

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. 28527-23-24

Child's Name:

C.R.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

October 22, 2023

INFORMATION AND PROCEDURAL HISTORY

The student (Student)¹ is in the [redacted] grade in the (District). The Student is eligible for special education under the Individuals with Disabilities Education Act (IDEA)² as a child with Other Health Impairment (OHI) and emotional disturbance and is entitled to protections under Section 504 of the Rehabilitation Act of 1973³ and the Americans with Disabilities Act.⁴ The parents (Parents) originally filed a due process complaint, later amended, challenging the District's past and current provision of FAPE and a recent recommendation for placement of the Student in a more restrictive setting.⁵ The Parents also contended the District discriminated against the Student. The Student remains in the current pendent placement, itinerant learning support, at the District elementary school. Those claims await resolution through ODR File No. CR. 28241-22-23.

Recently, the District filed a due process complaint seeking an expedited hearing an order to change this Student's placement to an interim

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision, and will be redacted from the cover page prior to posting on the website of the Office for Dispute Resolution.

² 20 U.S.C. §§ 1400 – 1482. The implementing federal regulations are found at 34 C.F.R. §§ 300.1 – 300.818, and the state regulations are found at 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ 42 U.S.C. §§ 12101-12213

⁵ A third amendment to the Parents' complaint is pending.

alternative educational setting (IAES) for 45 school days pursuant to 20 U.S.C. 1415(k)(3)(A) and (B); and 34 CFR 300.532(a) and (b)(2)(ii).⁶

In response, the Parents contend that a placement change to an interim alternative educational setting is unnecessary on grounds that the incidents described in the District's complaint were portrayed inaccurately and did not rise to the level of substantial risk of bodily harm.

For the following reasons, the relief requested by the District is granted.

ISSUES

- 1) Should the Hearing Officer Order a change of placement to an appropriate interim alternative education setting for not more than forty-five school days because maintaining the Student in the current placement is substantially likely to result in injury to the child or others?

- 2) Is the placement recommendation made by the IEP school appropriate?

FINDINGS OF FACT⁷

⁶ The District's complaint referenced 34 C.F.R. 300.352(a), later clarified as 34 C.F.R. 300.532(a)

⁷ I reviewed the record in its entirety but make only factual findings necessary to resolve the instant expedited matter.

2021-2022

1. In December 2021, the Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and the accompanying characteristics of an Adjustment Disorder. (P-27, p.54, S-6, p. 26)
2. In January 2022, an initial treatment plan was developed for the Student to address physical and verbal aggression, disruptive behavior, property destruction, poor social skills and conflict with peers and daycare staff. (S-6, p. 26).
3. On May 17, 2022, the IEP team met to develop and discuss programming for the Student's transition to [redacted]. (S-2)

2022-2023 School Year [redacted]

4. During the 2022-2023 school year, the Student transitioned to the District's [redacted] eligible for special education under the category of Other Health Impairment (OHI) (ADHD) along with a concomitant adjustment disorder. The Student had a private school-day behavioral aide (1:1) for support contracted through an independent agency. (P-4, p. 11, S-11; N.T. 257)
5. On September 1, 2022, the [redacted] learning support teacher contacted the Parent to advise of the Student's anger, grunting, growling, charging at the teacher, and pretending to cut a TSS with [an object]. (S-24, p. 3; N.T. 123)

6. The elementary school attended by the Student is staffed with an experienced, credentialed board-certified behavior analyst (BCBA) who provides direct instruction in social-emotional learning skills and works directly with behavior modification and data collection and analysis to make recommendations and changes to behavior plans. ⁸(S-28; N.T. 13-14)
7. The BCBA has worked with the Student since [redacted], provided direct instruction in social-emotional learning in a small group setting, and worked on self-regulation, self-management, peer interaction, and social skills. (N.T. 18)
8. The elementary school attended by the Student is staffed with a prevention specialist who provides individual and group counseling, classroom behavioral support, crisis intervention for children at risk of self-harm or hurting others, and risk assessments. The prevention specialist met the Student in [redacted]. (S-16; N.T. 147)
9. Throughout September 2022, the Student engaged in behavioral incidents that included elopement from the classroom, kicking, scratching, hitting and pushing staff, throwing [objects] at other students, kicking chairs and telling staff, "I am going to kill you." (P-8, S-16; N.T. 280-283)
10. At a September 20, 2022, IEP meeting, the team discussed a reevaluation of the Student, revision of a reinforcement schedule pending the completion of the FBA, data collection to share with the family, and behavioral strategies. The team added a crisis intervention plan to the Student's IEP. (S-3).

⁸ The BCBA was qualified as an expert witness. (N.T. 17)

11. The crisis intervention plan was designed to address behavioral concerns involving the Student that included elopement, throwing objects, harm to others, jumping/climbing, verbal and physical threats, and using classroom items as weapons. (S-19)
12. The crisis team is comprised of the BCBA, the prevention specialist, and the school counselor. The crisis team is utilized when a student's behavior is no longer manageable in the regular education setting, recess or lunch. (N.T. 19)
13. On October 4, 2022, the District prepared documentation for submission to the PA Department of Education (PDE) that two staff utilized a standing and supine restraint on the Student who was screaming, spitting, swinging, hitting and kicking. The Parents were called and picked up the Student. The Student did not see the nurse. (P-8, S-24, p. 66-67, S-16, p. 58; N.T. 250-252)
14. On October 10, 2022, District staff and the Student were involved in an incident that resulted in a child abuse investigation. The alleged perpetrators were identified as District staff. The alleged victim was the Student. The Student's private 1:1 filmed the episode. After the incident, the private 1:1 ceased supporting the Student. The Parents sought psychological support for the Student after the October 10 incident. The Department of Human Services determined the allegations against the District staff were unfounded. (P-1, P-13, P-18, P-19, P-22, S-9, S-12, S-26; N.T. 257, 285-286, 288, 311, 474-475)
15. On October 17, 2022, the IEP team convened to discuss restraints performed on October 4, discuss the "prevention strategy" used on

October 10, and the addition of a 1:1 behavioral aide to support generalization of the display of safe behaviors, social skills, coping mechanisms and to implement a reinforcement system. (S-5, p. 5)

16. On October 22, 2022, a psychologist determined the Student met the diagnostic criteria for ADHD, separation anxiety and recommended an evaluation at a sleep center to rule out medical causes for the Student's awakening many times a night. (P-25, S-6)
17. Throughout October 2022, the Student engaged in behaviors that included hitting, head-butting, punching, and pushing, kicking and spitting on staff. (S-16, p. 55-58)
18. On October 20, 2022, the Parents advised the District that Student was diagnosed with PTSD. (P-23)
19. In November 2022, the Student ran away from staff, kicked, hit, pushed and punched the 1:1, demonstrated physical aggression towards a peer, and hit the BCBA in the stomach and chest with closed fists. (S-16)
20. In November 2022, the District reevaluated the Student. The RR concluded the Student demonstrated inattentive and task-refusal behaviors and required frequent prompting, breaks, and rewards for engaging in expected behaviors. The evaluator determined the assessment results could be an underestimate of skills and abilities. The Student's cognitive abilities were determined to fall within the average range (FSIQ=91). (P-27, S-11)

21. On assessments of social, emotional, and behavioral functioning, the evaluator concluded the Student evidenced symptoms consistent with ADHD, including inattentiveness, hyperactivity, with weaknesses in inhibitory control, and executive functioning skills. The Student also evidenced significant symptoms of anxiety across home and school settings. In the school setting, the Student evidenced significant weaknesses in emotional and behavioral regulation skills. (P-27, S-11)

22. The RR concluded the Student was eligible and in need of special education support and services as a student with an Other Health Impairment (OHI) and an emotional disturbance based on significant weaknesses in emotional regulation skills and a long-standing history, with needs in emotional and behavioral functioning. (P-27, S-11, p. 63)

23. At the December 13, 2022, IEP meeting, the team added the eligibility category of emotional disturbance, incorporated direct instruction and push-in support for social-emotional learning, added ESY, and revised the Student's behavior plan based on the completed FBA. The team reviewed the collected behavioral data and added the support of a BCBA. (S-13)

24. In December 2022, the Student hit, kicked, punched staff, waved scissors, eloped from the instructional area, and smacked a peer's hands. (S-16)

25. In January 2023, the District started tracking the Student's daily behaviors (disruptive behaviors, aggression, participation in whole group learning), every period of the school day, with a score of zero

(0), one (1) or two (2). The total score was averaged with an overall score assigned for the day. (P-64)

26. A score of "2" indicated the Student made no disruptive noises, no forceful contact with property or others, and completed tasks within one prompt. A score of "1" indicated the Student engaged in disruptive noises but responded within 2-3 prompts, displayed or attempted to make forceful contact with property or others, but responded with 2-3 prompts or completed assigned takes within 2-3 prompts. A score of "0" indicated the Student made disruptive noises, displayed or attempted to make forceful contact with property or others and did not complete assigned tasks or required 4 or more prompts. (P-64)

27. In January 2023, the Student received a replacement 1:1. (N.T. 263, 268)

28. During January and February 2023, the Student hit, kicked and punched staff. (S-16)

29. On February 21, 2023, the IEP team met to review behavioral and academic data of the past 6-8 weeks and discuss ESY. The team agreed to include the Student's private healthcare team in IEP meetings, reassign a dedicated 1:1 to Student, and focus intervention efforts. (S-14)

30. During March 2023, scratched, pinched, and attempted to bite staff, threw books, attempted elopement and engaged in verbal aggression. (S-16)

31. On April 26, 2023, the IEP team met to review behavioral data and discuss a proposal to change the Student's placement to a District full-

time emotional support program in a different elementary building. The Parents disagreed with a change in the Student's placement. (S-15; N.T. 62)

32. During April 2023, the Student pushed a chair into staff, hit, charged and punched staff, threatened peers, and hit others with [an object]. (S-16)

33. In Spring 2022, the District assigned a dedicated 1:1 aide to the Student. (N.T. 268)

34. During the 2022-2023 school year, the District records indicated the Student was restrained by staff on 9/21, 10/10, and 12/12. The 12/12 episode reported the restraint occurred on 12/8. (P-8)

2023-2024 School Year

35. During the 2023-2024 school year, the Student is enrolled in the [redacted] grade. The Student receives itinerant learning support in the District. The Student receives support from a BCBA, a prevention specialist, and a full-time 1:1 aide. (S-15)

36. The school crisis team is utilized when a student's behavior escalates to the point where it is no longer manageable in the regular education setting, at recess, lunch or wherever the incident may be occurring. The current crisis team is comprised of the BCBA (behavior specialist), the prevention specialist, and the school counselor. (N.T. 19)

37. The BCBA works with the [redacted] grade teacher to provide behavioral support to the Student. The teacher and BCBA discuss the collected behavioral data and transfer of skills. (N.T. 223)
38. On August 28, 2023, the Student received a daily average score of 2.0. On August 29, 2023, the Student received a daily average score of 1.7. On August 30, 2023, the Student received a daily average score of 1.9. On August 31, 2023, the Student received a daily average score of 2.0. The Student received an average baseline score of 1.9 for the week. (P-64)
39. On September 1, the Student earned a behavior score of 1.8. (P-64)
40. On September 2, 2023, the Parent contacted the District about the Student's great week, summer tutoring and psychologist involvement. Through the email, the Parent introduced the District to the Student's private BCBA and requested to hold a September meeting. (P-56)
41. On September 5, 2023, the Student earned positive behavior "Dojo" points and a behavior score of 1.8 (P-57, P-64; N.T. 73)

September 6, 2023, Incident

42. On September 6, during a recess game [redacted], a peer indicated the Student chased and scratched [the peer] with [redacted]. [The peer] hit the Student. The Student denied this and called the peer a name. When alone with the Student, the teacher discouraged playing the [redacted] game. The Student replied, "I'm not listening to you, "I am going to play that game," and began to run away from the teacher. Although the crisis team responded to the playground along with the

Principal, the Student returned to the building with the class. In the hallway with the (crisis team) and 1:1, the Student cried and yelled because a lunchbox was left at the playground. In the BCBA's room, the Student escalated, shouted, and punched the behavior specialist, the prevention specialist, and 1:1 in the arms, chest and stomach. The Student attempted but could not elope from the room but calmed down after coloring. The Student returned to class after an hour. The District contacted the Parents after the incident. (P-59, S-33, p. 4; N.T. 24-29, 192-193, 202-204)

43. On September 7, the behavior therapist conducted a restorative practice, and a plan was developed with the Student to play [redacted] during recess. (P-60, S-36; N.T. 29-30)

September 7, 2023, Incident

44. On September 7, 2023, the BCBA went to the Student's classroom because of reported escalation. The behavior therapist observed the Student hitting the teacher with closed fists, scratching and grabbing her clothes. Other students moved away from the incident and were asked to leave the classroom as a safety precaution. The BCBA attempted calm-down strategies, but the Student continued hitting with a closed fist, kicking, scratching, and shouting. (S-33, p. 8-9; N.T. 31-33, 98, 191)

45. On September 8, the District held a Zoom meeting with the Parents, a privately retained BCBA, and the Student's [redacted] grade teacher. The private BCBA recommended replacement strategies to address the

Student's behavior. On September 8, 2023, the Student earned an average behavior score of 2.0. (P-65, p. 3; N.T. 205, 211, 407-408)

September 11, 2023, Incident

46. On September 11, 2023, the behavior therapist heard the Student screaming went to the classroom, where a substitute teacher was covering the class. The Student was shouting and hitting the 1:1 aide. After the classroom evacuation, the Student stood in the doorway screaming no one was going anywhere, hitting and scratching the BCBA. The Student punched the BCBA in the jaw, causing inner cheek bleeding, and threatened to hit again "if you don't get out of my way." The Student grabbed the BCBA's hair and pulled it back. The BCBA went to the nurse's office for scratches, bruising, and an inner cheek cut. (S-33, p.12, S-36, p. 4; N.T. 33-39, 97)
47. The substitute teacher indicated she was hit several times in the arms, but no marks or treatment occurred. The Student had no injuries from the September 11 incident. (P-62)
48. On September 11, 2023, the District filed a due process complaint and requested an expedited hearing.
49. On September 14, 2023, the Student received a daily average behavior score of 1.8. On September 15, 2023, the Student received a daily behavior score of 1.7. On September 18, 2023, the Student received a daily behavior score of 1.8. On September 19, 2023, the Student received a daily behavior score of 1.5 (P-64)

September 22, 2023, two Incidents

50. On September 22, 2023, the Student was involved in two incidents in the [redacted] grade classroom that involved physical aggression. During mid-morning, the Student disrupted instruction by yelling despite attempts to redirect. Reportedly, the other students became frightened. When the prevention specialist arrived to assist, the Student tried to run out of the door, pushed the teacher and hit her in the arms and stomach. The Student hit the prevention specialist and the 1:1. The class was removed, and the Student continued to hit the prevention specialist and indicated, "I can punch you however I want." After twenty minutes, the Student was calm and later joined recess. (S-40, S-41; N.T. 190, 219-220)

51. On September 22, 2023, during a class movie, the Student took [an object] from another child and refused to return it. The Student swatted at students with [an object], hit a peer in the head, and then ripped name tags off of desks. The 1:1 offered re-direction, and the Student punched the aide in the head. The teacher called for assistance; the classroom was evacuated, and the Student ran from the room. The Student ran at students and staff in the hallway, punched the [redacted] grade teacher, a learning support teacher, and the 1:1. After fifteen minutes, the Student calmed down and re-joined the class. (S-40; N.T. 195)

52. Although the District collects daily data in specific settings, it has been unable to identify a consistent antecedent that occurs before the Student's behavior escalates. (N.T. 43, 194, 198)

53. Although the Student is able to regulate emotions with the help of staff more quickly than the previous school year, the severity of the physical aggression has remained unchanged. (N.T. 47)
54. After a behavioral outburst, a restorative practice occurs with the BCBA, and the Student usually transitions back to the classroom. (N.T. 46)
55. The Student's outbursts result in other students displaying fear of harm or of the Student getting hurt, fear of socializing and attending school, and seeking out the counselor's office to understand the witnessed behaviors. (N.T. 41-42, 155-156, 195-197, 219)
56. The Student's IEP in place during the 2022-2023 school year and the embedded behavior plan is implemented by the [redacted] grade teacher. (N.T. 199)
57. The Student is intelligent, liked by staff, and can be kind and compliant. (N.T.185)
58. The proposed IAES is a full-time emotional support program with three teachers. One teacher with program aides is assigned to a small group of eight students. It offers instruction through a regular education curriculum, with inclusion opportunities, focusing on behavior management and regulation. (N.T.64, 240-244)
59. The proposed IAES offers intensive direct instruction of coping skills reinforcement in a small group setting and is staffed with three teachers. The teacher and program aides are assigned to small groups of 8 students. (N.T. at 64, 244)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

Witness Credibility

Hearing officers, as factfinders, are charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014).

The District offered testimony from witnesses, including the Student's current [redacted] grade teacher, the prevention specialist, the board-certified behavioral analyst (BCBA), and a special education supervisor. The Parents offered testimony from an independent certified school psychologist, a privately retained (BCBA), the Student's former (1:1), and a Parent. The District's and Parents' BCBA's and the Parents' certified school psychologist were qualified as expert witnesses. Not all testimony was beneficial for the resolution of the issues at hand. However, all testimony was reviewed and weighed in light of the witnesses' participation in the hearing. I found the testimony from the witnesses that admitted to experiencing the behavior at issue most credible and reliable as their testimony was consistent with the documentary evidence.

Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process

hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed. Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, the District is the party seeking relief and must bear the burden of persuasion.

Discipline Procedures

The IDEA grants significant disciplinary protection to children with disabilities. See generally, 20 U.S.C. § 1415(k). Those protections include several exceptions, most designed to enable schools to protect the safety of those who learn and work within their walls. The question posed in this case comes directly from one of the exceptions found at 20 U.S.C. § 1415(k)(3)(A):

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

In this case, the District requested this hearing because it believed that maintaining the Student in the pendent placement, the District's [redacted] grade elementary school is substantially likely to result in injury to the Student or to others. After a decision on whether the LEA has met its burden, a Hearing Officer has two options. 20 U.S.C. §§ 1415(k)(B)(ii)(I)(II). Under the IDEA, I must either return the child with a disability to the placement from which the child was removed or order a

change in placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days. IDEA implementing regulations at 34 CFR §§ 300.532(b)(2)(i) and (ii) clarify these choices. Under the regulations, a Hearing Officer may either return the child with a disability to the placement from which the child was removed if determined the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days. In sum, if maintaining the Student's current placement creates a substantial likelihood of injury to the Student or to others, I may change the Student's placement to an appropriate IAES for 45 school days. If the Student's current placement does not create a substantial likelihood of injury to the Student or others, such an order is unwarranted.

Although the IDEA defines "serious bodily injury," the term "injury" is undefined. 18 U.S.C. § 1365(h)(3); 20 U.S.C. § 1415(k)(7)(D). In contrast to serious bodily injury, the IDEA also uses the term "injury" but does not define that term. The IDEA contrasts the terms "injury" and "serious bodily injury," and the juxtaposition reveals that injury is something less than serious bodily injury. I conclude the term "injury" as used in the IDEA has the same definition of "bodily injury" found at 18 U.S.C. § 1365(h)(4).

The District's Claims

In its complaint, the District asserts that removing the Student from the [redacted] grade itinerant learning support placement to a forty-five-day interim alternative educational setting is warranted because of aggressive and unpredictable behavior, which is dangerous to Student and others. In support of this contention, the District points to three episodes, all in

September 2023, where the Student engaged in volatile behavior, including hitting, kicking and punching staff. As outlined in the above detailed factual findings, those instances alone are enough to conclude that this Student's behavior is likely to cause injury and has. Taken in isolation, one could conclude that these behaviors are outliers and indicative of a difficult adjustment to a full-day program ([redacted] grade) instead of the [redacted] experience of the previous school year. However, the evidence has established that Student's dysregulation and inclination toward physical aggression are a continuation of behaviors fully documented in the last school year. Based on the data collected, this Student has periods, even days, of compliance, behavioral regulation and acceptable school-based social behavior. However, the District has provided ample historical and current evidence of Student's volatile behaviors, including hitting, kicking, scratching, shoving staff and peers, verbal threats of harm and attempted elopement from the classroom and school grounds. Despite the programming and interventions implemented, this Student's school-day behavior is unpredictable and frequently violent.⁹

There is no bright-line rule for determining whether a particular student's behavior can be determined as dangerous to self or others. Although the IDEA and its implementing regulations do not include factors for deciding whether maintaining a child's current placement is "substantially likely to result in injury," a review of Pennsylvania administrative decisions illustrates the type of conduct decision-makers have found to meet this standard. Those decisions indicated that physical aggression toward staff members or classmates, threats of violence, and incendiary comments were

⁹ Despite the attempts to over-develop this hearing record, I explicitly decline to determine whether the District denied student a FAPE during the 2022-2023 and current year. That determination cannot be made on this expedited record and awaits resolution under ODR File No. CR.28241-22-23.

deemed sufficient to find that maintaining a student's current placement would likely result in injury. *Upper Dublin School District*, 67 IDELR 252 (SEA PA 2/19/16); *Penn-Delco School District*, 20 IDELR 210 (SEA PA, 10/29/12).¹⁰ Based upon the detailed findings of fact and evidence adduced during the hearing, the District has met its burden of proof that maintenance of the Student in the current placement is substantially likely to result in injury to the child or others.

Despite the efforts to address the Student's behaviors through multiple IEP meetings to review collected behavioral data and discuss programming and supports that included an FBA, a PBSP, a crisis plan, support from a BCBA, a prevention specialist, and a school-day 1:1, the Student's uncontrolled behaviors have persisted and are substantially likely to result in an injury to the Student or others. Despite these interventions, the Student's behaviors are unpredictable, and staff have been unable to identify any consistent antecedents or triggers for the violent outbursts. All agree the Student is intelligent, liked by staff, and can be kind. However, a temporary removal to a setting with more behavioral support is necessary at this time.

As frightening as these episodes must be for the Student, they also could undermine the emotional stability of classmates, many having their [redacted] school experience.¹¹ *Penn-Delco School, supra*. The current [redacted] grade teacher provided credible testimony of the attempts to de-escalate the Student, protect the other children in the classroom, and the

¹⁰ Other jurisdictions have made a similar determination. See *Lawrence Township Board of Education v. D.F. ex rel. D.F.*, EDS 12056-06, final decision (January 9, 2007); *San Leandro Unified School District*, 114 LRP 550 (CA SEA December 16, 2013); *Rialto Unified School District*, 114 LRP 1023 (SEA CA November 19, 2013); *Smithton R-VI School District*, 110 LRP 22863 (MO SEA April 8, 2010).

¹¹ [redacted]

post-outburst fears and concerns that arose. In sum, the totality of the evidence weighs decidedly in favor of a finding that maintaining the Student's placement in the District is substantially likely to injure the Student or others. At this time, an interim placement is necessary.

The interim placement proposed for the Student is a full-time emotional support program with a 1:8 teacher-to-student ratio.¹² It provides instruction through a regular education curriculum, with inclusion opportunities focusing on behavior management and regulation. At the IAES, the Student would receive intensive direct instruction in coping skills and reinforcement in a small group setting. For forty-five school days, the IAES is appropriate for the Student. For this expedited proceeding, this Hearing Officer concludes that the District has met its burden of proof, and the following is ordered.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

The District's request for an Order for a change of placement to an IAES for not more than forty-five school days on the grounds that maintaining placement at the current District elementary school is substantially likely to result in injury to the Student or to others is **GRANTED**:

¹² The IAES in which the District seeks to place the Student is the full-time emotional support program offered in the May 2023 NOREP rejected by the Parents.

1. Within four (4) school days following entry of this Order, the District shall arrange transportation to the IAES for the Student;
2. The IAES shall enroll the Student and maintain the placement for not more than forty-five days unless the parties agree otherwise.

Nothing in this decision and Order shall be read to interfere with the parties' ability to modify any provision of this decision and Order to the extent the parties agree in writing.

FURTHER ORDERED that any claims not specifically addressed by this decision and Order are DENIED and DISMISSED.

Joy Waters Fleming, Esquire

Joy Waters Fleming, Esquire
Special Education Hearing Officer

October 22, 2023