or comply with teacher directives.” (P-35 at page 8).

36. The December 2019 RR contained the school counselor’s observation of the student in mathematics class. The student engaged in consistent, even near-constant, classroom disruption, including multiple instances of defiance of the teacher and a classroom assistant. (P-35 at pages 8-9).
37. The December 2019 RR continued to identify the student with a health impairment based on the student’s ADHD and identified the same behavioral needs. (P-35 at page 12).
38. The December 2019 RR noted that “(the student)...displays significant difficulty with behavior regulation and impulse control, across all settings, but particularly in unstructured settings like recess, lunch, bus line and on the bus.” (P-35 at page 13).
39. The student continued with special education at the District through the remainder of [redacted] grade, [redacted]grade, and into [redacted]grade.

[redacted] Grade / 2021-2022

40. In December 2021, in the midst of the student’s [redacted] grade year, the student’s individualized education program (“IEP”) team met for the annual revision of the student’s IEP. (P-1).

41. The December 2021 IEP indicated that the student continued to be identified as a student with a health impairment (ADHD) and received learning support in reading/language arts and mathematics. The student was supported in an environment with a classroom aide. (P-1 at page 9).
42. Weekly counseling session continued. The IEP noted that "maintaining expected, school appropriate behaviors continues to be an area of concern in [redacted] grade, particularly in the unstructured settings such as lunch. (The student) continues to work on appropriate interactions with his peers and adults. (The student) often worries about what other people are doing instead of worrying about (self)." (P-1 at page 9).
43. The December 2021 IEP contained input from teachers who continued to note the student's consistent struggles with off-task behavior and problematic interactions with peers, although defiance of adults was not as prevalent as in the prior RRs. (P-1 at pages 9-11).
44. The December 2021 IEP included input from the school counselor who worked with the student weekly. The counselor reported: "(The student) needs to continue to work on thinking before (reacting) and taking ownership...in situations with teachers or peers. (The student) does a great job of seeking me out for support when (needed)." (P-1 at pages 10-11).

45. The present levels of functional performance in the December 2021 IEP included a report of progress on the student's behavior goal. In general, the IEP noted that "(the student's) conduct in the general education classroom can often be described as passive and apathetic. Additionally, (the student) displays attention seeking behaviors in all settings across (the) school day and on occasion, presents as frustrated and defiant when tasks are difficult. (The student) demonstrates impulsive decision making. Unstructured times throughout (the) day can be a time when (the student) has difficulty maintaining behavior, although (the student) has shown much improvement from the start of the school year." The student had "minimal" office referrals. (P-1 at page 14).
46. The present levels of December 2021 IEP indicated that the student had made progress on the goal in the PBSP: "When presented with a non-preferred task, (the student) will demonstrate appropriate interpersonal skills with adults and peers by refraining from the use of combative or hurtful language (arguing with peers/staff, name calling, profane words, antagonizing/instigating peers) 100% of the time on an average of 4 out of 5 days over three consecutive weeks." (P-1 at page 14).
47. As a result of progress on this goal, the behavior goal in the December 2021 IEP was revised. (P-1 at page 14).

48. The December 2021 IEP noted ongoing academic needs and the need to address compliance with directives, reduce argumentativeness and off-task behaviors. (P-1 at page 14).
49. The PBSP indicated the following behaviors of concern:
- Refusal to comply with adult directives
 - Inattention to detail (written assignments)
 - Work avoidance (assignments [perceived] to be overwhelming)
 - Inattentive/off task behaviors during instruction
 - Physical Aggression (throwing objects, hitting, physical intimidation)
 - Inappropriate Language (Swearing, homophobic slanders, name calling, sexual content, threats to students, disrespectful comments to adults)
- (P-1 at page 18).
50. The PBSP noted that instances of physical aggression and inappropriate language had not been noted in the [redacted] grade year but were included because of past exhibition of those behaviors. (P-1 at page 18).
51. District discipline records, however, indicate that in September 2021, the student was involved in a physical altercation where the student and a classmate “were pushing each other during recess,

however, (the student) took extra liberty and blindsided student and pushed into table causing minor injury”; approximately a week later, the student was antagonizing and using gender-relates slurs with a classmate. (P-30 at page 1).

52. The behavior goal in the December IEP 2021 was revised as follows: “When presented with a non-preferred task in ELA and Math, (the student) will demonstrate appropriate interpersonal skills with adults and peers by refraining from the use of combative/argumentative behavior and/or disruptive behavior (such as calling out, distracting peers, making noises) for an average of 90% of data collected opportunities over a nine week period.” (P-1 at page 33).
53. The December 2021 IEP included the details of accommodations and interventions to be utilized as part of the student’s behavior plan. (P-1 at pages 36-37).
54. The December 2021 IEP indicated that the student would attend homeroom and field trips, and would receive instruction in specials, science, social studies, and world language, in regular education settings with the support of a classroom aide. (P-1 at page 39).
55. The student was placed in special education environments for 38% of the school day, with the remainder of the school day spent in regular education environments. (P-1 at pages 42-44).

56. In April 2022, the student was involved in a “minor altercation” in physical education where the student and a classmate hit each other with rackets. (P-30 at page 1).
57. In May 2022, at the end of the student’s [redacted] grade year, the District re-evaluated the student. From the content of the May 2022 RR, it is unclear why the re-evaluation was undertaken; the record is silent otherwise as to the basis for the re-evaluation. (P-37).⁷
58. An classroom observation of the student by a District behavior support specialist included consistent off-task and task-avoidance behaviors. (P-37 at pages 5-6).
59. The teacher input in the May 2022 RR is replicated from the teacher input in the December 2021 IEP. (P-1 at pages 9-11; P-37 at pages 6-7).
60. The May 2022 RR continued to identify the student with a health impairment and continued recommendations that had been in place. (P-37).

⁷ It may be that the May 2022 RR is the student’s triennial re-evaluation, with the most recent District re-evaluation in January 2019. The December 2019 RR was undertaken with the specific intent of investigating the student’s academic and behavioral struggles in [redacted]grade. (P-35, P-36).

[redacted] Grade / 2022-2023

61. In September 2022, the student was involved in two disciplinary incidents, one involving [redacted] of a classmate and the other involving antagonistic classroom comments. (P-30 at page 2).
62. In October 2022, the student tripped another student, causing minor injury. (P-30 at page 2).
63. In November 2022, the District issued a RR. (P-2).
64. For the first time in the student's evaluation history at the District, the November 2022 RR included the results of behavioral assessments in the March 2018 initial evaluation issued by the neighboring school district prior to the student's enrollment at the District. (P-2 at page 2).
65. When the student enrolled in the District in [redacted] grade, behavior assessments from the initial evaluation indicated that parents and teachers rated the student as clinically significant in overall emotionality and behavior in school, including clinically significant ratings in attention problems, hyperactivity, aggression, conduct problems, adaptability, anger control, bullying, executive functioning, and negative emotionality. Critical items endorsed by the raters included: threatens to hurt others, loses control when angry, hits other children, bullies others, picks on others who are different, hurts others on purpose, and gets back at others. (P-2 at page 2).

66. The November 2022 RR included goal-progress from the first nine weeks of [redacted] grade. The student's behavior goal, to demonstrate appropriate interpersonal skills with adults and peers by refraining from the use of combative/argumentative behavior and/or disruptive behavior (such as calling out, distracting peers, making noises), was written for 90% goal achievement; in the first nine weeks, the student exhibited appropriate behaviors 48% of the time. (P-2 at page 6).
67. The November 2022 RR contained two observations by a District behavior support specialist. The observer's general, introductory description of the student's behavior indicated: "During these observations, (the student) engaged in a set of behaviors that were incompatible with learning. These behaviors included inattentiveness, calling out, disrespectful comments toward staff and peers, dramatized responses [big emotions for little situations], taking a break outside of the classroom during instruction, and other behaviors meriting adult attention for support." (P-2 at page 6; parenthetical material edited for stylistic consistency, bracketed material in the original).
68. The observer concluded: "Collection of information from staff as well as observational data indicate that (the student) engages in a set of behaviors that impedes...availability for learning across settings, content areas, instructors, and peers." (P-2 at page 7).

69. The November 2022 RR included the disciplinary incidents over [redacted] grade and [redacted] grade (as of the date of the RR) noted in the findings of fact above. (P-2 at page 7).
70. The November 2022 RR included an observation by a District school psychologist. The observation did not note any problematic behaviors. This was attributed to the student's interest in the subject (mathematics). (P-2 at page 7).
71. The November 2022 RR included the input of the student's teachers. (P-2 at pages 7-9).
72. The student's social studies teacher indicated that "my primary concern is that (the student) will frequently engage in comments unrelated to class work. These comments are often argumentative and (the student) gets stuck in a sort of loop where (the student) cannot regain a focus." (P-2 at page 7).
73. The student's science teacher observed: "(The student) loves to gain the attention of the class. (The student) will yell out across the room, is constantly talking loudly (even when it is to the paraprofessional), leave (the assigned) seat to talk to other students, and perform other attention seeking behaviors (giving silly answers, singing, making noises, etc.)." This mirrors the observation of the student's English and language arts teacher: "(The student) is vocal throughout class discussions and contributes often; however,

many...comments are meant to entertain...peers or draw attention....”

(P-2 at page 8).

74. Echoing the theme of the school psychologist’s observation, the student’s special education instructor in mathematics indicated that “it is obvious that math is a strength for (the student) because there are very few concerning behaviors present in class.” (P-2 at page 8).
75. The student’s special education teacher in English and language arts indicated that the student “can be passive about doing schoolwork (putting head down, rolling eyes, etc.)” and “(the student) often tries to deflect responsibility for...undone work, etc. onto others (teacher, para, other students, etc.)”. (P-2 at pages 8-9).
76. The November 2022 RR contained updated social/emotional/behavioral assessments. (P-2 at pages 15-24).⁸
77. Behavioral rating scales were completed by the student’s mother, a regular education teacher, and a special education teacher. (P-2 at pages 15-17).
78. The regular education teacher had worked with the student for approximately one month; additionally, the evaluator noted that the regular education teacher’s ratings “should be interpreted with caution due to an elevation on the Consistency Index indicating inconsistent

⁸ As noted above with all of the re-evaluations in the record, the November 2022 RR contains comprehensive assessments in academic areas. This fact-finding focuses only on the social/emotional/behavioral aspects of the RR.

responding to similar items.” For this reason, the regular education teacher’s ratings are reported in the footnote below, and the findings of fact rely more heavily on the special education teacher’s ratings, a teacher who worked with the student for a longer time and whose ratings were not noted as having an elevated Consistency Index. (P-2 at page 15).⁹

79. The parent’s rated the student in the at-risk range in the following sub-scales: hyperactivity, aggression, conduct problems, withdrawal, adaptability, social skills, and functional communication. At-risk ratings were registered in the following content scales: bullying, developmental social disorders, executive functioning, negative emotionality, and resiliency. On more global index and composite measures, the parent reported at-risk ratings on the externalizing composite, behavioral symptoms index, and the adaptive scales composite. The parent did not rate any sub-scale, content scale, composite, or index at the clinically-significant level. (P-2 at pages 15-16).

⁹ The regular education teacher reported at-risk ratings in the following sub-scales: hyperactivity, conduct problems, withdrawal, adaptability, social skills, leadership, and study skills. At-risk ratings were registered in the following content scales: developmental social disorders, executive functioning, negative emotionality, and resiliency. On more global index and composite measures, the teacher reported at-risk ratings on the behavioral symptoms index and the adaptive scales composite. The regular education teacher reported clinically-significant ratings in the attention problems and learning problems sub-scales, yielding a clinically-significant rating in the school problems composite. (All results at P-2, page 15).

80. Of the three raters, the student's special education teacher rated the student's behavior as consistently more problematic. (P-2 at pages 15-16).
81. The special education teacher rated the student in the at-risk range in the following sub-scales: conduct problems, attention problems, learning problems, social skills, leadership, and study skills. At-risk ratings were registered in the resiliency content scale. On more global index and composite measures, the special education teacher reported at-risk ratings on the school problems composite and the adaptive scales composite. (P-2 at pages 15-16).
82. The special education teacher rated the student at the clinically-significant range in the hyperactivity and aggression sub-scales. Clinically-significant ratings were registered in most content scales: anger control, bullying, emotional self-control, executive functioning, and negative emotionality. On more global index and composite measures, the special education teacher reported clinically-significant ratings on the externalizing composite and the behavioral symptoms index. (P-2 at pages 15-16).
83. The evaluator's characterization of the scales across the three raters indicated behavioral assessment that confirmed the District's experience with the student: difficulties with aggressive and/or argumentative behavior, inattentive behaviors (such as being

disorganized, easily distracted, difficulty concentrating, missing assignments, difficulty listening to details/ directions), considerable academic difficulty, changing moods quickly, being generally irritable, distractible, acting impulsively, having trouble concentrating/focusing, difficulty regulating his emotions (particularly anger), and some threatening behavior or physical aggression. (P-2 at pages 16-17).

84. The November 2022 RR included executive functioning assessments from the same three raters. The parent and regular education teacher reported elevated levels on the overall executive functioning index. The special education teacher reported an extremely-elevated level on the index. (P-2 at pages 17-18).

85. The November 2022 RR included emotional disturbance qualification scales from the same three raters. The parent's scales across all measures were almost all rated as at-risk, with an indication of social maladjustment being present. The regular education teacher's scales exactly mirrored the parent's scales, although the teacher indicated that social maladjustment was not present. The special education teacher's scales nearly mirrored those of the parent and regular education teacher except that the special education teacher rated the student as clinically-significant in the unhappiness/depression scale; the special education teacher, along

with the parent, rated social maladjustment being present. (P-2 at pages 18-19).

86. The November 2022 RR included the student's self-report on behavioral rating scales. (P-2 at pages 19-20).
87. The student self-rated at-risk levels in the sensation-seeking clinical scale and anger control content scale. The student self-rated clinically-significant levels in the attitude-to-school and attitude-to-teachers clinical scales, and the school problems composite. (P-2 at pages 19-20).
88. The evaluator characterized the student's self-report ratings as indicating the student is extremely unhappy and apathetic towards attending school and completing school work, as well as a general dislike of teachers; the student may demonstrate a tendency to take risks and to seek excitement; and the student feels a tendency to become irritated quickly and impulsively, and may have difficulty with regulating affect. (P-2 at page 20).
89. The November 2022 RR also included the student's self-report on the emotional disturbance qualification scales. The student's self-rated scales across all measures were in the acceptable range, with an at-risk rating for the unsatisfactory interpersonal relationships scale. (P-2 at pages 18-19).

90. The November 2022 RR included a second emotional disturbance assessment, with three raters (parent and two regular education teachers). The teachers who completed these scales were different from the teachers who completed the behavioral ratings and the other emotional disturbance scales. (P-2 at pages 20-22).
91. Parent's ratings were within the average range, or the moderate-clinical range. (P-2 at pages 20-22).
92. The teacher's ratings were much more elevated than the parents. (P-2 at pages 20-22).
93. Both teachers rated the student at the very-high-clinical range for the inappropriate behaviors/feelings scale and the instrument's total score. (P-2 at pages 20-22).
94. On the relationships scale, one teacher rated the student in the high-clinical range; the other teacher rated the student in the very-high-clinical range. (P-2 at pages 20-22).
95. On the pervasive mood/depression scale, one teacher rated the student in the average range; the other teacher rated the student in the very-high-clinical range. (P-2 at pages 20-22).
96. On the physical symptoms/fears scale, one teacher rated the student in the moderate-clinical range; the other teacher rated the student in the very-high-clinical range. (P-2 at pages 20-22).

97. The November 2022 RR included a childhood depression inventory administered to the student. The student's scores were consistently in the average range. Given the disparity between the scores and the ratings of the parent and teachers, the evaluator opined that the student may lack self-awareness regarding current behaviors and social-emotional regulation issues or that the student responded in a way to cast a positive light through the assessment. The evaluator did not, however, indicate any concerns with potential validity of the student's scores. (P-2 at pages 22-23).
98. The November 2022 RR contained a semi-structured interview of the student by the evaluator. Regarding aggression, the student recalled earlier school years including discipline for "arguing" and "fighting other kids" and a specific instance of aggression with another student in the restroom. The student shared that, in the student's view, aggression was less prevalent since [redacted] grade, although there was still a tendency to "take things too far." The evaluator noted that the student was quick to share that the student "doesn't start anything" and most examples regarding acts of aggression involved external blame (e.g., saying the other student(s) started it). (P-2 at pages 23-24).
99. Regarding learning behaviors, the student reported the ability to pay attention in class but that the student likes to "mess around."

Examples provided by the student included talking to peers, throwing things back and forth, and flicking pencils. The student appeared to the evaluator to be honest about classroom behaviors, but the evaluator opined that the student lacked insight on how these behaviors might influence student-teacher relationships; the student placed blame on the teachers (naming a few specifically) who the student felt were targeting the student. (P-2 at pages 23-24).

100. Regarding peer relations, the student voiced the ability to socialize with peers. The student considered peer relations to be “typical” and noted a circle of has 3-4 close friends. The evaluator felt the student’s responses indicated conflict amongst the larger peer group. The student acknowledged “messaging around” with others and often getting into fights. (P-2 at pages 23-24).

101. The November 2022 RR identified the student as continuing to have a health impairment but added a secondary identification as a student with emotional disturbance. (P-2 at page 24).

102. Even with the significant amount of new input and assessment data regarding the student’s social/emotional/behavioral functioning in the educational environment in the November 2022 RR, identification of the student’s specific needs regarding behavior in the November 2022 RR were identical to the needs identified in all previous District RRs (January 2019, December 2019, and May 2022). (P-36 at page

22, P-35 at page 12, P-37 at page 9, P-2 at page 24; these exhibits are cited in chronological order, not according to their sequential numbering as exhibits).

103. In mid-December 2022, the student was involved in a disciplinary incident for “forcefully hitting a...student on side of (the) head”. (P-30 at page 3).

104. In late December 2022, the student’s IEP team revised the student’s IEP. (P-3).

105. The present levels of academic and functional performance in the December 2022 IEP included information from the November 2022 RR. (P-3 at pages 7-15).

106. The December 2022 IEP included a recommendation for 900 minutes per year of social worker support “to build pro-social and coping skills to address the behaviors of concern and goals in (the) PBSP” although these services do not appear in the related services section of the IEP. (P-3 at pages 15, 17).

107. The PBSP in the December 2022 IEP is identical to the PBSP in the December 2021 IEP, although the PBSP removed physical aggression as a behavior of concern, notwithstanding the disciplinary incidents involving aggression toward peers documented in April 2022, September 2022, October 2022, and December 2022. (P-3 at page 18; P-30 at pages 1-3).

108. The behavior goal in the December 2022 IEP remained the same: "When presented with a non-preferred task in ELA and Math, Geno will demonstrate appropriate interpersonal skills with adults and peers by refraining from the use of combative/argumentative behavior and/or disruptive behavior (such as calling out, distracting peers, making noises) for an average of 90% of data collected opportunities over a nine week period." (P-3 at page 34).
109. The December 2022 IEP indicated that the student would attend homeroom and field trips, and would receive instruction in technical education, consumer science, science, social studies, and world language, in regular education settings with the support of a classroom aide. (P-3 at page 41).
110. The student was placed in special education environments for 30% of the school day, with the remainder of the school day spent in regular education environments. (P-3 at pages 45-47).
111. In early January 2023, the student was involved in a disciplinary incident where the student "was pushed by (a classmate), engaged together down to ground, chased after (the classmate) and slammed the (the classmate) to ground.". (P-30 at page 3).¹⁰

¹⁰ The parenthetical use of 'classmate' is substituted here to avoid the repetition of 'student' where that term has been used to refer to the student involved in the hearing.

112. In early June 2023, the student's [redacted](Hearing Officer Exhibit ["HO"] 1 – Parent's Complaint).

[redacted] Grade / 2023-2024

113. As the student began [redacted] grade, there is no indication on the record that the student's programming changed as a result of the death of [redacted], nor is there any indication in the record that the District requested permission to re-evaluate the student, conduct a functional behavior assessment, or revise the PBSP.

114. In November 2023, after a conversation with the student's mother, the support provided by the social worker was reduced (from direct services to consultation services with staff). (P-3 at pages 2, 43).

115. In early December 2023, the student's IEP team met to revise the student's IEP. (P-9).¹¹

116. In the December 2023 IEP, the student's IEP team felt that the support of the classroom aide could be faded due to the fact that the student did not access the aide's services. (P-9 at page 10).

117. The December 2023 IEP indicated that due to the student's lack of academic engagement in English and language arts, the student

¹¹ Both P-9 and P-10 came into the record and were referred to at different times during the hearing. The two documents are identical. Citation will be only to P-9 but the duplication has no impact on the evidence.

should be transitioned to a District online learning environment for that class. (P-9 at page 11).

118. The present levels of academic and functional performance contain progress-monitoring on the student's behavior goal in the PBSP. (P-9 at page 19).
119. The present levels of performance do not account for, or mention, the passing of the[redacted], nor does the mother's input or concerns for the student. (P-9 at pages 9-21).
120. The needs identified in the December 2023 IEP remained the same from all prior RRs and the December 2022 IEP. (P-9 at page 22).
121. The PBSP in the December 2023 IEP remained the same as in the December 2022 IEP, not accounting for aggression as a behavior of concern. (P-9 at page 24).
122. The student's behavior goal was revised in the December 2023 IEP: "When presented with a non-preferred task, (the student) will follow adult directives with two additional prompts in 85% of data collection periods." (P-9 at page 38).
123. The December 2023 IEP indicated that the student would receive 60 minutes per month of social work support when the student went to the District's intermediate high school in the [redacted] grade year. (P-9 at page 43).

124. The placement information in the December 2023 IEP was described and calculated for the District's intermediate school, not the middle school. The student would be placed in special education environments for 19% of the school day, with the remainder of the school day spent in regular education environments. (P-9 at pages 45-47).
125. In mid-December 2023, the student was involved in a disciplinary incident where the student bumped a classmate to the ground. (P-30 at page 3).
126. In January 2024, the student was involved in a disciplinary incident where the student bullied a younger student. (P-30 at page 4).
127. In February 2024, the student was involved in six separate disciplinary incidents: twice, the student received formal disciplinary action for being disrespectful; the student knocked a classmate in the head with books and repeatedly threw a ball at another student during class; the student was repeatedly defiant when asked to clean up a mess the student had made; the student sprayed water on another student then utilized water to draw inappropriate pictures on the carpet of an office; and the student engaged in ongoing problematic behavior by skipping class, persistently disrupting another class from the outside, used profanity toward an administrator attempting to

address the behavior, and then eloped from the building. (P-30 at pages 4-6).

128. In March 2024, the student was involved in disciplinary incident where the student engaged in inappropriate physical contact during a game, causing injury to a classmate. (P-30 at page 6).

[redacted] Grade / 2024-2025

129. The student moved to the District's intermediate high school for [redacted] grade.

130. At a high school football game in late August 2024, on the cusp of the 2024-2025 school year, the student was involved in a fight. (School District Exhibit ["S"]-18; Notes of Testimony ["NT"] at 82-179, 186-301, 614-714).

131. The student claimed that another student instigated the fight after the student was swept up in a hat-passing game among students. (NT at 82-179, 614-714).

132. Local police purportedly had video evidence related to the fight but this footage was not made available to the District or the family. (NT at 82-179, 186-301, 614-714).

133. The fact that a fight involving the student had occurred was not disputed, nor the fact that the fight involved fists and punches, and injury to the other student. The student was suspended for six days.

The student was also placed on social probation for the first semester of the 2024-2025 school year (the student was “not permitted to attend any after school activity or function for the duration of the first semester”). (S-18).

134. In mid-September 2024, the student disrupted a class by continuing to defy and argue with a teacher. (P-30 at page 7).

135. A few days later, in mid-September 2024, the student was involved in a fight with another student in the morning in a school cafeteria. (S-16; NT at 82-179, 186-301, 614-714).

136. The student and a classmate had a disagreement over a backpack, which led to both students wrestling to the ground. (S-16; NT at 82-179, 186-301, 614-714).

137. In late September 2024, the student received a disciplinary referral for refusing a directive to stop using a cell phone. (P-30 at page 7).

138. Over the course of September 2024 and into October 2024, the District sought to arrange an IEP meeting to discuss the student’s behavior. (NT at 438-557).

139. Parent did not cooperate in arranging the meeting. Parent testified that work obligations and seeking an advocate to assist her led to difficulty in arranging the meeting. As to the second point, in August 2024 an advocate had attended the regular-education informal

hearing at the invitation of the student's mother after the fight at the football game. (S-18; NT at 614-714).

140. In early October 2024, the student's IEP was revised to align with the student's enrollment at the District's intermediate high school, including two periods in the emotional support setting, removal of the middle school online learning class, removal of the classroom aide, again providing direct social work services, and revisions to goals and modifications in the IEP to align with the high school structure/environment. (P-8, P-9 at page 10; NT at 82-179, 186-301, 438-557, 730-817).

141. The IEP team did not consider a re-evaluation, a functional behavior assessment, or revisions to the PBSP. (NT at 438-557, 730-817).

142. In mid-October 2024, the student was disciplined for multiple behavior incidents in one day, including escalating a conflict with a peer in math class, using inappropriate language, and threatening the peer. On the same day in social studies class the student threw an object at a classmate and used vulgar language in referring to school personnel. (P-30 at page 8).

143. Concerned about the student's escalating behaviors, the District convened a regular-education, problem-solving meeting that included the student, the parent, the director of special education (who

facilitated the meeting), the building principal, the assistant principal, the student's special education case manager, and the parent's advocate. (P-31; NT at 82-179, 186-301, 432-557, 572-609, 614-714).

144. The meeting resulted in a document referred to as a 'student-centered plan'. The process of developing the student-centered plan is relatively new at the District. The meeting aims to allow all parties to share views and brainstorm about how to address issues or problems that might be impacting a student's education. (P-31; NT at 572-609).

145. The meeting, process, and student-centered plan have a regular education focus and are not special education efforts or interventions. The student-centered plan was referenced in a late October 2024 IEP revision but did not become part of the student's IEP. (P-9 at page 9, P-15, P-18; NT at 438-557, 572-609).

146. By late October 2024, the student had reached 10 days of suspension from school. (P-9 at page 9).

147. On November 13, 2024, the student was involved in a disciplinary incident regarding defiance over use of a cell phone. (P-30 at page 8).

November 14th Incident

148. In the afternoon of November 14, 2024, during the 5th period class, the student and a friend came to the emotional support classroom where the student is permitted to seek support when needed. (S-9; NT at 82-179, 186-301, 438-557).
149. A classmate was receiving instruction in the emotional support classroom, and the student repeatedly directed sexualized comments toward the classmate. The comments disrupted instruction for the classmate and others in the classroom. The student was reprimanded by the teacher; the friend who accompanied the student voiced concern about getting in trouble because of the student's comments but was assured by the teacher that would not happen. The student then made a non-sexualized comment that disrupted the class. (S-9).
150. The next period, 6th period, the student and the classmate who the student antagonized in the 5th period were in the same social studies class. (S-6; NT at 438-557).
151. The social studies class is a co-taught class where the student's special education teacher/case manager normally provided support. That teacher was absent, and a substitute special education teacher was in attendance. The classroom teacher, as well, was a substitute teacher. (S-6).

152. The student, the classmate from the prior class, and two others were loud and disruptive in the class, using profanity and interfering with other students' learning. The classroom substitute recommended that the special education substitute take to the library a handful of students who were working on an essay project; approximately 15 minutes into the class, the special education substitute departed with those students. (S-6).
153. The student and the classmate from the 5th period traded homophobic slurs with each other. The student then reminisced about pushing the classmate, and another student, into a wall in a prior school year. (S-6).
154. The student and the classmate from the 5th period then traded pointed personal comments of an antagonistic nature, the student's comment regarding the mother of the classmate and the classmate regarding the death of the[redacted]. (S-8).
155. Following this exchange of comments, the student threatened to beat up the classmate from the 5th period in the bathroom or the hallway. (S-8).
156. Before class ended, the student asked another classmate to film the student and the classmate from the 5th period when both were in the hallway after class. This classmate agreed to film the encounter,

thinking that the student would only be confronting the classmate from the 5th period. (S-7).

157. When the period ended, the student exited the room as one of the first students leaving the class; the classmate from the 5th period remained behind to consult with the substitute classroom teacher. (S-4, S-6).¹²

158. After the classmate from the 5th period exited the classroom, the student came up behind the classmate. The student followed the classmate down the hall, slapping and hitting the classmate on the head and pushing the classmate into walls/lockers. The classmate did not resort to physical defense. (S-4)

159. Along the hallway, the interior wall has windows that allow a view into the library of the school. As the student and the classmate from the 5th period approached the wall of windows, the student continued to hit the classmate and forcefully pushed the classmate against the windows. One of the windows shattered. (S-4).

160. Students in the hallway reacted and, almost immediately, staff moved into the hallway to assess the situation. In the aftermath of the window-breaking, the student did not attempt to escape the area and moved to the other side of the hallway and waited there. (S-4).

¹² S-4 is a video from a hallway video camera.

MD Process

161. As a result of the November 14th incidents (both the 5th and 6th period behaviors), the student was suspended for three days. (S-11; NT at 186-301).
162. Because the days of cumulative suspension for the student would be in excess of 11 days, on November 20, 2024, the District held a MD meeting. (P-12; NT at 82-179, 186-301, 438-557, 614-714, 730-817).¹³
163. The MD worksheet indicated that the District-based members of the MD team determined that the behaviors over 5th and 6th periods were not caused by the student's disability or and did not have a direct and substantial relationship to the student's disability. The rationale for the finding of the District-based members of the MD team were (1) that the student's emotional disturbance is a secondary disability, that the student has "no major emotional disturbance"; (2) that the student has controlled impulsive or aggressive behaviors in the past; and (3) that the student received interventions for problematic behaviors. The finding also referenced the regular-education student-centered plan. (P-12 at page 4).

¹³ On the same date the District held an informal hearing, required as a regular-education process under 22 PA Code §12.6. Evidence was developed in the instant hearing about the informal hearing held directly after the MD process. This evidence is not probative of the questions presented for a determination through special education due process. (P-5, S-13, S-14)

164. The parent and her advocate, present at the meeting, disagreed.
(P-12 at page 4).
165. The MD worksheet indicated that the District-based members of the MD team determined that the behaviors over 5th and 6th periods were not the direct result of the District's failure to implement the student's IEP. (P-12 at pages 4-5).¹⁴
166. The District-based members of the MD team, having found that the behaviors were not a manifestation of the student's disability, determined that "the relevant disciplinary procedures applicable to children without disabilities may be applied". (P-12 at page 5).
167. District administration considered expulsion of the student. As a compromise, and in order to avoid expulsion, parent agreed to a regular-education, out-of-District placement of the student. (S-3; NT at 186-301).

¹⁴ As noted above, parent's more broad-ranging claims, including denial of FAPE claims related to programming, proceeds at a separate ODR file number. Findings of fact regarding programming that might have been considered by the MD team are held in abeyance since more in-depth evidence about programming is likely to be developed during that process. And, as will be seen below, parent carries her burden as to the first question— are the behaviors in question caused by the student's disability or have a direct and substantial relationship to the student's disability?

Out-of-District Placement

168. On December 4, 2024, the District issued a notice of recommended educational placement ("NOREP") based on "multiple physical altercations in the school building". (P-14 at page 1).
169. The December 2024 NOREP indicated that the student's out-of-District placement was for 45 days and indicated that return to the District was conditioned upon the student's compliance with a checklist of expectations at the out-of-District placement. (P-14 at page 2).
170. The factor underlying the District's recommendation indicated "the safety of staff and peers was considered as part of this recommendation. (The student) has a history of physical aggression that includes property destruction.". (P-14 at page 2).
171. The educational placement recommended through the NOREP was full-time emotional support at the out-of-District placement. (P-14 at page 2).
172. In early December 2024, the student's IEP team met for its annual revision of the student's IEP, which also included educators from the out-of-District placement since the student was attending the out-of-District placement. (P-15; NT at 331-368, 375-433, 438-557, 614-714).
173. At the out-of-District placement, through mid-March 2025, the student was involved in 53 major referrals (administrator-managed) to

the office and 14 minor referrals (staff-managed). (P-32; NT at 331-368).

174. The student engaged in similar behaviors at the out-of-District placement as at the District, including defiance, task-refusal, antagonizing peers, throwing objects at peers and staff, drawing inappropriate pictures, use of slurs, use of personal insults, use of profanity, verbal threats toward staff, sexualized comments. In mid-December 2024, the student was involved in a fight on the school bus on the morning commute to the out-of-District placement, including kicking, hitting, and shoving the classmate into the seat. (P-32).
175. The most prevalent behavior at the out-of-District placement, however, was new to the student's behavior mosaic. The student would sleep during class and not respond to requests or prompts from staff to engage in learning. (P-32; NT at 331-368, 375-433).
176. In mid-January 2025, the student's IEP team met, as is the practice at the out-of-District placement, for an IEP meeting 30 days after enrollment at the placement. (P-18; NT at 375-433).
177. At the January 2025 IEP meeting, the notion of a checklist for expectations at the out-of-District placement was abandoned. (NT at 375-433, 438-557).
178. In February 2025, the District issued a NOREP. (P-22).

179. The February 2025 NOREP indicated that District educators and out-of-placement educators agreed that the student had not met criteria for a return to the District. The NOREP referenced the November 2024 regular-education agreement of the parties entered into in lieu of expulsion. (P-22; NT at 375-433, 730-817)
180. The February 2025 NOREP indicated that the District continued to recommend full-time emotional support at the out-of-District placement. (P-22 at page 2).
181. On February 24, 2025, the parent filed the complaint that led to these proceedings. (HO-1).

Credibility of Witnesses

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. No one witness's testimony was accorded materially more weight than the testimony of any other witness. In that way, the documentary evidence was generally more persuasive in understanding the factual mosaic of the evidence.

Legal Framework

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.163)). In pertinent part, where a school district seeks

to remove a student identified as a child with a disability under IDEA for more than 10 consecutive school days due to a disciplinary matter, such a removal is considered a disciplinary change in the student's educational placement. (34 C.F.R. §300.536(a)(1); 22 PA Code §14.102(a)(2)(xxxii)).

Within 10 school days of the decision to implement a disciplinary change-in-placement, "(the school district), the parent, and relevant members of the child's IEP Team (as determined by the parent and the [school district]) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents" to determine if the behavior underlying the disciplinary action was "caused by, or had a direct and substantial relationship to, the child's disability", or was the direct result of the school district's failure to implement the IEP. (34 C.F.R. §300.530(e); 22 PA Code §14.102(a)(2)(xxxii)). This review is the MD process.

If the MD process determines that the behavior underlying the disciplinary action *is not* a manifestation of the student's disability, the school district may take disciplinary action as it would with a student who does not qualify under IDEA (34 C.F.R. §300.530(c); 22 PA Code §14.102(a)(2)(xxxii)); if the MD process determines that the behavior underlying the disciplinary action *is* a manifestation of the student's disability, the student must be returned to the then-current educational placement, and the student's IEP team must seek to understand how the

behavior must be understood and addressed by the student's IEP. (34 C.F.R. §300.530(e)(f); 22 PA Code §14.102(a)(2)(xxxii)).

Discussion & Conclusions

Here, the findings of fact are voluminous. In the mind of this hearing officer, this is necessary to provide a sense of the overwhelming evidence, since the student's enrollment in [redacted] grade, of the student's defiance, aggression, bullying, poor peer relations, and fighting. Ultimately, the determination of the District-based members of the MD team, that the events of 5th and 6th periods—and, to be clear, the discipline was based on the student's behavior in both classes— on November 14th are not manifestations of the student's disability or do not have a direct and substantial relationship to the student's disability, cannot be supported by this record.

In summarizing the problematic events of that day, the student:

- disrupted a class in which the student simply dropped by
- made sexualized comments directed at a peer
- did not comply with teacher directives
- disrupted another class with profanity, homophobic insults
- bullied and threatened another student
- engaged in slapping, hitting, and shoving

The record is replete with this behavior exhibited in every school year at the District. None of these examples of the student's behavior on the afternoon of November 14th were new to peers or educators in the District who have spent time with the student in educational environments.

In short, those behaviors were both a result of the student's disabilities and had a direct and substantial relationship to the student's disabilities. The contrary conclusion of the MD process was in error.

The question then becomes: What next for this student? A functional behavior assessment is underway by agreement of the parties in February 2025 and a comprehensive re-evaluation process undertaken by the District was ordered in the midst of the hearing by this hearing officer. (See HO Exhibit – Order for Re-Evaluation Process).¹⁵ Those documents will help to inform the understanding of the student going forward. The order below will return the student to the District for a full-time emotional support placement but with a time and a runway for the student's IEP team. At this point, the student needs full-time emotional support programming in whatever setting the IEP team might decide is appropriate. But the IEP team needs time to craft what is, in effect, an entirely new IEP.

And anyone reading this decision should not consider this to be a 'victory' for the student and family. Regardless of how the parties have arrived here, a placement at the District, even a full-time placement, may not be appropriate for the student. Only time will tell, but an agreed-upon placement outside of the District might be the most appropriate placement

¹⁵ There will be a number of HO exhibits as part of this record. A full list, with accurate numbering of HO exhibits, will be provided to counsel after the submission of this decision.

for the student, especially where the student's feeling about the District will not allow the student to engage in significant learning.

One final note, by way of extraneous *dicta*: The student and family have been entirely resistant to engaging in therapeutic services to assist in helping the student process the weight of the loss of the student's [redacted]. This seems to be short-sighted; it may ultimately short-circuit the student's ability to engage effectively in significant learning. Having the family make therapeutic services part of the student's life, and encouraging the student to engage in those services, seem to be a vital part of the student's way forward.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the behavior underlying the November 14, 2024 disciplinary incident is a manifestation of the student's disability, the behavior being caused by, or having a direct and substantial relationship to, the student's disabilities.

The District shall arrange for the student to no longer attend the out-of-District placement, which was undertaken as a result of a flawed MD process. That placement may end at any point which is practicable for both parties but shall be accomplished by Friday, April 25, 2025, thereby accounting for the spring holidays which are nearing. No later than Monday,

April 28, 2025, the District shall provide a full-time emotional support placement for the student at the District's intermediate high school.

Recognizing that the student's IEP team has not had an opportunity to craft this program/placement, the District shall implement the goals, and provide the specially-designed instruction and program modifications, as outlined in the January 2025 IEP.

As indicated above, the IEP team should expect an updated functional behavior assessment and RR in the near future. These documents may be used to revise the January 2025 IEP, as the parties may agree, but there is no requirement for the January 2025 IEP to be revised simply because those documents have been issued.

The District shall implement the January 2025 IEP in the full-time emotional support placement, unless the parties agree otherwise through an approved NOREP process. The student's IEP team shall work to have a fully revised IEP, for implementation at the District, as of the first day of school in the 2025-2026 school year, the student's [redacted] grade year. Nothing in this order should be read to limit the parties' ability to agree through an approved NOREP process to an out-of-District program and placement, or any other placement arrangement, for the 2025-2026 school year.

Because use of the January 2025 IEP in a full-time emotional support placement at the District is ordered by the undersigned hearing officer, any potential claim by parent for denial of FAPE for the design of services in that

IEP from the date of this decision through the end of the current 2024-2025 school year at the District is hereby rendered void. This order does not address the disposition of any potential claim by parent for denial of FAPE related to the implementation of services under the January 2025 IEP at the District from the date of this decision through the end of the current 2024-2025 school year at the District.

Any claim not specifically addressed in this decision and order, as that claim is not at issue in the affiliated ODR matter, is denied and dismissed.

s/ *Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire
Special Education Hearing Officer

04/10/2025