

**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

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█, a minor, by and through her parents,

Petitioner/Student,

v.

Case No. 2023-DP-0246 (expedited)

█ School District #█ and  
█ Special Services Cooperative,

Rhonda Walker  
Impartial Hearing Officer

Respondent/District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S. C. §1400 et seq. and the Illinois School Code, 105 ILCS 5/148.02a et.seq.

**BACKGROUND**

Student is 12 years old and is currently a 6th grade student attending a District middle school. (IHO 1) The Student is eligible for special education services under the primary category of Other Health impairment with a primary diagnosis of Attention-Deficit/Hyperactivity Disorder. (ADHD) (IHO Exhibit 1) Additionally, Student has an unspecified anxiety disorder as well as chronic recurrent multifocal osteomyelitis (CRMO) and ulcerative colitis. (IHO Exhibit 1)

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<sup>1</sup> Personal identifying information is contained in Appendix A

This matter arises as the result of Student's expulsion following a misconduct violation. (IHO 1) Parents, by counsel, filed an Expedited Due Process Hearing (DPCN) request on June 18, 2024 asking that the District conduct a supplemental Manifestation Determination Review (MDR) and raising unrelated issues<sup>2</sup>. (IHO Exhibit 1) The District responded to the complaint on June 28, 2024. (IHO Exhibit 7) This matter was bifurcated with an expedited hearing scheduled on the discipline and removal issues and a separate hearing on any other issues to be scheduled as required. (IHO 19, see, 105 ILCS 5/14 8.02b(1) After review of the school calendar tendered by the District, it was determined that the 20-school day timeline for this Hearing Officer to conduct the hearing concluded on September 11, 2024. (IHO Exhibits 1, 5)

The parties waived resolution and participated in mediation but were unable to resolve their outstanding issues. (IHO Exhibit 6). A prehearing conference was held on July 26, 2024. The Parents were represented by Thomas Kennedy III of Kennedy Hunt Law and the District was represented by Dana Bond of Guin Mundorf, LLC.<sup>3</sup> The parties agreed to hearing dates on August 8 and 9, 2024.(IHO Exhibit 18) On or about August 7, 2024, Thomas Kennedy, counsel for the parents, informed District counsel and the IHO that he was ill and requested a continuance which was granted, the parties agreeing to continued hearing dates of September 9 and September 11, 2024.

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<sup>2</sup> Parents' complaint raises issues unrelated to this hearing and which are addressed in a separate order pursuant to briefing on a Motion to Dismiss. Parents request a determination regarding attorney fees and alleged violations of Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, the Illinois Human Rights Act, 775 ILCS 5/1-101, and Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a). The IHO has no jurisdiction to make determinations under these Acts. Counsel for the Parents states that these claims are included in the complaint for the specific purpose of preservation of the issues only. The unrelated issues were stricken on the face of the Complaint (See IHO Exhibit 19)

<sup>3</sup> Sarah Jane Hunt of Kennedy Hunt Law, and Barney Mundorf of Guin Mundorf, LLC. are of record in this matter but did not participate on the record in either the Prehearing Conference or Hearing.

The parents opted for a closed hearing which was conducted over the course of two days on September 9, 2024 and September 11, 2024 on the Zoom platform. Each of the parties presented their respective witnesses. The parties sought admission of the following exhibits, which was granted: Joint Exhibits (JE) 1-25, District Exhibits (DE) 1-3 and Parent Exhibits (PE) A- F.

The parties waived oral closing arguments with each submitting a written closing argument. (IHO 23, 24)

### **ISSUES AND REQUESTED REMEDIES**

The issues raised by the Parents, over which the IHO has jurisdiction, and District response present the following issues and requested relief for determination by the Hearing Officer:

1. Whether the District failed to conduct an appropriate manifestation determination review conference in violation of the Individuals with Disabilities Education Act, 20 U.S. C. §1415(k)(1)(E), and the Illinois statute pertaining to Children with Disabilities, 105 ILCS 14-5/8.02.
2. Whether the District should have conducted a functional behavioral analysis.
3. Student, by her Parents, seeks the following relief:
  - a. That the District conduct a supplemental MDR to include consideration of the findings of Student's therapist and, as a preliminary step, a functional behavioral analysis (FBA).
4. The District seeks a finding that they conducted an appropriate MDR, properly deciding not to conduct an FBA.

The district seeks the following relief:

- a. A finding that Student's conduct was not a manifestation of her disability.

### **FINDINGS OF FACT**

The hearing officer did not have the benefit of a transcript when writing this decision. Therefore, the following is based upon the Hearing Officer's notes and recollection. The Hearing Officer has considered the testimony of all witnesses presented and the documents introduced and admitted into evidence whether or not specifically referred to or cited in the final decision. To the extent that a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the adopted evidence has been determined more credible than the conflicting evidence. After consideration of all the evidence and arguments, the Hearing Officer's Findings of Fact are as follows:

1. Student is 12 years old and attends ██████████ Middle School in the general education setting. (Testimony of ██████ Student is eligible for special education and related services under the primary category of Other Health Impairment. (Testimony of ██████ Student's medical conditions include ulcerative colitis and Irritable Bowel Disease (IBD) as well as chronic focal osteomyelitis (CRMO) (Testimony of ██████ CRMO is described as causing bone infections which result in lesions that cause regular and severe pain. (Testimony of ██████

2. Student had a section 504 plan related to her medical diagnoses during second and third grades. (Testimony of ██████ ██████ Student's second-grade teacher noticed issues

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<sup>4</sup> ██████ is Student's mother.

<sup>5</sup> ██████ is the Director of Student Services and a school psychologist. She holds B.S. and M.A. degrees in educational psychology.

with attentiveness. (Testimony of [REDACTED] Prior to her initial 504 meeting, the District performed reading scale testing and a Connor Screening which indicated that Student was showing symptoms of ADHD, particularly inattentiveness. (Testimony of [REDACTED] An IEP was implemented in Student's fourth grade year created on November 18, 2021 for the 2021-2022 school year when staff noticed that Student was having a harder time keeping up with the curriculum and that her grades were starting to regress. (Testimony of [REDACTED] [REDACTED] Math is where Student was encountering the greatest difficulty, but her accommodations addressed what she needed in all her classes. (Testimony of [REDACTED] Student's initial IEP provided services related to math and English language arts (ELA). (Testimony of [REDACTED] Her eligibility was determined as Other Health Impairment (OHI) based on her symptoms of ADHD and other medical conditions. (Testimony of [REDACTED] The school was aware that Student was taking medication for her ADHD. (JE 3)

3. ADHD is broken down into three categories: inattentiveness, hyperactivity and impulsive symptoms, or a combination. (Testimony of [REDACTED] In the classroom environment, staff observed that Student's symptoms centered around inattention as opposed to hyperactivity, impulsivity, or a combination thereof. (Testimony of [REDACTED] [REDACTED] Student is characterized as quiet but distracted at times. (Testimony of [REDACTED] [REDACTED] Her ADHD manifested in focusing difficulty and getting homework and classwork done. She will doodle instead of taking notes and needs consistent redirection. (Testimony of [REDACTED] [REDACTED] JE 9, p. 7) Her teachers state they did not observe impulsive or attention seeking behavior in class, stating she did not act out in that setting. (Testimony of [REDACTED] [REDACTED]

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<sup>6</sup> [REDACTED] is a social studies and English language arts teacher at the school.

<sup>7</sup> [REDACTED] is a teacher at the school is the 6<sup>th</sup> and 8<sup>th</sup> grade science teacher at the school. She holds a B.A. and M.A. in education.

Student's accommodations include testing in small group settings, reduced homework, extended time to turn in homework and the ability to turn homework in late without penalty. (Testimony of █████)

4. Student's annual review which occurred in her 5<sup>th</sup> grade year was conducted on November 15, 2022 (JE6) The Present Levels from that year indicate that she has anxiety and is unsure of herself in many situations. (JE 6) It was stated that she had a hard time staying out of the drama between 5<sup>th</sup> grade girls. (JE 6) The Goals and Objectives in her IEP that year indicate gradual progress where she was choosing to make better choices in social interactions. (Testimony of █████ JE 6) The next annual review, which occurred during 6<sup>th</sup> grade was performed on December 6, 2023. (JE 7) Student is described as social and that she enjoyed being with friends. (Testimony of █████ JE 9) As of December 2023, she was dealing better with her emotions and staying out of friendship drama. (JE 9, p.7) In the context of her friendships, she is described as attention seeking at times and very sensitive to the comments of others. (Testimony of █████ JE 9, p.7) She is also described as empathetic and helpful to the extent that she will become so involved that she does not do what she needs to do for herself. (JE 9, p.7) The school social worker states that she will say things to get a reaction from other students so they pay attention to her or for sympathy.(Testimony of █████ She feels this is related to social interaction and finding her way and is typical for 6th grade girls. (Testimony of █████ The school social worker was unaware of Student's ADHD diagnosis. (Testimony of █████ )

5. In August of 2020, Student was referred for neuropsychological evaluation by her physician due to concerns regarding symptoms of ADHD (Testimony of █████ PE A)

The evaluation was performed by [REDACTED] (Testimony of [REDACTED] PE A) The evaluation report, dated September 22, 2020, indicates Student has been diagnosed as having moderate to severe ADHD, Combined Type and Anxiety Disorder, unspecified. (PE A) She explains that combined type ADHD includes hyperactivity and inattention. (Testimony of [REDACTED] This evaluation has not been updated as it is a fairly stable diagnosis; there is no need to do an additional assessment. (Testimony of [REDACTED] Parent believes she provided this document to the District but does not recall who she provided it to. (Testimony of [REDACTED]

6. Student has seen [REDACTED] for therapy services regularly since 2020 and currently sees her every two weeks at a minimum. (Testimony of [REDACTED] Starting in fifth grade, Student saw [REDACTED] on a more frequent basis due to increased anxiety. (Testimony of [REDACTED] Student's psychiatrist has prescribed both stimulant and non-stimulant medication for her ADHD including Adderall but none worked. (Testimony of J.W) Student is currently taking Zoloft. (Testimony of [REDACTED] The dosage for this medication was increased in the Spring of 2024 to 200 mg. which is the maximum recommended dosage for her. (Testimony of [REDACTED] Parent did inform the school staff of Student's medication increase (Testimony of [REDACTED]

7. Student has been characterized as impulsive. (Testimony of [REDACTED] [REDACTED] [REDACTED] [REDACTED] Her medication increase has resulted in slightly less anxious behavior but has not helped with her impulsivity. (Testimony of [REDACTED] Parent states that nothing helps with

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<sup>8</sup> [REDACTED] is Student's therapist. Her credentials were stipulated to and include a dual M.A. in Secondary Education and in Psychology as well as a doctorate in philosophy from the School Psychology Program at Ball State University. (PE E) She is a psychologist at Saint Louis Behavioral Medicine Institute providing outpatient assessments including neuropsychological assessment and psychotherapy. Her practice is 70-75% children and adolescents with all having ADHD and co-morbidities.

her impulsivity. (Testimony of █████ Student recently received a prescription for Clonidine but there have been no results so far. (Testimony of █████

8. Parent states that during the last calendar year, Student's symptoms of impulsivity have changed including that Student stole a bracelet at school. (Testimony of █████ This incident occurred on or about February 2, 2024. (PE C) The bracelet was part of a group of rewards used in a classroom setting. (Testimony of █████ PE C) In an email exchange with Student's parent about the incident, the behavior is characterized as likely having to do with Student's impulsivity. (Testimony of █████ PE C) Student denied the act and engaged in behaviors to cover up her misdeed including expressing surprise that someone would do that, offering to buy a new bracelet, continuing to talk about the missing bracelet and lying about having completed work that would have entitled her to take a reward. (PE C) Eventually it was discovered that Student had taken the bracelet. (PE C) The matter was reported as a discipline incident, but further action was not taken. (Testimony of SS, JE 13) The bracelet incident is representative of weekly occurrences such as taking a bag of chocolate she is not supposed to have, denying the taking but leaving the bag behind. (Testimony of █████ Therapeutically, the incident was thought to be impulsive and attention seeking; there is a short-term reward for the behavior, but the effect is not considered. (Testimony of █████

9. In April, 2024, Student discussed self-harm and suicide at school. (Testimony of █████ A suicide assessment was performed, and Student's answers were significant, indicating that hospitalization was appropriate. (Testimony of █████ The school social

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<sup>9</sup> █████ is Student's special education teacher. She holds a B.A in elementary education and an M.A. in educational administration.

worker reached out to Student's Mother. Student's medication change the week prior was discussed as well as an incident the evening prior. (Testimony of [REDACTED] [REDACTED] Parent took Student to see her therapist on that day. (Testimony of [REDACTED] Her therapist determined that Student was not an immediate suicide risk and that her statements were attention seeking. (Testimony of [REDACTED] [REDACTED] The District was aware of Student's attention seeking behavior. (JE 11) Student's suicidal ideation incident at school is not documented in the school records. (Testimony of [REDACTED]

10. The incident precipitating this matter involved Student bringing a knife to school. That Student did so is not controverted in this matter. Specifically, Student brought a pen knife to school on two days May 21, 2024 and May 22, 2024. (IHO 1) On May 21,2024, Student showed the knife to other students at recess with one saying the knife had a wooden print and that Student did not say anything to her. (Testimony of [REDACTED] JE 19) Another classmate stated that Student showed her the knife and said she wanted kill herself. (JE19) These episodes were not reported to school staff until the following day. (JE 19)

11. Student brought the knife back to school the next day when the students were scheduled for a field trip. (Testimony of [REDACTED] JE 19) During the field trip, Student's leg was cut with a razor blade brought on the trip by another Student. (JE19) Student's injury was not severe and was treated with a band aid . (JE 19) An investigation followed and the Student admitted that she brought the knife to school and was in possession of it during the field trip. (JE 19) She described the knife and stated she hid it in the mulch by the swings. (JE 19) The knife was ultimately recovered from that location. (JE 19) determined that Student said she was trying to protect herself but could not explain

specifics. (Testimony of ■■■ JE 19) Various explanations were made as to why Student had the knife including that regarding killing herself as well as that she needed it for protection. (JE 19, Testimony of ■■■ There was also a statement made that Student cut herself with the razor blade on purpose but this was never confirmed and the incident was treated as accidental and an incident report prepared. (Testimony of ■■■

12. On the way to the field trip, Student not appear to be emotionally dysregulated. (Testimony of ■■■ ■■■ It appeared to be a normal day for her. (Testimony of ■■■ She did not exhibit attention seeking behavior outside of what is characterized as “typical sixth grade girl stuff” (Testimony of ■■■ ) The circumstances surrounding the knife incident seemed completely different than what was observed of Student in the classroom. (Testimony of ■■■ After the incident, Student was shaken up and nervous about getting in trouble, as were the other kids involved. (Testimony of ■■■

13. The knife involved in this incident belonged to Student’s father and was typically kept on his dresser as he used it for opening envelopes and boxes at work. (Testimony of ■■■ ■■■ The knife has two sides, with the longest being 1 5/8”. (Testimony of ■■■ JE20) The other blade is shorter. (JE 20)

14. The School has a handbook containing the school discipline policy. (JE 22) Specifically, the conduct rules apply both on school grounds as well as at school sponsored activities. (JE22) Students are prohibited from possession, controlling or transferring a weapon as defined in the school policy. (JE 22) A knife is considered a weapon pursuant to that policy without further definition. (JE 22)

15. The policy provides that “school officials shall limit the number and duration of expulsions and out-of-school suspensions to the greatest extent practicable and where

practicable and reasonable, shall consider forms of non-exclusionary discipline before using out of school suspensions or expulsions”. (JE22)

16. Regarding weapons violations, the policy states that students determined to have brought a weapon to school, or a school sponsored activity, shall be expelled for a period of at least one calendar year but not more than two calendar years. (JE 22) The policy does note that the expulsion requirement may be modified by the superintendent. (JE22) This school policy mirrors the Board policy. (JE 18)

17. Student saw her therapist within a few days after the incident. (Testimony of ■■■ PE B) Student’s therapist generated a letter report on June 11, 2024 confirming that she has been Student’s therapist for four years, primarily working on emotional regulation and impulse control. (PE B) Student’s therapist describes her as engaging in in attention seeking behavior. (Testimony of ■■■ Student has been exhibiting increased social difficulty due, in part, to her difficulty with emotional regulation and impulsive behaviors. (PE B) This has resulted in Student experiencing the bullying behavior of her peers. (PE 8). Her main triggers seem to be related to friends and social issues at school. (Testimony of ■■■ Student’s behavior is characterized as impulsive but she is not considered a threat to herself or others. (Testimony of ■■■ Student expressed that it was an attempt to get attention from her peers which is consistent with her negative attention seeking behavior. (Testimony of ■■■ ■■■ Student wants her peers to feel sorry for her or worry for her; she was not thinking about the consequences. (Testimony of ■■■ Student’s disruptive behavior is primarily in disagreements with other children

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<sup>10</sup> K.H. is Student’s cousin and has experience in special education. She is a Special Education Supervisor for an unrelated district. She holds a B.A. in Education/Exceptional Child Education, an MA in Secondary Education and Special Administration and a PhD in Education.

resulting in saying something rude or more impulsive actions such as self-harm when she is upset. (Testimony of █████)

18. Student could not provide a good reason for bringing the knife to school which underscores the impulsivity of the behavior. (Testimony of █████ She realized that what she did was wrong but did not handle it well which is tied to her inability to plan and poor decision making. (Testimony of █████ That she acts without thinking it through is impulsive. (Testimony of █████ Impulsiveness relates to poor decision making and the fact of ADHD makes it more likely that a child will take bigger risks such as taking the knife to school. (Testimony of █████

19. A Manifestation Determination Review (MDR) was conducted on June 7, 2024. (JE12) The team concluded that the incident was not a manifestation of Student's disability, and they determined that the school would proceed with expulsion. (JE12) At the MDR, school staff indicated that Student's disability presented itself as inattentiveness to tasks, distractibility, disorganization, difficulty remembering steps in problems, classwork/homework completion and social difficulties. (JE12) They concluded that Student did not act impulsively in that the fact that she "brought the knife to school on two consecutive days required some level of planning and intention rather than an impulsive act". (JE 12, Testimony of █████ █████

20. A letter dated May 23, 2024 was sent to parents in compliance with school policy regarding suspensions. (JE 16) The letter references a pre-suspension conference held that day and an MDR on June 7, 2024. (JE 16) The letter concludes that "It has been determined that your child's continued presence at school poses a threat to the safety of other students, staff or members of the school community. Due to the

egregious nature of your child's conduct and the history or record of your child's past conduct, school officials have determined that [Student] is likely to engage in similar conduct in the future because [Student] brought a knife to school which is considered a weapon." (JE 16) An expulsion letter was sent scheduling an expulsion hearing on June 24, 2024. (JE 16)

21. The team considered Student's suicidal ideation at school in April, 2024, and her medication increase at the MDR. (JE 12) It was noted that she was having a good year up until that point. (See JE 12) The IEP team was asked if an evaluation should have been performed when Student was referred for social work services for the ideation event; however, it was deemed that this was not required. (JE 12) Additionally, the family raised whether a Functional Behavioral Assessment (FBA) should have been performed. (JE12) The team indicated that there had not been any behavior concerns other than one prior incident related to impulsivity which would warrant an FBA. (JE 12) Student's peer relations and engaging in drama were not considered related to her ADHD. (Testimony of [REDACTED]) The team was made aware of Student's psychotherapeutic treatment; however, Parents were not asked for a medical consent at the MDR in order for the team to obtain her medical information. (Testimony of [REDACTED] [REDACTED])

22. A comment was made at the MDR that Student made a mistake and has to pay the consequences of that mistake as it cannot serve as a bad example for other children. (Testimony of [REDACTED] [REDACTED] [REDACTED])

23. Student's recommended placement was changed to Pathways, a therapeutic day school. (Testimony of [REDACTED] [REDACTED] JE 12) A representative of Pathways was at the IEP meeting and gave a presentation. (JE12)

24. The district was aware of the report generated by Student's therapist; however, it was received after the MDR was conducted. (Testimony of ■■■ PE B) After receipt, the report was sent to two other members of the IEP team, ■■■ and ■■■ (Testimony of ■■■ While the IEP approach is to consider any information that is shared, that does not mean that whatever is stated or recommended will be used; the team is not obligated to follow what outside professional says. (Testimony of ■■■ It is thought that there is a difference between clinical diagnoses and eligibility for special education diagnosis. (Testimony of ■■■ The letter did not present any information that the team did not consider at the MDR. (Testimony of ■■■ There was no need to obtain Student's information from her therapist. (Testimony of ■■■

25. After the MDR, Parent asked that additional information be included in the paperwork including that social work reported that Student was making progress but that her goals would have been changed based on behaviors exhibited by student in Spring semester in that Student is displaying more emotional dysregulation when it comes peer interaction, her medication increase, and student's attention seeking behaviors including the suicidal ideation event. (JE 12) The team concluded that attention seeking behavior is not part of the DSM criteria for ADHD. (Testimony of ■■■ Adolescents struggle with peer issues; attention seeking behavior; making bad decisions is a normal part of growing up and it is common in middle school. (Testimony of ■■■ ■■■ The team felt that Student's struggles in this regard were not outside the norm for her age. (Testimony of ■■■ ■■■

## CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services “designed to meet their unique needs and prepare them for further education, employment and independent living.”

**20 U.S.C. §1400(d)(1)(A)** A district must comply with the IDEA’s procedural and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. **Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176 (1982)** To meet its substantive obligation, a district “must offer an IEP reasonably calculated to enable the student to make progress in light of the student’s circumstances.” **Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S.Ct. 988, 1001; 69 IDELR 174 (2017)**

School personnel are empowered to consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a Student who violates a code of student conduct. **See, 34 CFR 300.530** If a school seeks to expel or suspend a disabled student for more than 10 days, the child's IEP team must conduct a manifestation determination to determine if the behavior was related to the child's disability. **20 U.S.C. § 1415(k)(4), 34 CFR 300.530(e)**

The provisions governing manifestation determinations are as follows:

In carrying out a [manifestation] review . . . , the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team —

(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including —

(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

(II) observations of the child; and

(III) the child's IEP and placement; and

(ii) then determines that —

(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aides and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

**20 U.S.C. § 1415(k)(4)(C)**

There are certain circumstances which allow school personnel to remove a

Student as follows:

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA

**20 U.S.C. 1415(k), 34 CFR 300.530(g)**

It is uncontroverted that the IEP team did not consider the report prepared by Student's psychotherapist at the MDR. It is insufficient that the witnesses stated at hearing that they received and considered it after the fact and it did not change

their minds. This is especially true in that Student's therapeutic diagnosis includes unspecified anxiety which might have been useful information to the team during discussions of the incident in question. While they may have considered what Parents said about contents of that report at the meeting, this is not a substitute for seeing an actual report drafted by a therapeutic professional as well any underlying data and reports she may have, including Student's initial neuropsychological evaluation.

Further, the school should have wanted to obtain this information. They were aware many indicators overall involving student and instead of considering her as a whole, they wrote each off as one-off instances, including:

- a. Student had had a previous act of impulsivity in stealing a bracelet. The team did not consider that this indicated impulsivity related to ADHD as it happened on one occasion and there was no disciplinary action taken.
- b. Student had expressed suicidal ideation that was serious enough for the school social worker to have recommended hospitalization, concluding that she had active suicidal ideation and had engaged in self-injurious behavior. This information was not in her school record and it is not evident to the extent that this was considered at the MDR.
- c. Student was attention seeking and created drama in her relationships. There was information provided by the Parents that Student's psychotherapist felt that this behavior stemmed from anxiety which was communicated at the MDR to school personnel. Instead of treating this as a part of a pattern of concerning behavior exhibited by Student, school

personnel wrote this off as “girl drama” that has to do with these girls finding their place in the world.

- d. Student suffered a cut on her leg on the School field trip as the result of handling a razor blade brought on the trip by another student. The reports regarding this cut range from self to accidental injury.
- e. At least one student expressed that Student said she wanted to kill herself with the knife at issue.
- f. Student saw her therapist 2-4 times per month.

It is apparent that the IEP team disregarded the numerous factors present, relying on the fact that Student did not display the characteristics of hyperactivity sometimes associated with ADHD in the classroom. They focused on the fact that Student’s conduct took place over a two-day period finding because of that, that the conduct was planned and thus precluded impulsivity.

The numerous incidents present regarding Student should have, at a minimum, generated interest in reconvening the MDR to receive and review the reports created by Student’s therapist in order to better understand Student’s ADHD, the manner in which it manifested and any other diagnoses. It has been found that IDEA does not limit the IEP Team to considering only the disability “identified by the school district.” **Richland Sch. Dist. v. Thomas P., Richland School District v. Thomas P., 00-C-0139-X (W.D. Wis. May. 24, 2000) 20 U.S.C. § 1415(k)(4)(C)** In Richland, the hearing officer’s consideration of an expert report at hearing that was not in the possession of the school at the time of the MDR was upheld. **Id.**

The district did not have before it all the required relevant information relating to Student's disabilities at the time of the manifestation determination, as required by IDEA. **20 U.S.C. §1415(k)(4)(c)(i)** The School could have easily obtained this information once made aware of it but chose not to reconvene to obtain further information of Student's psychotherapist and to consider the letter report as a team.

The MDR team must consider all relevant information in the student's file, including the IEP, teacher observation, and any relevant information provided by the parents. **See, Seattle Sch. Dist., Wash. St. Educ. Agency, 60 IDELR 266, 113 LRP 8166, Sch. Bd. of the City of Norfolk v. Brown, 769 F. Supp. 2d 928 (E.D. Va. 2010)** The MDR team's actions here shows more consideration to making an example of Student as Parents have expressed was stated at the meeting.

Further, it does not appear that the team considered whether the special circumstances referenced in IDEA apply here. **20 U.S.C. 1415(k), 34 CFR 300.530(g)** That section adopts the definition of a weapon which specifically exempts a pocketknife with a blade of less than 2 1/2 inches in length. **18 U.S.C. sec. 930(g)** The District's closing argument characterizes the knife as over 6" long when both blades are open. (IHO 23) The picture of the knife in evidence does not support this characterization. (JE 20) The knife is a two bladed pocket knife whose longest blade is less than 2 1/2 inches. While the District has rightful concerns over any student bringing a weapon to school, this particular item does not meet the definition adopted in IDEA.



### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILCS 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification must specify the portions of the decision for which clarification is sought. A copy of the request must be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

### **NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

**APPENDIX A**

Minor Student	██████████ (Student)
Attending School	██████████ School District ██████
	██████████ Special Services Cooperative
<b>Parents Witnesses:</b>	
Minor Student's Parent/Petitioners	████████████████████ ████████████████████
Parent Witness	██████████████████ Cousin, Special Education Supervisor
Parent Witness	██████████████████ - ██████
<b>District Witnesses:</b>	
District Witness	██████████████████ Director of Student Services/School Psychologist
District Witness	██████████████████ Former Principal
District Witness	██████████████████ Special Education Teacher
District Witness	██████████████████ Teacher
District Witness	██████████████████ Middle School Social Worker-
District Witness	██████████████████ Teacher

