Arkansas Department of Education
Special Education Unit

RE: Vilonia School District **PETITIONER**

VS. EH-18-23

Xxxx and Xxxxx Xxxxx **RESPONDENTS**
as Parents and legal guardians of Student
Xxxxx Xxxxx

HEARING OFFICER'S FINAL DECISION AND ORDER

Issues and Statement of the Case:

The Petitioner requested an expedited due process hearing alleging that if the Student remains in his current educational placement within the District that it is substantially likely to result in injury to the himself or others. The Petitioner is requesting an order changing the placement of the Student to an appropriate interim educational setting for not more than forty-five (45) school days.

Procedural History:

On March 23, 2018, a request to initiate an expedited due process hearing was received by the Arkansas Department of Education (hereinafter referred to as the "Department") from the Vilonia School District (Petitioner) (hereinafter referred to as "District"), the school district responsible for the education of **Xxxxx Xxxxx** (hereinafter referred to as "Student") under the legal guardianship of **Xxxx and Xxxxx X**xxxx (hereinafter referred to as "Parents"). The District requested an expedited hearing in accordance with 20 U.S.C. § 1415(k)(3) seeking an order to permit them to change the placement for special education services for the Student to an alternative educational setting for not more than 45 school days because the District believes that maintaining the current placement of the Student is substantially likely to result in injury to the Student or to others.

The Department responded to the Petitioner's request by assigning the case to an impartial

hearing officer and establishing the date of April 12, 2018, on which the hearing would commence should the parties fail to reach a resolution prior to that time. An order setting preliminary timelines with instructions for compliance with the order was issued on March 27, 2018. The required resolution conference was conducted on March 26, 2018; however, the parties were unable to resolve the issue. The Parents responded as ordered by providing a response to the District's allegations on April 6, 2018, denying the allegation that the Student is dangerous.

Prior to the District's request for an expedited hearing the Parents had requested a due process hearing on March 13, 2018, with that hearing date to also commence on April 12, 2018. The District's response to the Parent's request for a hearing was received on March 23, 2018, and as noted above included the District's request for an expedited hearing on the issue of placement. On March 26, 2018, following the inability to reach a resolution, the Parents requested and were granted a Stay Put Order directing the District to allow the Student to return to school and implement his most recently agreed to individualized education plan (IEP).

The stay put order was issued on March 27, 2018, directing the District to continue serving the Student in his most recently agreed to placement; however, the District elected to ignore the hearing officer's order and refused to allow the Student to return to school. Prior to the expedited hearing the District on March 27, 2018, filed for a temporary restraining order and preliminary and permanent injunction in the Circuit Court of Faulkner County, Arkansas. The Parents asked for and were granted for the case to be heard in the United States District Court for the Eastern District of Arkansas. On April 11, 2018, the Court decided to treat the District's request only as a preliminary injunction as opposed to their request for an injunction and a temporary restraining order.[1] On April 13, 2018, the Court granted the District a modified injunction. The Court ordered that the District continue to provide

[1] Parent Binder, Page 100 and District Binder, Page 544

the Student with educational services in a home-bound setting until a long term placement is finalized through the current IDEA administrative review process. The Court also allowed the Parents to elect that the District provide the Student's educational services in a day treatment facility until a long term placement can be finalized through the administrative review process.[2]

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated 6-41-202 through 6-41-223, Robert B. Doyle, Ph.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial expedited due process hearing. The Parents were represented by Theresa Caldwell, attorney of North Little Rock, Arkansas and the District was represented by Jay Bequette, attorney of Little Rock, Arkansas.

The discussion of the facts presented in this case will be presented in the context of the time in which the events occurred and the decisions made by the District in deciding the provision of special education services and their subsequent decision regarding placement for those services.

Factual Discussion Prior to March 13, 2018:

The Student is a fifteen year old, male, who is currently enrolled in the District's Freshman Academy.[3] The most recently approved IEP designates the Student as being eligible to received special education services under the IDEA category of traumatic brain injury.[4] The IEP also contained a Behavior Intervention Plan (BIP) originally designed the previous school year when the Student was receiving educational services under a Section 504 plan.[5] The behavior being addressed by the BIP

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[2] Ibid, Page 145 and 581 respectively

[3] Parent Binder, Page 10 and Transcript, Page 29-30

[4] Ibid

[5] Ibid, Page 12-13

included the Student's talking back to staff and work avoidance. With the exception of his band class the BIP indicated that he exhibited those two behaviors in all other classes. The most recently approved IEP designates the Student's least restrictive environment (LRE) for educational services to be in the general education setting 98% of school time per week.[6]

On March 1, 2018, the Freshman Academy Principal was informed by the parent of another student of a social media screen shot which depicted the Student "holding a gun of some type up in front of himself with a hash tag across the bottom that said, "I love it when they run."[7] The Principal subsequently forwarded the information to the local police department. The local police informed the Principal that they would be at the school building to confront the Student the following day, March 2, 2018 and that they would have police present at the Student's home "so they could see him when he came out to make sure he didn't have anything."[8] On being confronted on his arrival at school the Student informed the Principal that the picture of him holding a rifle was an Airsoft gun that did not shoot real bullets and the he wasn't really serious about it. In addition to the picture noted above and after the police notification, on the following day (March 2, 2018) the Principal identified the Student's voice on the same social media platform stating that "for all you pussy fucks out there that think you can beat my ass, I wish the fuck you would do so, that I fight to kill, I don't fight to hurt people."[9] Also on the day in which the Principal notified the police he listened to another recording in which the Student is alleged to have said "bitch, I don't - - -(unintelligible) - - - I will send a straight bullet" while holding

[6] Ibid, Page 10

[7] Transcript, Page 30

[8] Ibid, Page 31-32

[9] Social Media played for the Hearing Officer and testified to by the Principal, Transcript, Page 33-34

a handgun.[10] A third image from the same social media source was presented on the screen for the benefit of the hearing officer which depicted another student with his image circled in red.[11] The student as determined on cross examination of the Principal was that the student circled was a friend of the Student.

On March 2, 2018, the District's Special Education Supervisor testified that she was present when the Student returned to school and engaged him in conversation regarding the social media posts. She testified that "he was just very polite, respectful." She testified that her concern was about him wanting to take his own life. When asking the Student as to his level of depression at that moment he responded that he was at a level "two."[12]

On March 2, 2018, the District asked the Parents for permission to conduct a mobile assessment. The reason given to the Parents was due to the Student having "posted a snapchat on Wed, Feb 28 a picture of hanging himself with a belt and posted, "I tried to hang myself - Is that funny?" "Depression has never taken you over has it?"....[and] "on Thurs, March 1, a picture of himself with a weapon # I LOVE IT WHEN THEY RUN."[13] In lieu of the District's mobile assessment the Parents elected on March 5, 2018, to admit the Student to Unity Health (a psychiatric facility) for observation and treatment with the subsequent result in a change of medications and discharge on March 13, 2018.[14]

Also on March 5, 2018, the District elected to suspend the Student from school from March 2,

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[10] Ibid, Transcript, Page 34-35

[11] Transcript, Page 36-37 and 42

[12] Ibid, Page 140-141

[13] District Binder, Page 16

[14] Parent Binder, Page 34

2018 through March 15, 2018.[15] The following day, the Parents were notified by an email attachment that the Student was being recommended by the District's Superintendent for expulsion.[16] The Superintendent's recommendation was to be considered at the next District Board meeting scheduled for March 12, 2018.

The District introduced as evidence in the form of a note dated March 6, 2018, written by a college intern of an event that took place during the week of February 14, 2018, where he reportedly told the intern that he wanted to fight someone, kill them, and then go to prison for the rest of his life. The following day she recorded in her note that "he said he was doing better" and that "he finished up his work and I did not have to pull him out of advisory anymore."[17] The Principal testified that on March 6, 2018, he instructed the intern to write the note describing the event.[18] There was apparently no discussion following the event with the Principal or any other District staff in February or later which triggered a need to address the Student's depression and thoughts of killing someone as well as himself.

Factual Discussion After March 13, 2018:

One week before the current hearing (April 12, 2018) the Principal testified that additional information was shared with him from another student verbally depicting the Student fighting with a fellow student regarding their girl friend, and afterwards killing himself.[19] The picture also contained a text conversation with the Student's friend advising him that "this is not the way you handle these things...don't just post pictures about it, you need to deal with it....if you post pictures, people are just

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[15] District Binder, Page 18

[16] Ibid, Page 19-21

[17] District Binder, Page 34

[18] Transcript, Page 56-57

[19] Ibid, Page 45

going to make fun of you even your closest friends...you've got to learn to deal with it. Write in a journal, read a book, shadow box, draw posters, talk to somebody..don't do that BS because you're going to hurt more and they are going to make fun of you, even your closest friends."[20]

With the exception of the Student being able to describe the weapon in the first media photo to the Principal as an Airsoft toy he was not confronted by the school administrators, nor the Police to describe the other social media pictures and conversations in their context. The Principal testified on cross examination that "I don't know specific context without him explaining that to me."[21]

Evidence was introduced by the District in the course of the hearing which included police incident reports other than the current events dating back a year earlier. The first was on April 23, 2017, and the second on October 10, 2017, when the Parents requested their assistance in helping them deal with the Student's behavior at home. The third and fourth reports involved the Student at school in October and December 2017, when he was acting out and refusing to go to class. How and why the Student's BIP in place during these events at the school was not implemented was not addressed at the hearing. However as testified to by the Principal, he had a positive relationship with the Student, stating that when he encountered the Student on March 2, 2018, "I waited at the end of the building where students entered...when [the Student] got to me, I walked with him from that point down the hallway and told him that I needed him to come up to my office, I needed to visit with him about something...[and he] did that, because he and I – we have a had a good relationship, and that continued through all of this."[22]

The District attempted to conduct an IEP team meeting on March 14, 2018, for the purpose of

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[20] Ibid, Page 47-48

[21] Transcript, Page 114

[22] Ibid, Page 49

reviewing and revising the Student's IEP as well as conducting a manifestation determination regarding the Student's recent social media behavior. The review as completed by the District described the behavior as "creating a material disruption at school due to a social media post which involved video/picture of [the Student] with a gun and making a threat."[23]

Having had an opportunity to observe the appearance and demeanor of the witnesses, and consider the testimonial and documentary evidence, I further find as fact:

1. The Student posted a self-photo on a social media platform along with lyrics from a rap song which read "I love it when they run." This incident was not posted while the Student was in school nor on school property. The photo and information was not addressed to any one person or audience.

2. The Student's BIP in place at the time of the incident addressed only the maladaptive behaviors of talking back to staff and avoiding his school work. The only events introduced in testimony by the Principal and the District's Special Education Supervisor that closely relates to the BIP involved the Student being "upset and throwing a chair and hitting the Smartboard, and another time when he punched a door and punched the glass out of it and hurt himself."[24] The BIP does not contain any behaviors related to the issue of dangerousness to self and others which triggered this expedited hearing.

3. The testimony and evidence presented reflected positive working relationships by staff with the Student, to the degree that he shared with them his depression episodes and thoughts of suicide; however, no support services were put in place to assist him with these thoughts and subsequent behaviors.

4. The apparent "love triangle" addressed in testimony apparently had been an ongoing dispute between the Student and two other students, being addressed via the social media via pictures and chats,

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[23] District Binder, Page 136-138 and Parent Binder, Page 26-27

[24] Transcript, Page 131

but according to the Principal had been resolved.[25]

5. The neuropsychological evaluation introduced in the course of the hearing revealed that the Student was physically abused by his birth parents (not the current Parents), suffering two concussions. The test results revealed that the Student showed dysfunction with systems controlled and mediated by the frontal and prefrontal lobe areas of the brain. Consequently, these deficits are negatively affecting behavioral, emotional and cognitive regulation skills.[26] These deficits appear to be consistent with the BIP which addressed the Student's relationship to school staff and school work.

6. The Principal testified that the Student would need documentation from a mental health professional prior to being allowed to return to school.[27]

7. A note completed by the Student's treating psychiatrist, dated March 5, 2018, stating that he was treating the Student for a major depressive disorder for which the medication has recently been changed "following the events over social media during last week at school." The note further states that in his professional opinion the Student "does not pose a threat to himself or others and does not meet the criteria for acute hospitalization." He further stated that he strongly recommended "that there are some accommodations placed at school before his return date can be established." He did not elaborate what those accommodations should include.[28]

8. It was noted in the District Court's summary of the case for injunction that the Principal did not address the Student's social media post with the Parents on the date in which he became aware of it. Instead he notified the local police department, with the Parents becoming aware only the next day

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[25] Ibid, Page 130

[26] Parent Binder, Page 46

[27] Transcript, Page 144 and Parent Binder, Page 120

[28] District Binder, Page 35 and Parent Binder Page 121

when the Student was brought to school.[29]

9. The District Court's summary also included reference to the Student's treating psychologist in which she found that the Student did not have current thoughts or plans to harm himself. She also suggested that the Student would with sufficient supports had the potential to progress in the classroom.[30]

10. The Superintendent was unable to testify in the District Court hearing as to what mental health professional had recommended the more restrictive school environment of a day treatment center that was being advocated for placement by the District.[31]

11. Given the current state of school violence in the country the Principal acknowledged in testimony that it may have had an influence on the Student's acting out and possibly the District's decision for suspension and the Superintendent's decision for expulsion.[32]

12. On February 5, 2018, the District accepted the Parent's recommendation for a Brain Injury Consultant to assist the IEP team in developing an IEP consistent with the altered disabling condition for which special education services are needed.[33] However, that assessment and subsequent suggestions was not available at the time the District decided to suspend the Student.

Conclusions of Law and Discussion:

The District asserts that the removal of the Student to an interim placement is warranted based upon the photos and statements that he made and shared with friends on social media. There is no

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[29] Parent Exhibit, Page 117 and

[30] Ibid, Page 124-125

[31] Ibid, Page 127

[32] Transcript, Page 84-85

[33] Parent Binder, Page 95

evidence or testimony presented that these events were directed to any one student or staff within the District's area of responsibility. The Parents argue that the District's position underlying the Student's behavior are unsubstantiated and that he is not a danger to himself or others. The Parents contend that his maladaptive behaviors as exhibited on social media are the actions of a person who is crying for help and a young man who has suffered the trauma of a brain injury which impairs his judgement as reflected in the behavior. The District had access to the conclusions and recommendations of the neuropsychological evaluation conduced in April 2017. Had the District had access to the assessment and recommendations of the Brain Injury Consultant who attended the resolution conference on March 26, 2018, their response to the events that occurred and actions taken by the District on March 2, 2018, might have played out differently.

The District has not provided evidence that the Student threatened to commit a crime of violence or to kill anyone in particular other than himself. While it can be argued that the lyrics of the Student's rap song which stated "I like to see them run" while holding a Airsoft rifle could be construed as a threat to commit a crime of violence, it was not directed toward any individual or facility. Further, there is no evidence that the Student shared or performed the song with anyone so as to cause a victim to believe the immediacy of the threat and the likelihood that it will be carried out. Additionally, the District did not provide evidence of a school policy prohibiting a student to write a statement referencing shooting a gun.

The District Court in granting the District its request for an injunction has correctly interpreted the IDEA (20 U.S.C.A. §§ 1400-1482) and its implementing regulations, in that a school district "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 brings a weapon to school, inflicts serious bodily injury on another person at school, or "knowingly

possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premisses, or at a school function."[34] If the school district believes that maintaining the child's current placement is substantially likely to result in injury to the child or others, the school district may request an expedited due process hearing.[35] In such a case, a hearing officer may "return a child with a disability to the placement from which the child was removed, under certain circumstances or "order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others."[36]

The action of not allowing the Student to return to school following his ten day suspension was made by the District even though a manifestation determination had not been completed to determine if the Student's maladaptive behavior as alleged in the District's complaint was or was not related to his disability. The District's Special Education Supervisor testified that "there could be" a relationship.[37] When asked about the IDEA required procedure following the potential for a relationship between behavior and disability the Supervisor stated that the procedure would be to meet with the Parents and determine an appropriate placement for services. She also acknowledged that unless the Parents agreed to an alternative placement that the Student would be returning to his regular placement following the

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[34] Parent Binder, Page 129 and 20 U.S.C.A. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g) (2014)

[35] 20 U.S.C.A. § 1415(k)(3), (k)(4)(B); 34 C.F.R. § 300.532(a) and (c) (2014)

[36] 20 U.S.C.A. § 1415(k)(3)(B)(ii); 34 C.F.R. § 300.532(b)(2) (2014) (The child shall remain in the interim alternative educational setting until an administrative law judge (ALJ) renders a decision or until the expiration of the 45 day removal period, which ever occurs first. 20 U.S.C.A. § 1415(k)(4)(A); 34 C.F.R. § 300.533 (2014)

[37] Transcript, Page 87-88

ten day suspension.[38]

At the hearing it became clear that even though the Student talked about self-harm none of the Student's responsible agents at the school sought permission from the Parent to consult with any of his treating mental health professionals before taking the action of not permitting him to return to school. The Parents were asked to obtain the opinion of those professionals as to the Student's mental health prior to allowing him to return to the school. Even with the knowledge that his treating psychiatrist determined he was not a danger to himself or others, the District continued to allege that the Student presented as a danger to himself and others and refused to allow him to return to his IEP placement for special education services.

It is clear that the conduct of the Student which caused the discipline of suspension did not involve a child bringing a weapon to school, inflicting serious bodily injury on another person at school, or knowingly possessing or using illegal drugs while at school, on school premises, or at a school function. Therefore, I conclude that the District did not have the authority to remove the Student to an alternative educational setting following the ten day disciplinary action of suspension. Since the District failed to complete the required manifestation determination before taking such action I conclude that the District's action of removing the Student to an alternative placement for services is inappropriate.

I further conclude that the District has failed to show by a preponderance of the credible evidence that the Student's recent conduct supports a finding that maintaining his current placement is substantially likely to result in injury, and that he should be removed to an alternative educational setting. While the IDEA and its implementing regulations do not include factors for determining whether maintaining a child's current placement is "substantially likely to result in injury," a review of

[38] Ibid, Page 88

several administrative and judicial decision shows the type of conduct that decision-makers, have found to meet this standard.[39]

First, proof of physical violence toward staff members or classmates has been deemed sufficient for a finding that maintaining a student's current placement is substantially likely to result in injury. In *Lawrence Township Board of Education v. D.F. ex rel. D.F.* a hearing officer found that maintaining in his current placement a teenage boy who physically attacked other students in two separate incidents was substantially likely to result in injury to others, and ordered the child's removal to an interim alternative educational setting.[40]

In *San Leandro Unified School District* a hearing officer determined that an eight-year-old boy's continued presence in his current placement was substantially likely to result in injury due to numerous incidents of physical violence toward staff and students, including chair-throwing, punching, and kicking, lunging at a classmate with a plastic clay-sculpting tool, threatening to stab a teacher with four pencils and lunging at her, and hitting a classmate in the face with a metal lunch pail, and ordered his placement in an interim alternative educational setting.[41]

In *Rialto Unified School District* a hearing officer ordered the forty-five-day removal of an eight-year-old boy who had a long history of physical violence toward staff and other children, including an incident in which the boy threatened to bring a knife to school and kill a staff member, and who, in

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[39] In promulgating rules under the IDEA, the Department of Education explained that "[h]earing officers have the authority under [34 C.F.R.] §300.532 to exercise their judgments after considering all factors and the body of evidence presented in an individual case when determining whether a child's behavior is substantially likely to result in injury to the child or others." 71 Fed. Reg. 46540, 45722 (August 14, 2006).

[40] *Lawrence Township Board of Education v. D.F. ex rel. D.F.*, EDS 12056-06, final decision (January 9, 2007).

[41] *San Leandro Unified School District* , 114 LRP 550 (CA SEA December 16, 2013)

several incidents in the weeks leading up to his removal, attempted to bite an aide, kicked another aide, and threw a chair; held a pair of scissors to a classmates's face and threatened the classmate; threw tacks and a white Board at a staff member, kicked him in the leg and head, and spat on two other staff members; "mule-kicked" an aide in the leg, causing her to be placed on modified duty for a month; and, threw a chair and swung his belt at staff, stabbed a staff member with a pencil, and used a nail to threaten staff members.[42]

In *Smithton R-VI School District*, a hearing officer found that maintaining the current placement of a student was substantially likely to result in injury to himself or others because he had a long history of physically violent behavior toward staff and other students, including incidents in which he pinched, slapped, punched, kicked, scratched, and pushed staff members or classmates, and an incident in which he threatened to kill himself, and ordered his removal to an interim alternative educational setting for forty-five days.[43]

In contrast, in *Salem City Board of Education* the hearing officer ordered the District to return the Student to his prior placement, pointing to the lack of evidence that the student made any threats or exhibited any violent behavior. Similar to the Student in this case, not only was there no evidence of a direct threat made by the student, but as noted by the hearing officer, the district also failed show that the student offered the lyrics to anyone who could perceive them as a threat. The district acknowledged that the lyrics were "very serious" and that the student had been instructed not to talk about guns. However, given that he never exhibited any behavior indicating that he would follow through with the acts described in the lyrics, the district couldn't demonstrate that maintaining him in his current school

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[42] *Rialto Unified School District,* 114 LRP 1023 (SEA CA November 19, 2013)

[43] *Smithton R-VI School District*, 110 LRP 22863 (MO SEA April 8, 2010)

was substantially likely to result in injury.[44]

Also in contrast, an absence of, or minimal, physical violence, even if a student has threatened staff members or classmates, is unlikely to result in a finding that maintaining the student in his or her current placement is substantially likely to result in injury. In *Clinton County R-III School District v. C.J.K.*, the court held that, even though he repeatedly threatened staff members and students, including threatening to make a teacher "black and blue," threatening to place an explosive device in the principal's car, and warning a student he knew where she lived, maintaining a student's current placement was not substantially likely to result in injuries because there were "relatively few recorded perceptions of physical danger" with respect to the Student's behavior.[45]

In *Fremont County School District* a hearing officer determined a student's expulsion to be invalid because his misconduct which led to the discipline was a manifestation of his disability. The hearing officer concluded the manifestation determination review process was flawed and ordered the student to be returned to the placement from which he was removed. In this case the school district disregarded the student's BIP which called for redirecting the student to the least restrictive intervention and allowing the student to request a break to avoid escalation of a negative behavior. By failing to follow that plan when the student's behaviors escalated the hearing officer concluded that the district could not later find that the teen's threatening conduct was a manifestation of his disability at a manifestation determination review.[46]

In *Sharon Public School* a hearing officer found that a school district failed to show that

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[44] *Salem City Board of Education*, 116 LRP 1023 (SEA CA November 19, 2013)

[45] *Clinton County R-III School District v. C.J.K.*, 896 F. Supp. 948 (W.D. Mo. 1995)

[46] *Fremont County School District* #25, 71 IDELR 224 (SEA WY 2017)

maintaining the current placement of a student who allegedly pushed a deck against a substitute teacher's thighs and "punched her wrist downward with his fist" was substantially likely to result in injury because the record indicated that this was an isolated incident of physical violence and because, although the student was involved in other, verbal confrontations with teachers, staff members "were far more concerned with [his] refusal to do homework than his potential dangerousness."[47]

Finally, with regard to IDEA administrative due process hearings, a hearing officer's responsibility and authority, as illustrated in *Saddleback Valley Unified School District*, a hearing officer found that a school district was not entitled to remove a student for an additional forty-five-days after his initial forty-five-day removal for bringing knives to school, even though in the weeks leading up to the expedited hearing the student was involved in a physical altercation with one classmate and threatened to pull out another classmates' earrings and "rip his neck off." In denying the district's request for another forty-five-day removal, the hearing officer noted that bringing knives to school is a serious offense, but also noted that the assistant principal did not believe that the incident alone was enough to show that the student was dangerous; that the physical altercation was the result of teasing, and not anger or aggression; and with respect to the verbal threat to another student, the hearing officer noted that the"[s]tudent's recent threat to another child is also a grave concern. However, there is no indication that it was anything more than words. If there had been any physical contact or a series of threats, the situation might be different, but the threat standing alone is not enough to show a substantial likelihood of injury."[48]

The Department has addressed the responsibilities of each local education agency with

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[47] *Sharon Public School*, 45 IDELR 75

[48] *Saddleback Valley Unified School District,* 52 IDELR 56 (CA SEA January 7, 2009)

regard to addressing the needs of all children with disabilities such as the Student in it's regulations at Section 2.00 of Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education, 2008.

As previously noted, the jurisdiction of a hearing officer in an IDEA due process hearing is confined to ruling on any matter that pertains to the identification, evaluation or educational placement of a child with a disability, and the provision of a free appropriate public education to the child within the meaning of the IDEA and Arkansas Code Annotated 6-41-202, et seq.[49] Also as previously noted, the rules implementing the IDEA also describe the authority of a hearing officer in an expedited hearing. Specifically, 34 CFR 300.532 (b) states that a hearing officer may "order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines [that] maintaining the current placement of the child is substantially likely to result in injury to the child or others."[50]

While there is no bright-line rule for determining whether a particular student's behavior can be determined as "dangerous" to self or others, the Student's behaviors as presented in the evidence and testified to by the witnesses of both parties, do no meet the criteria of dangerous by the standards as outlined in the above decisions by hearing officers.

Order:

1. The District will immediately upon receipt of this order notify the Parents and the Student that he will be receiving his special education services at the previously agreed upon location as contained in his amended IEP of October 25, 2017.

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[49] *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education (2008), Section 10.01.22.1

[50] See *White Bear Lake Area Schs*., 113 LRP 28309 (SEA MN 05/13/13)

2 The District will immediately upon receipt of this order, but no later than April 30, 2018, schedule an IEP conference to be held at a time and place agreeable to the Parents and the Department's Brain Injury Consultant. The purpose of the conference will be to determine the most appropriate and least restrictive environment in which to provide the Student's special educational needs, including any necessary supports and related services as dictated by his qualifying disability of Traumatic Brain Injury.

Finality of Order and Right to Appeal:

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to this expedited hearing.

IT IS SO ORDERED.

Robert B. Doyle, Ph.D.
Hearing Officer

April 25, 2018
Date