

KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF IDEA MONITORING & RESULTS  
AGENCY CASE NO. 2122-18

██████

PETITIONER

FINDINGS OF FACT, CONCLUSION  
OF LAW AND ORDER

████████████████████

SCHOOLS

RESPONDENT

BACKGROUND

A Due Process complaint was filed by the student's parent on or about February 18, 2022. Respondent filed a counterclaim on or about March 31, 2022. A Hearing was originally set to occur on November 2-4, 2022, but after Motion for Continuance by the school and agreed to by the parent same was continued to January 25-27, 2023. Again, upon request of the parties that Hearing was cancelled and rescheduled for March 29-31 , 2023, or alternatively April 26-28, 2023. The Petitioner filed a Motion to change said dates due to fact that the Parties agreed to have an Independent Evaluation of the child completed by ████████████████████. The Hearing was conducted on April 26-28, 2023. The Parties requested that additional days be scheduled for Hearing after the Independent Evaluation Report was obtained due to the fact that there were scheduling difficulties for same. An Amended Due Process Request was filed by Petitioner on November 8, 2023. After completion of the Independent Evaluation and receipt of the report, the continuation of the Hearing was held on November 15-17, 2023. At the close of that Hearing the Parties requested to schedule a Deposition of the one remaining witness, ████████████████████. Said Deposition was ultimately accomplished by the Parties on

December 15, 2023. Thereafter, the Parties requested a continuation of the Briefing Schedule.

After several agreed to extension of the

Briefing schedule, the case was submitted by Petitioner to the undersigned for decision.

LEGAL ISSUES RAISED BY THE PLEADINGS AND HEARING

1. Whether Petitioner sues denied a free and appropriate education pursuant to 34 CFR 300.17 and 707 KAR 1:290 due to the school's failure to address the child's unique behavioral needs during academic years 2019-20; 2020-21 , 2021-22, and 2022-23 (Kindergarten through third grade) Petitioner claimed that the child had been repeatedly suspended from school in excess of 10 days, that an appropriate evaluation had not been conducted to address the child's unique behavioral needs, that the child's behavior had been escalated by unnecessary restraint of the child which resulted in injury to the child; denial of related services in the form of an adequate behavior intervention plan resulting in more restrictive educational placement for the years in question; and denial of extended school year services for each of the three (3) academic years in question.

2. Secondly, Petitioner alleged that procedural protections had been denied to the child under 707 KAR I :002 during years 2019-20, 2020-21, and 2021-22 in that an education plan with related services to allow the child to achieve educational advancements had not been developed sufficient to address the child's disabilities; that the child had been removed from the last agreed upon educational placement in excess of ten (10) days and Respondent had failed to conduct a legally complaint Manifestation Determination as required by 34 CFR 300.530 (5) (e).

3. The complaint also alleged a denial of parental participation in the ARC meetings stating that the parent had repeatedly been called to elementary school to address the child's behavior and to remove the child from the educational setting; that numerous threat assessments had been required to readmit the child to school; that the city police and Cabinet for Families and Children had received calls from the District threatening the child's parent and that as a result of these actions FAPE was denied and 34 CFR 300.322 was breached.

4. The child alleged that 34 CFR 300.621 was violated, and [REDACTED] confidentiality breached when the school lost [REDACTED] Due Process Educational folder at the beginning of the 2021-22 school year and school personnel shared confidential information concerning the child to third parties who had no interest in the child's educational program.

5. Petitioner claimed that the child was victim of retaliation by the school when the child was summoned to the [REDACTED] Court because of an alleged terroristic threatening charge and assault in degree charge against Petitioner by an employee of the school district in retaliation for exercising child's due process rights. This allegation came in a second attempt to Amend the Due Process Complaint on November 8, 2023. Respondent objected ([REDACTED], 1/1/5, page 89) Petitioner agreed the retaliation claim was not within the jurisdiction of 20 USC 1415. Testimony of this was permitted as to any relevancy it would have on other claims.

6. The School's counterclaim alleged that the parent's revocation of consent to evaluation and services in the category of Emotional Behavioral Disability (EBD) on September 23, 2021 prohibited any recourse for any damages that the child incurred during that period of time; that the child be reevaluated for EBD; alleging that continuing the current placement of the child was substantially likely to result in injury to the child; and requesting a

change of placement upon a determination that said placement would result in injury to the child under 20 USC 1415 (k) (3) (A) and 20 USC 1415 (k) (3) (B) (ii). In its Brief the school acknowledged all issues, except that relating to parent's revocation of consent to evaluation and services in EBD, were now moot.

#### FINDINGS OF FACT

1. At the time of the filing of this Petitioner the child was a 9-year-old student in the second (2<sup>nd</sup>) grade receiving specially designed instruction under the disability of speech or language impairment.

2. This child's education began at the [REDACTED] Head Start Program (T.P. 17) then student enrolled in the [REDACTED] Elementary School for Kindergarten. The kindergarten teacher was [REDACTED]. The child was suspended numerous times during kindergarten in excess of 10 days and restrained several times.

3. The father testified that when child was in head start at about ages 3-4, [REDACTED] mother, her then boyfriend and parents moved to [REDACTED] and some acting out behaviors began in head start. The child had stated "my mommy doesn't love me. She moved to [REDACTED] and took the twins, but she didn't take me." Testimony April 26, 2023, p 18. The mother had moved back to [REDACTED] County by the time of the Hearing. During all times pertinent to this Hearing, child lived at the home of the father with father and an older brother. Id. p 16.

4. The child's first grade year (2020-2021) was disrupted by COVID. Most instruction was remote due to the pandemic. The child's teacher was [REDACTED] and the child had a good rapport with her, but some behaviors still interfered with the child's learning.

5. The school year 2021-22 was similar to kindergarten. The student's teacher testified that the child was not aggressive, but the child's verbal attacks on other students were disruptive. There were suspensions in excess of 10 days and restraints.

6. The first ARC meeting involving the child was on November 9, 2018, during the child's second year of head start. Petitioner's Exhibit 2 page 6. Parent concerns were reflected as the parent began to worry about the child stuttering and knowing that child had behavioral issues.

At this meeting the child was found eligible for services under the category of speech or language impairment.

7. The next ARC was held on March 26, 2019, again during the child's second year of head start. At that time in developing the IEP it was found that the child's behaviors did not impede child's learning or that of others (CMPL p 16). This IEP developed goals in the area of speech as reflected on Exhibit (CMPL p 17).

8. The next ARC occurred on September 30, 2019, when the child was in kindergarten (CMPL p 21). The parents' concerns were stated that parent would like to see the child be able to be in school and remain on task. The behavior of the child was discussed, and it was determined that an Occupational Therapy Evaluation was needed as the child was often getting up on the floor in the classroom and being off task. Teachers reported behaviors beginning September 25, 2019, of the child coming to the classroom and telling her not to talk to the child; the child having a pair of scissors and going around the room threatening to cut other students; the child hitting another student and starting to hit and kick the teacher when she tried to calm the child down; and the child running from the classroom assistant. School

members were concerned for the child's safety. The ARC members agreed that a Sensory Processing Evaluation needed to be completed and the parent signed permission in that area (CMPL p 22).

9. Following the evaluations the ARC reconvened on October 28, 2019, (CMPL p 28 to 32) the purpose of the meeting was to discuss the child's progress in speech and school behavior. The committee discussed the need for a Functional Behavioral Assessment (FBA) and an evaluation for emotional behavioral issues. The parent signed the consent for the evaluations. Several behavioral issues were discussed including the following: the child was under a desk and

██████████ was attempting to coax the child out and the paraprofessional was blocking the door with her chair. When the child could not get out the child slapped the paraprofessional twice in the face. She asked, "are you supposed to hit me" and the child stated, "I did not hit you; I slapped the ██████████ out of you". When another teacher entered the room, the child wanted to give her a hug, but she stated she could not do so because the child had to be good and not hit other people first. She told the child to finish the child's work and then the child could play a game she had brought, and the child immediately completed the work. Another incident discussed the child kicking the teacher in the side of the head and she went to the ER because of dizziness. This incident occurred after lunch when the child tried to run out of the classroom.

██████████, a Trauma Therapist from ██████████ participated in the ARC and stated that the child's sessions were going well with her and that positive behavior was being increased through a ladybug.behaviorchart earning a preferred item after completion of chart. ██████████ stated that the child's behavior was unpredictable and anything the

child did not want to comply with could set off the behaviors. The dot system did not cause the child to lose dots if the child was not complying, but the child was granted dots with good behavior.

██████████ discussed at said ARC meeting whether there was enough evidence to conduct a FBA. ██████████ explained the behavioral system that was being used. Discussion was held as to whether the child's behaviors could be the result of a medical condition and ██████████, the ██████████ Therapist stated that she had not seen the child long enough to determine any medical issues, but did not believe it was ADHD or impulse control. ██████████ stated that the intake person at ██████████ had identified "conduct disorder" and "unspecified impulsive disruptive control" (CMPL31). No further inquiries were made into eligibility into

Development Delay thereafter. An intervention program which had supports at both home and school was discussed by the ARC as well as a shortened day as the behaviors were better in the morning.

10. A Behavior Intervention Plan (BIP) was completed using a point system and check in and out sheet. All parties agreed to an evaluation in the area of Emotional Behavioral Disorder.

(CMPL p 32). Parent signed the consent for these evaluations on October 28, 2019. (CMPL p 37). 11. An ARC meeting was held on October 31, 2019. (CMPL p 39-43) to discuss shortened school days. ██████████ from ██████████, who was the juvenile intervention services program (JISP) explained how the program worked and that she could work up to three

(3) hours daily in school setting to address behavioral regulation. ██████ described the JISP as intensive home therapy for children with severe emotional disabilities. She stated the program was an intervention one step below residential placement. (Deposition p. 9) Child had a shortened school day of three hours Monday to Thursday while JISP was involved. ██████ was out on Fridays to see ██████ trauma therapist. ██████ stated there was no rhyme or reason as to what caused behavior (Deposition p. 17). ██████ was aware of child's ██████ diagnosis of unspecified impulse control and agreed with said diagnosis (Deposition p. 19). ██████ was aware the child was referred for twelve threat assessments from December 19-May 22. She stated services with the child were terminated after only a month because the program had "exhausted all resources" (Deposition p. 21). No other services replaced those of JISP. JISP suggested residential placement, but parent did not agree. The parent expressed the need for more support at school.

12. Another ARC was held on December 3, 2019, (CMPL p 50-56). The purpose of this meeting was to discuss the Least Restrictive Environment (LRE). It was discussed that sensory processing had been measured and was found to have no impact on the child's daily living skills, nor academic skills. The parent expressed concerns about a mention of medication or an inpatient setting by the ██████ therapist after only seeing the child a couple of times. An Integrated Report was discussed by ██████, school psychologist. The report stated that the child could be compliant and complete tasks for a period of time, but could also become defiant hitting, kicking and using inappropriate language. The Parties agreed that the child's current program was not working and after reviewing the eligibility form, determined the child was eligible for services with a category of Emotional Behavioral Disability (CMPL



p 54). The parent did not consent to services due to disagreeing with the terms of service times and the LRE. Specifically, the parent wanted the child in the regular classroom as often as possible with as little as time in the resource and did not agree with the child being in the resource room from 8 am to 9:45 am. At this time a diagnostic impression had been formulated by [REDACTED], but there was not a formal diagnosis from a physician. (Supplemental Exhibit 12:2: 19). The issue of continuing an evaluation for EBD was rediscussed and parent agreed. Due to no academic difficulties, testing in academic areas was removed from the renewed evaluation consent.

13. Although the actual Due Process file was lost, there were very few unique records maintained in that physical copy. The digital records of the school still contain the disciplinary, attendance, grade and special education records, other than signed copies of some of the records.

There was no testimony that any of these records were discovered or conveyed to third parties. The only testimony of confidential information being shared with a third party was the parent's testimony that the child's older brother heard from the daughter of a school administrator something that the administrator discussed at home with his family about the child. (Testimony November 15<sup>th</sup> p 8-9).

14. The ARC reconvened on December 4, 2019 (CIVIPL p 59-64). The purpose of this meeting was to develop, review and revise the child's IEP and make placement decisions. The Parties reached a consensus on placement options alternating between regular classroom and the resource room. A BIP was developed that if the child began having a tantrum in the regular classroom, the child would be taken to the resource room to cool down. (CMPL p 61)

There was further discussion of the current BIP for positive tally marks and receiving a 5-minute choice reward for every tally mark the child earned.

15. The parent discussed that he did not want to take the child anymore to [REDACTED] [REDACTED] for threat assessments. It was agreed that only suspension would occur, and no threat assessments would occur as long as the parent kept the child in outside therapy and physician consultation from an outside mental health agency. Behavior was to be monitored every 15 minutes to obtain data on what would make the child be successful. It was agreed that suspension would be up to three (3) days and the child would not be suspended pending treatment in order to return to school. The IEP developed at the December 4, 2019, meeting found that the primary disability to be Emotional Behavioral Disability and that the child was also eligible for speech and language service (CMPL p 67-73).

16. An ARC was held on February 26, 2020, during the child's kindergarten year and a second IEP was developed in the area of Emotional Behavioral Disability. The child's strength and adverse effects under social and emotional status were the same as that on the previous IEP (CMPL p 102 and 68). Measurable goal 2 was the same as measurable goal 3 on the previous December 4, 2019, IEP. (CMPL pl 04 and 70) At this meeting the parent wanted the parental rights read in full and stated they could only stay until 10:00 am. The team members were introduced at 8:20am when the meeting notice had reflected it would begin at 8:00 am (CIVIPL p 108-109). The meeting was intended to address manifestations and offer services to the child. The parent stated the child was not receiving services and that someone had reported that the parent refused to complete a risk assessment. The ARC recommended home hospital instruction for the child

and the parent agreed for someone to come to the home for services, but stated they wanted the child back in school. The parent did not want to review the information for the Manifestation Determination on that date due to parent's work schedule and the meeting for Manifestation Determination was rescheduled to March 9, 2020.

17. There were several attempts to schedule an ARC meeting (CIVIPL p 113-116) and ultimately the next ARC was held on September 21, 2020, when the child was in first grade. At that time the child was found to still be eligible in the categories of Emotional Behavioral Disability and Speech and Language. (CMPL p 1 17-126). Measurable goal 2 was set as the same goal that had been previously set concerning behavioral, namely when given an undesirable classroom task the child would increase their use of coping and calming strategies when given two prompts on three out of four trials as measured by a weekly behavior chart. (CMPL p 120). The purpose of the meeting was to remove the child from a home hospital setting. The parent expressed they did not want the child suspended for behavioral issues. The parent did not want to continue with home hospital instruction and requested a fulltime aid in school classroom. The school offered access to an aid throughout the day. (CMPL p 125).

The parent stated that he wanted due process to be filed. It was agreed that the child would go to school for four weeks, as long as the child's behavior was non-aggressive, the child could go into the general ed classroom fulltime. [REDACTED] was to see the child twice a week and parent stated that if the child received these services twice a week, parent did not feel the child would need additional service time for prior lost time. However, parent contends that this service was not provided. The Parties agreed to not proceed to due process at that time and to reconvene in four weeks to discuss placement.

18. The next ARC meeting was convened on November 20, 2020. The reading of parental rights was waived. By this time JISP program had been closed. The child was not seeing o counselor at that time because in person sessions were not available due to COVID. It was the parent's intention to return the child to those sessions face to face once available. (CMPL p 134). Discussion was had that due to the child's improvement the ARC was considering resource time of 40 minutes a day and an aid at all times. The parent was not in agreement with the 40 minutes per day and requested that [REDACTED] file Due Process. The school provided parent with resource numbers for filing Due Process. The IEP was still in effect and would continue to be implemented under stay put.

19. An IEP was developed on March 2, 2021. (CMPL p 146-157). Disability continued to be Emotional and Behavioral. Again, measurable goal 2, continued to be the same as it had been from the beginning of EBD services (CMPL p 149). Namely when given a non-preferred task child would increase the use of self-regulation strategies and calming strategies when given 2 prompts on three out of four trials as measured weekly by behavioral chart. By this point, the child had returned back to school from virtual through the pandemic and had struggled to stay focused on completion of non-preferred tasks. It was stated that support staff were in the room giving constant redirection and prompting to the student to -get work completed. There was also discussion that during bus duty time the child was having a hard time sitting in the gym and had to be directed several times to stop swinging on the rail. [REDACTED] [REDACTED] stated that the child did not participate in any virtual learning for her during the times and days agreed upon in the November meeting.

20. The Least Restrictive Environment was discussed on March 2, 2021. At that time the child had four transitions in a day with 165 minutes in resource. The ARC agreed that having fewer transitions would best serve the child. It was agreed that time was needed in the resource room to target behavior intervention. It was agreed that the child would remain in the resource room for 60 minutes a day (a decrease from 165 minutes a day). Strategies to improve the child's behavior were discussed such as taking a walk around the building, having break cards to request when the child needs a break and receiving awards per the BIP. The IEP meeting had been scheduled eight (8) times since January 3, with the school cancelling meetings twice due to the weather and the parent on other occasions, often because of parents night work schedule. The parents were not present at this ARC meeting.

21. An ARC meeting convened on September 3, 2021, when the child was in second grade. The parent opted to revoke all services, except Speech. (CMPL p 161-166). The purpose of this meeting was to discuss the lost Due Process records.

22. The next ARC was held on October 8, 2021, and the only eligibility listed in the IEP was Speech or Language Impairment. (CMPL p 180-183 and 197-201). The IEP noted that although the child was not identified as EBD, ■ did have a BIP as part of ■ IEP that was being implemented in the resource setting to provide increased supervision in a smaller class setting to ensure the safety of the child and others during the second half of the school day. (CMPL p 198). Supplementary aids and services specifically stated "[child] will require support for aggressive behavior, hitting, kicking, throwing items in classroom, running from classroom, running from adults. [Child] requires support for redirection and safety in classroom and when

transitioning to and from classroom due to [child] wandering around the building." (CMPL p 200). A further Least

Restrictive Environment was stated as "ARC committee agreed with the exception of the parent that [child] would attend pari time general and part time special education as his LRE. [child] will be in general educa@.ion class for reading, language arts, and SEL in the morning. [child] will bc in resource setting in the afternoon as data supports that aggressive behavior is displayed more during the afternoon hours. [child's] general education teachers will send afternoon assignments to the resource setting while the child is being provided increased supervision in a smaller class setting with implementation of his BIP continuing across school settings. This will help with ensuring safety with [child] and others while [child's] IEP is being implemented. (CMPL p 201).

23. Another ARC meeting was held on December 1, 2021 (CMPL p 213-221). The purpose of the meeting was to discuss the Manifestation Determination, consent for re-evaluation, and placement options. The child was brought to the meeting by parent and other members of the ARC asked that the child not be there, but the parent felt the child had the right to attend. As of the date of the ARC meeting, the child had been suspended for twenty (20) days due to behavior for the 2021-22 school year. (CMPL p 217). The parent had reported to social services that there were inappropriate restraints at the school on November 3, 10 and 26. Parent was asked if he would sign a consent for release of information for the school to speak with [REDACTED] where the child had been receiving counseling services, same was denied.

24. During the Manifestation Determination it was discussed that the child's eligibility determination was in the area of Speech. Child had been suspended twenty days of

the 2021-22 school year. Child's long history of behavioral difficulties and that [REDACTED] parent had revoked consent for Special Education services in the EBD category at the last ARC meeting in October 2021, was discussed. The BIP that was in place that had previously been used under the category of EBD, was currently being used with the Response to Intervention, and that became part of the child's

IEP. The previous FBA that had occurred with the child was also discussed. The ARC agreed that based upon a review of the child's records and educational history the probability of repeating violations was likely.

25. The ARC discussed they believed the speech services were being implemented appropriately, but school ARC members felt that the child has a disability of Emotional Behavior Disability. Those ARC members at the school did not feel that the child was properly identified and thought that [REDACTED] needed specially designed instruction with program modifications and supports with goals and objectives to help child become more successful at school. Child currently had a BIP that was being implemented across all educational settings as part of the multi-tier system of interventions, but this had brought limited success. The parent did not agree to give consent for the child to be re-evaluated under the category of EBD (CIVTPL p 218).

26. The ARC found that the behavior in question that resulted in the child being suspended was not a manifestation of [REDACTED] current disability of speech and that the student could be subject to the same disciplinary procedure as a student without a disability. The ARC discussed that due to the most recent threat assessment it had been recommended that child be seen by mental health provider to ensure child was able to return to school and was not a danger to child or others. The ARC stated it was their duty to report to Social Services if they

felt a student's mental health needs were not being met or recommendations followed up on. That ARC stated that the behaviors the child had been displaying resulted in threat assessments being completed, police being called, and the child being suspended from school. The child had hurt other students and staff members on numerous occasions and destroyed classroom materials and threatened to harm child and others on many occasions. The ARC informed the parent that [REDACTED] had requested copies of threat assessments that had been completed for the child, but they could not provide those to [REDACTED] because parent had revoked his consent to share information with outside agencies over a year ago. The ARC went on to say that regardless of the disability category the child needed positive behavioral support and a BIP to address behavioral needs. It was discussed that the BIP is a living document that can be changed as the child makes progress and if it is not successful it may be modified to better meet the child's needs. The child was being rewarded daily for earning stars with rewards being based upon child's preference.

27. Because of the child's increased aggressive behavior toward child self, peers, and staff the issue of placement was considered. At the time the child was participating in general education with resources for speech services only. The ARC felt the child needed a more restrictive setting for instruction and that behavior was impeding the learning of child as well as [REDACTED] peers. It was discussed that other placement options such as part time special education and part time general education could be considered, and the ARC felt the best interest of the child was served by being in a smaller class setting for a portion of the day with more direct instruction and increased supervision for child to better access the curriculum and keep child and others safe. The aggressive behaviors child was exhibiting were kicking, hitting, scratching



and spitting on others. The child had also threatened to kill child and others and had run out of the school on several occasions. The Special Education Director, [REDACTED], suggested that the ARC team change the placement to part time general instruction and part time special education, which was approved by all members of the ARC, with the exception of the parent. The team determined that every time the child displayed aggressive behavior and assaulted peers or staff members that it would be reported to the School Resource Officer or the City Police and that every time the child threatens to harm a threat assessment would be conducted and if that threat assessment recommended an evaluation for mental health professional to ensure the child was mentally stable, Social Services would be called.

28. At the ARC meeting on April 12, 2022, the ARC agreed for the child to be reevaluated in EBD. The consent for evaluation was sent home for the parent to sign and return, but was not signed and returned until the last day of school June 1, 2022.

29. An ARC meeting was held on August 26, 2022, when the child was in third (3<sup>rd</sup>) grade. At said ARC meeting the purpose was to discuss progress in Speech Therapy and discuss consent for re-evaluation and re-evaluation needs. Said meeting essentially established the types of evaluations that the parent had consented to on June 1, 2022, with another ARC scheduled for September 16, 2022. (CMPL p 234-238) After the August 26, ARC meeting the parent signed a consent to re-evaluate which was sufficient in all areas requested by the school.

30. The record was replete with various behavioral issues. PROWL (positive attitude, respectful, on task, willing to learn, lifelong leader) forms were submitted as (CMPL p 249-285). They reflected disciplinary referrals. There were 36 reports from August 28, 2019, through May 18, 2022. These reported incidents varied from being rude to going at another student with scissors, throwing objects at students and staff, striking students and staff, running

from the classroom, going at a teacher with a broom, refusing to do work, ripping up other students' papers, inappropriate language, threatening physical violence against other students and staff, spitting, head butting staff, slapping staff and hitting them with fist, throwing things at students, running out of the counselors' room, refusing to listen to directions, refusing to complete work, crawling around the room and under desk, slapping another student and leaving a mark on their face, and hitting two other students, threatening to kill teachers and telling an administrator he would "send him to the hospital". 18 of these incidents occurred during the child's kindergarten year with the remainder during the second grade. There were no references to first grade as the majority of the year was virtual due to the pandemic.

31. Behavior Detailed Reports were submitted into evidence as CMPL p 287-338 and discussed the same PROWL incidents as well as the conferences and responses of the school. These records reflect that the school attempted relaxation strategies, calming techniques, and various restraints. The child was suspended for 13 days in kindergarten and 51.5 days in second grade, again there were no suspension in the first grade as that year was virtual (CMPL 660-682). Twenty-six restraints were documented in the record over the years in question (CIVIPL 151-194).

The parent believes more occurred.

32. An independent FBA conducted by [REDACTED], a licensed psychologist, concluded that the child would change placement from general education to resource room from a shortened day back to a full day without any resulting change in the child's behavior. [REDACTED]. [REDACTED] did not feel confident addressing the child's behaviors because the school did not forward

records to her. [REDACTED], the DSE, stated that she thought that would jeopardize the independence of the evaluation (Respondent Exhibit 5).

33. The school psychologist, [REDACTED], agreed with the independent FBA, but there is no evidence that any of those recommended interventions were implemented. It should be noted that the independent FBA was completed after the time period in question at the hearing. The school psychologist, [REDACTED] did state in her evaluation that the child exhibited symptoms of Attention Deficit Hyperactivity Disorder [REDACTED] p. 16) and that the child's borderline reading scores, based on her evaluation, had an adverse impact on the child's education and warranted interventions ([REDACTED] p.85). [REDACTED] did not object to any of the conclusions or recommendations from the independent evaluators.

34. The child's Due Process folder was lost by the district after the child's 2<sup>nd</sup> grade teacher, [REDACTED] left the school. In her testimony she denied taking the file with her [REDACTED]

p. 7). The DSE testified that it was her understanding that the child's file was accidentally thrown

in the garbage and she and the principal searched the dumpsters and could not find same.

#### BURDEN OF PROOF

The parties seeking relief bears the burden of proving their entitlement to relief by a preponderance of the evidence. In this case, the student bears the ultimate burden of persuasion on the elements of students claims. The district bears the ultimate burden of persuasion on the elements of its counterclaim. Schaffer vs Weast 546 US 49,57-58(2005); KRS13B.090. see also

City of Louisville, Division of Fire vs Fire Services Managers Association by and through Kaelin, 212 SW 3d 89, 95(KY2006) providing "the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or the entitlement to the benefit sought.

#### CONCLUSIONS OF LAW

1. THE ISSUE OF PREDETERMINATION OF ELIGIBILITY WAS NOT ALLEGED IN THE COMPLAINT OR AMENDED COMPLAINT AND IS THEREFORE, NOT PRESERVED AS AN ISSUE.

Petitioner argues predetermination of eligibility in their Brief. However, same was not alleged in the Due Process Complaint or Amended Complaint, nor was the issue raised during the hearing. Therefore, Petitioner is not entitled to relief in said area.

However, on the merits, the eligibility under the category of Other Health Impairment and Developmental Delay was never suspected or raised during the school years in question. OHI eligibility would not properly fit with aggressive, violent and threatening and destructive behavior that the child exhibited. OHI focuses on having a heightened alertness to environmental stimuli. The diagnosis of ADHD was not suggested to be an explanation for the child's actions. However, nothing in the record indicates that the school district should have known that there was some other potential eligibility category other than EBD and the Speech, and no proof was presented at the hearing that eligibility in some other category existed if the ARC had considered n.

11. THE ISSUE OF ALLEGED RETALIATION IS NOT WITHIN THE JURISDICTION OF THIS FORUM.

The child requested on November 8, 2023, that the Due Process Complaint be amended to include a claim that the school retaliated against student for filing Due Process when a school employee filed a charge against child in the juvenile court. 20 USC 1415 only provides jurisdiction to address issues directly related to a child receiving FAPE. Petitioner acknowledged same as the Hearing.

111. PETITIONER HAS NOT MET THE BURDEN OF PROOF TO SHOW THAT THE SCHOOL HAS VIOLATED THE STUDENT'S PROCEDURAL PROTECTION SUCH AS TO CREATE A DENIAL OF FAPE.

No procedural violation occurred in this case; thus, it is not necessary to delve in to whether same caused substantive harm. Plaintiff argued the 34CFR300.300(4) controls provisions of special education services once a parent of a child has revoked consent in writing for the continued provision of special education and related services. In such circumstances the public agency (i)

"may not continue to provide special education and related services to the child, but must provide prior written notice in accordance with section 300.503 before ceasing the provision of special education and related services; (ii) may not use the procedures in sub part E of this part, including (i) Due Process procedures under 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child; (iii) will not be considered to be in violation of their requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and (iv) is not required to convene an IEP meeting or develop an IEP under section 300.320 and 300.324 for the child for further provision for special education and related services".

Section 300.503 states (subsection A)

"Written notice that meets the requirements of paragraph (b) of this section, must be given to the parents of the child with a disability a reasonable time before the

public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child."

Section B of 300.503 defines that the content of notice must include (1) "a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report the agency uses as a basis for the proposed or refused action; (4) a statement that the parents of the child with the disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for the parents to contact to obtain assistance and understanding the provisions of this part; (6) a description of other options that the IEP team considered in the reasons why those options were rejected; (7) a description of other factors that are relevant to agency's proposal or refusal".

34 CFR 300.300 (b) (4) (ii) required that after the parent withdrew consent for the child to be served in the EBD categorical disability, the district was prevented from seeking to regain the parents' consent even through a Due Process action. These provisions provide that a district can pursue an evaluation through Due Process procedures, but cannot compel a parent to consent to services for their child. Further, 34 CFR 300.300 (b) (4) (iii) relieves a district from a FAPE obligation once a parent revokes consent to services. Lastly, 34 CFR 300.300 (b) (4) (iv) states that IEP team meetings do not have to continue to occur after the consent for services is revoked.

Neither party has cited any case law regarding 300.300 (4) (i) about written notice in accordance with 300.503 before ceasing provision of special education and related services. The Hearing Officer finds the school did provide such notice prior to stopping special education and related services in EBD by giving the parent repeated notices of ARC meetings wherein the student's behaviors were attempted to be addressed. Further, the conference summaries from all of the IEPs were provided to the parent and contained notice of all areas

required of section 300.503 for notice. Procedural safeguards were provided at each ARC meeting and even formally read on at least one occasion. The conference summaries explained what was decided, the facts upon which those decisions were made, and what things were considered and rejected in making decisions at the ARC. Nothing in the Due Process Complaint or Amendment suggested that the school failed to provide prior written notice to parent. Further, he was specifically provided with information about Due Process provision after he revoked his consent. It is disingenuous to argue that his revocation was not knowing or voluntary.

73 FR 73008 (2008, p 7310) cited by Petitioner related to an adult student revoking consent for their services after the parental rights had transferred to the student and encouraged sufficient notice to be given to the adult student about the consequences of their decision to facilitate the parents discussing the ramifications of that revocation with their adult child. Nothing in said regulation requires written notice to a parent of the consequences of their own decision. Thus, the Hearing Officer finds that section non supportive of Plaintiff's position.

The parent testified at the October 8, 2021, ARC meeting he did not have other concerns. Testimony April 27, p 198. After significant misbehavior resumed and suspension notices began again, notices were sent for Manifestation Determination Meeting. CMPL 210-212. Ultimately, the Manifestation Determination Meeting was held on December 1, about a full month after the District tried to schedule it. The conference summary of that manifestation determination reflected that parent declined speech therapy services during the suspension CMPL 213-221. During that meeting the District requested permission to reevaluate the child for EBD, but the parent declined. CMPL 216. The father clearly understood that the Manifestation Determination

ARC meeting was to determine that the child's speech was not the reason for ■■■ behavioral concerns. Transcript April 27, p 205-206. Parent expressly agreed that the behaviors were not caused by the child's speech disability and there was no claim of the District failing to implement the speech only LEP.

Id p 208.

20 USC 1415 does not require that a Manifestation Determination consider other possible disabilities than that for which the child is eligible for special education and related services, 20 USC 1401 (3) defines child with a disability by reference to the specific eligibility categories, not broad or generic definitions of disability. At the time of the Manifestation Determination the parent had withdrawn consent for the child to be considered for EBD disability and there was no other evidence the school was aware of any formal diagnosis or of any medical or psychological condition that would even put them on notice that the child could be eligible under another category.

It appears that the parent believed that the resource room could only be used if a child was eligible under the category of EBD and that is part of the reason he did not want the child eligible under that category and would not consent to services. (Testimony April 27, p 213-214.) The school was obligated by their duties to staff and other students to limit the student's destructive and disruptive behavior.

Further, courts have stated that on equitable principles "what is important to the equitable consideration is if the parent disrupted or were uncooperative in the school district's efforts to meet its obligations under the IDEA" In re New York City Department of Education, 694 F 3d 167,



185 (2<sup>nd</sup> Cir. 2012). Further, other cases have held that courts may consider various factors weighing the equities, including whether the parent made their child available for a school's district evaluation. C.L. vs. Scarsdale Union Free School District, 744 F.3d 826, 840 (2<sup>nd</sup> Cir. 2014) and E.M. vs. New York City Department of Education, 758 F.3d 442, 461 (2<sup>nd</sup> Cir. 2014).

Therefore, the Hearing Officer finds both under express regulatory language and equitable considerations of the parent revoking consent for services in the category of EBD no relief may be awarded for any action of the district after parent revoke consent for EBD services. It should be further noted that neither the Complaint nor Amended Complaint alleged that the district had failed to provide prior written notice of discontinuation of services after the parent's revocation of consent for services.

#### IV. THERE WAS NO DENIAL OF FAPE FOR THE SCHOOL YEARS IN QUESTION.

The records show clearly that the only area that the child was identified for special education services was Speech and Language during the initial determination of eligibility on November 9, 2018 while the child was in the second year of HeadStart. At that time concerns were reflected both with the child's stuttering and behavioral issues. The ARC held on March 26, 2019 specifically held that the child's behaviors did not impede learning or that of others. (CIVIL p. 16).

Once the child entered Kindergarten, an ARC was held on September 30, 2019 and the child's behavior was discussed and was serious enough that the ARC agreed that an

Occupational Therapy Evaluation was needed in order to address whether sensory issues were causing the behavior. After that evaluation occurred, the ARC met on October 28, 2019 for discussion of progress in child's speech and school behavior. A Functional Behavior Assessment occurred on October 28, 2019. Petitioner argues an FBA was completed "only in the area of speech" CMPL589. The form merely reflects child's eligibility category on October 28, 2019, was speech. The FBA was developed to discuss the behavior interventions which had been utilized in the fall of 2019 leading up to the decision on October 28, 2019, to do an evaluation in the suspected area of Emotional Behavior Disability.

The shortened school day paperwork was given to parent for discussion with child's physician, which was promptly accomplished. HT, Apr. 27, pp. 91-92. This was accomplished and the committee reconvened three (3) days later on October 31, 2019, to move child to a shortened school day and week, with the consent of parent and child's pediatrician. A reward system was set up for behavior and Behavior Intervention Plan was formulated using a points system and a check in and out procedure.

At this meeting it was agreed that an evaluation should take place in the eligibility area of Emotional Behavioral Disorder and the parent consented for this evaluation on October 28, 2019. A shortened school day was discussed as child's behavior was worse in the afternoon. Despite the behaviors, no academic concerns existed. (T. 4/27 p. 84-85)

At the meeting on October 31, shortened school day/week were approved and the JISP worker was invited. HT, Apr. 27, p. 93; CMPL39. Parent indicated they understood the parental rights. CMPL41. The committee discussed that child's aggression was increasing, that child was getting aggressive with kids and adults, that child had slapped numerous adults, and had

shown physical aggression against other children. Id. Despite the involvement of multiple independent therapists through ██████, none of them ever told parent anything they thought the school should be doing or which they thought the school was doing wrong, and none of them ever made recommendations which the school refused to follow. HT, Apr. 27, pp. 103-104. Due to threatening behavior and language, child was referred for two (2) threat assessments during November 2019. Parent then revoked consent for communication and sharing of information between the School District and ██████ and revoked consent for the evaluation to continue despite having just consented to it on October 28. This revocation occurred on November 21, 2019. At this meeting on December 2, parent requested the oral reading of full parental rights, and brought in a copy of the 11-21-19 handwritten note which set out the above revocations. Parent no longer wanted child on shortened school days barely a month after that was started. Supplemental exhibit

.. 12-2-19 conference summary. At the same meeting, parent acknowledged child's behavior had gotten worse at home since October as well, and acknowledged child hadn't met with ██████ since Child started in JISP. Parent had no suggestions for dealing with child's behavior at school. There had been no other suspensions since early October. CMPL660, et seq., and threat assessments on CMPL439 and 11-26 CMPL442.

At the December 2, 2019, ARC meeting, it was shared Chat "[child] has received diagnostic impression from ██████ but has no formal diagnosis from a physician." Supplemental exhibit 12-2-19 conference summary. Since the evaluation for EBD had stopped when parent revoked consent on November 21, 2019, the committee also discussed whether parent would again allow the evaluation to be completed. After discussion, parent agreed. Id.

The committee again agreed there were no academic difficulties, and testing in academic areas was removed from the renewed evaluation consent. *Id.* The committee concluded on December 2 and agreed to meet again on the following day.

The conference summary from December 3, 2019 reflects the committee discussed the OT sensory evaluation which indicated sensory processing had no impact on child's daily living skills or academic skills. CMPL50, et seq. The EBD evaluation was reviewed, and "[t]he committee determined that [child] is eligible for special education within the eligibility category of Emotional Behavioral Disability." CMPL54. Parent could not recall anything in the evaluation with which he disagreed. HT, Apr. 27, pp. 139-140. The evaluation described child's behavior as aggressive, not impulsive, hyperactive, or distractable. RX I . An IEP was discussed, but the committee could not come to an agreement on service minutes. However, the committee did agree the shortened school day/week schedule would end, and child would return to school full time. HT, Apr. 27, pp. 113, 116. Parent did not recall disagreeing with anything when EBD eligibility was being discussed. HT, Apr. 27, p. 115. The meeting reached a stalemate regarding service minutes and was adjourned. CMPL55. Parent wanted full time regular education with a one-to-one aide monitoring of behavior. HT, Apr. 27, pp. 121-122.

The committee reconvened on December 4, 2019. HT, Apr. 27, pp. 132; CMPL59, et seq. Ultimately, the committee agreed on an IEP under the EBD eligibility. CNRL67-73; HT, Apr. 27, pp. 136-137. Parent testified they agreed with the IEP. HT, Apr. 27, p. 134. Specifically, parent agreed academics still wasn't a concern, and child's general intelligence was commensurate with peers. HT, Apr. 27, p. 137. Parent also agreed to sign a new release to allow

██████ to continue working with the child, since she couldn't work with child after parent revoked consent for the sharing of information. ██████ Deposition, p. 37; HT, 16Apr. 27, p. 136.

██████ testified that she did not provide instruction to the child or serve as a "babysitter" Deposition pp 35-39. She also observed District staff de-escalating child (where the success of proven techniques was "like flipping a quarter" — working some days and failing other days with no real pattern). She observed District staff utilizing physical restraint as a very last resort. ██████ Deposition, pp. 19-20. She also testified <sup>despite</sup> ~~that~~ <sup>her</sup> training as a social worker and being a trainer with safe crisis management (a program which targets verbal de-escalation behaviors before utilizing physical interventions) and working side by side with child for several hours a day for about a month, she was unable to identify child's triggers. When ██████ ██████ stopped serving the child, child had moved into the EBD eligibility and was receiving additional behavioral supports through the special education teacher. There were fewer suspensions, behavioral referrals, and restraints during the time child was identified under the EBD category.

As school continued under child's new IEP under the EBD eligibility, there were still behavior concerns, including an incident on 2/20/20 which prompted another suspension, the duration of which would take child beyond ten (10) days total for the school year. On February 21, 2020, parent revoked consent for "all release of information to any outside agency". HT, Apr. 26, p. 101. The District noticed an ARC meeting for February 26, which was the 8th day of suspension for the year. CMPL99. The ARC convened on February 26 with the purpose to discuss behavior, including a manifestation determination. CMPL107, et seq. Despite the meeting starting late and parent imposing a 2-hour time limit due to his work and having had

his parental rights read to him in full on December 2, parent insisted on having them read again on February 26. Parent testified they didn't believe they had ever had the rights read to them in full before. HT, Apr. 27, pp. 145-146. The manifestation discussion could not be completed on February 26. Parent admitted the reading of the procedural safeguards took a good portion of the meeting, and that his request delayed the committee getting to the purpose of the meeting. HT, Apr. 27, p. 147. Instead of completing the behavior discussion the committee, including parent, agreed to move child into home/hospital instruction due to the serious dangerous and threatening behavior until they could reconvene and further discuss the events which had prompted multiple suspensions and threat assessments. CMPLIOI, et seq. The committee proposed to reconvene on March 9, but that meeting didn't occur, and the February 26 meeting ended up being the final ARC meeting of the school year due to the onset of the COVID-19 pandemic in early March 2020. This February 26 meeting came after child had been suspended 7 or 8 days. The meeting was the purpose of conducting the required manifestation determination before child reached 10 days of suspension. The committee, with parent in agreement, changed child's placement to home/hospital before ■ reached 10 days of suspension for the year, thereby avoiding any procedural violation relating to the collective disciplinary changes in placement exceeding 10 days. Therefore, there was no manifestation determination procedural violation during the 2019-2020 school year.

The parties agreed that home hospitalization should be discontinued, and the child returned to school at an ARC meeting on September 21, 2020, but there was disagreement between the parent and other ARC members as to whether the child would be in general education classrooms full time or in resource settings. It was agreed that the child would return

full Cirne for four (4) weeks in regular classrooms and ██████████ would see the child twice a week. AL this time the parents did not feel that the child would need additional services for the time that had been missed during the COVID period of time in the behavioral area.

Another ARC meeting was held on November 20, 2020. HT, Apr. 27, p. 164; CMPL134, et seq. At that time, the ██████████ release was no longer in place, and there was no ongoing communication between ██████████ and the School District, even though Child continued to receive therapy through ██████████. HT, Apr. 27, pp. 167-168. At the November ARC meeting they discussed progress and what Child had been doing while in virtual instruction. CMPL 134-135. They agreed the reward system was working, and compensatory education relating to any missed services during virtual instruction was offered and declined. CMPLI 35. Parent agreed behavior wasn't an issue during virtual instruction. HT, Apr. 26, p. 91. At the November 20, 2020, ARC meeting, the parties discussed reducing Child's resource time, but could not agree on a new number of minutes, so it was left at 165 minutes per day. CMPL136.

Multiple attempts were made to convene an annual review ARC meeting during the spring of 2021. CMPL141-145. Eventually, a meeting was held on March 2, 2021, without either parent present to meet the annual review deadline. CMPL145-151. The committee agreed to reduce child's resource time whenever ██████████ returned in person, and to continue with speech 2 times per week. Child's behavior goals remained the same because ██████████ had no behavior problems during virtual instruction due to the lack of interaction with peers. Parent recalled receiving notices but couldn't recall who cancelled the various meetings. HT, Apr. 27, p. 173. After receiving the meeting notes and the new IEP, parent did not request another meeting to revisit or discuss anything which was decided in his absence. Id. Parent testified child's behaviors were

fine at the point child came back to school in 2021. HT, Apr. 26, p. 85. When school resumed in the fall of 2021, Child's behavior was significantly better. HT, Apr. 27, p. 188. Parent was in communication with Child's teacher and they discussed how child was behaving positively, being respectful, following directions, and accepting redirection. HT, Apr. 27, pp. 188-192.

An ARC meeting was held on September 23, 2021, to inform the parent that child's special education records had been accidentally discarded. CMPL 161, et seq. At the same meeting, parent determined to revoke consent for EBD services, and return to a speech-only IEP. HT, Apr. 26, pp. 97-106; HT, Apr. 27, pp. 194-195. The revocation of consent form was signed. CMPL172. A consent for a new speech evaluation was signed (CMPL169); an evaluation for speech was completed (CMPLI 92); a new social developmental history was obtained (CMPLI 76); an ARC meeting was held on October 8, 2021 (CMPLI 80); speech eligibility was determined (CMPLI 93); a new speech-only IEP was written (CMPLI 86); and consent to receive services was signed (CMPL191).

The facts reflected in the numerous Conference Summaries, IEP's, and testimony illustrate child did not suffer academically at any time and that adequate services were provided, when permitted by parent, to insure child received FAPE during all years in question.

**V. THERE IS NO EVIDENCE THAT THE LOST FILE CAUSED ANY DAMAGE TO THE STUDENT FOR WHICH THIS HEARING OFFICER HAS JURISDICTION TO ADDRESS.**

All parties agreed that the records were improperly disposed of, but there is no evidence that the records were ever accessed by any third party, that they were misused, or that the child was harmed by the loss of a physical copy of the Due Process file. Only a few unique records which were maintained in lost physical copy. No disciplinary, attendance or grade records were



lost, and no special education records were lost, other than signed copies of some of the records were otherwise maintained digitally. There was no proof of any harm child suffered from the records which being accidentally disposed of. The new teacher took the doors off of a locked cabinet and threw away all the contents of the cabinet, including records of other students besides the one in this case. Assistant Principal [REDACTED] testified that once the files were found missing, he and the Principal went to the dumpster in an effort to recover them. (Testimony November 17, p 58-59) [REDACTED], the teacher at the time stated that left the records in the locked cabinets in the classroom when she went elsewhere for work. Transcript November 16, p 17.

The only testimony that confidential information was shared with a third party was provided by the parent testifying that the child's older brother had heard from a daughter of a school administrator something that the administrator allegedly discussed at home with the family about the child. This statement was multiple levels of hearsay and is given little weight.

Hearing Officers only have authority under 20 USC 1415 (b)(1) to deal with issues relating to identification, evaluation, placement, provision of FAPE. Thus, the Hearing Officer does not have jurisdiction to address any breach of any confidentiality had same even been shown.

**VI THE DUTY TO CONDUCT A MANIFESTATION DETERMINATION WAS NEVER TRIGGERED UNDER USC SECTION 1415 (K)(1)(F)(I).**

Even the parent acknowledged in his testimony that behavior was not a manifestation determination of the child's disability in the area of Speech and the only failure to evaluate

occurred when the parent refused to consent for the reevaluation for EBD. The district conducted a legally compliant manifestation determination once the parent agreed to show up for the

Determination and he admitted that none of the behavior was a manifestation of the child's speech disability and acknowledged that any alleged procedural violation as to the December 1, 2021, manifestation meeting did not cause any substantive harm to the child. The ARC based the manifestation discussion on the currently effective evaluation which supported a speech only eligibility. There is no requirement to keep revisiting a manifestation determination for each new behavior when the behaviors continue to be of the same type and are admittedly unrelated to the student's disability.

Kaelin v. Grubbs 682 F 2d 595 (6<sup>th</sup> Cqr 1982) case cited by Petitioner as regards to manifestation determination is not persuasive as it was issued in 1982, prior to the time that written requirements for a manifestation determination had been enacted into law. The most recent IDEIA amendment in 2004 removed the language which expressly placed a burden on the school to prove that a child's behavior was not a manifestation of the child's disability. No court cases were cited that suggest any jurisdiction has found this to be a continuing obligation. In any event, the parent even conceded at hearing that behavior was not a manifestation of the child's speech disability.

**VII. EVEN IF DENIAL OF FAPE HAD OCCURRED, THERE WAS NOT SUFFICIENT EVIDENCE TO CRAFT ANY COMPENSATORY EDUCATION RELIEF.**

Board of Education of Fayette County, Kentucky v L.M., 478 F 3d 307(6<sup>th</sup> Cir. 2017) discussed the burden of proof for an award of compensatory education. The court held that the

fact finder must identify particular evidence in the record which supports and justifies their specific award of compensatory education on the basis of where the student would be but for the alleged deprivation of services and what compensatory services would be reasonably geared to ameliorate the deficit. No evidence was presented in the hearing that showed what position the child would have been in but for the District's alleged violation of FAPE. Although it is reasonable to believe that the number of suspensions the child had would have caused a loss of educational benefit to him, the child continued to make passing grades and is of average intelligence. No evidence was introduced to where the child was performing at the of the 2021-22 school year or where the child would have been if other services had been provided. The Independent Evaluator's testimony did not note any deficits where the child was at that were caused by the district and did not describe any services that would make up for any such claimed deficits.

Wherefore, the Hearing Officer hereby finds as follows:

- (1) Petitioner's Complaint and Amended Complaint are dismissed.
- (2) All portions of Respondent's Counterclaim, other than seeking a determination than any denial of FAPE was not the school's responsibility are moot.
- (3) The Respondent's Counterclaim for a finding that any alleged violation of FAPE was excused on its behalf due to the parent revoking consent for services is granted.

Pursuant to 707 KAR 1:304 section 12. Appellate decision. (1) a party to a Due Process Hearing that is agree to a hearing my appeal the decision to the members of the Exceptional Children's Appeals Board (ECAB) assigned by the Kentucky Department of Education. The appeal shall be protected by sending it, by

certified mail to the Kentucky Department of Education, a request for appeal within 30 calendar days of the date of the Hearing Officers decision. The address The Kentucky Department of Education, office of Legal services, 300 Sower Blvd, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601.

So ordered this            day of August, 2024.



KIM HUNT PRICE  
HEARING OFFICER

CERTIFICATE OF SERVICE

The foregoing Order was served by electronic mail to [REDACTED]  
[REDACTED]  
[REDACTED] Hon. Donald Haas at  
[KDELegal@education.ky.gov](mailto:KDELegal@education.ky.gov), this day of  
August, 2024.



KIM HUNT PRICE  
KIM HUNT PRICE  
HEARING OFFICER