

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
26 EDC 00228

<p>Wake County Board of Education Petitioner,</p> <p>v.</p> <p>Student by and through his parents, Mother and Father Respondent.</p>	<p style="text-align: center;"><b>REDACTED</b> <b>AMENDED FINAL DECISION</b></p>
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*Pursuant to N.C. Gen. Stat. § 1A-1, Rule 60 and 26 NCAC 03 .0101(a), the Final Decision issued on March 5, 2026 is amended in the Final Decision order section on p 23. Otherwise, the contents in the Final Decision remain the same and the ultimate outcome is not affected by this amendment.*

**THIS MATTER** was heard before the undersigned Honorable Stacey B. Bawtinheimer, Administrative Law Judge Presiding, on February 18-19, 2026, at the North Carolina Office of Administrative Hearings in Raleigh, North Carolina and virtually on February 26, 2026.

After considering an evidentiary hearing on the merits held on the above-mentioned dates, arguments from counsel for both Parties, all documents in support of or in opposition to the Parties' motions, all documents in the record including the Proposed Decisions as well as all stipulations and exhibits, the Undersigned concludes the Wake County Board of Education (the "Board") failed to meet its burden to establish maintaining Student's current educational placement is substantially likely to result in injury to himself or others warranting a change of Student's stay-put placement to an Interim Alternative Educational Setting ("IAES") for forty-five (45) school days. As such, the Tribunal need not reach a determination whether the Board's proposed IAES is appropriate. Therefore, this Tribunal issues a judgment in favor of Student and his Parents only the first issue regarding substantial likelihood of harm and declines to decide the appropriateness of the IAES.

**APPEARANCES**

For Petitioner ("the Board <sup>1</sup> ):	Patricia R. Robinson Jason Naulty Tharrington Smith, LLP 150 Fayetteville Street, Suite 1900 Post Office Box 1151 Raleigh, North Carolina 27602-1151
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<sup>1</sup> To avoid confusion of the Parties, given the parallel matter 25 EDC 04499 over which the Undersigned also presides, where the Parties are reversed, the Undersigned will refer to Petitioner in this Final Decision as "the Board" and Respondents as "the Family."

For Respondents (“the Family”): K. Alice Morrison  
Jeremy Sanders  
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## **INTRODUCTION**

The Wake County Board of Education (“Board”, “WCPSS” or “Petitioner”) seeks to change Student’s placement to an Interim Alternative Educational Setting (“IAES”) under 20 U.S.C. § 1415(k)(3)(A), asserting that his continued placement is substantially likely to result in injury to himself or others. Although the Board relies on behavior logs documenting on some days hundreds of “aggressive” acts per day, testimony showed these numbers reflect repeated tallies of the same extended episodes rather than discrete dangerous events. Many entries labeled as aggression—such as “kicking at staff”—involved Student lying on his back kicking into the air, with staff able to step away safely. Other high-frequency entries, such as “breaking/ripping property,” included tearing paper or crayons, with no evidence that these actions posed a risk of injury. The only significant incident addressed at hearing was a single bite that occurred while Student was dysregulated and being pressed to make choices by his Emotional Behavior Support (“EBS”) teacher, which he was not capable of making in that state.

The evidence further showed that all staff working with Student were trained and certified in CPI crisis-intervention and restraint techniques, yet they chose not to use those trained, lawful, preventative measures even during episodes the Board now characterizes as substantially likely to cause injury. Instead, staff repeatedly evacuated entire classrooms—an exclusionary practice that disrupted instruction for nondisabled peers—and did not mitigate Student’s dysregulation.

The Undersigned emphasizes that nothing in this decision condones or recommends the use of physical restraint on a medically fragile child, particularly one with a history of heart transplant. Rather, the Board’s refusal to use the very safety tools it trains and authorizes its staff to use is inconsistent with its assertion that Student presents a substantial likelihood of injury.

The record also demonstrates that Student’s physical stature and medical history significantly limit his capacity to inflict physical harm. At seven years old, he is three feet eight inches tall, weighs forty-four pounds, and has experienced delayed physical development following a heart transplant. Video evidence showed marked differences between Student’s physicality and that of his peers. Taken together, the testimony and documentation show that Student is not substantially likely to cause injury; rather, he is a medically fragile child whose behaviors indicate a need for an updated Functional Behavior Assessment (“FBA”), revised Behavior Intervention Plan (“BIP”) with new strategies, and the trauma-informed practices the Board itself acknowledged could be provided in his current school.

Instead of using its data to improve interventions or add these necessary supports, the Board used it to construct a narrative favoring Student’s removal to a segregated setting, contrary to IDEA’s mandate that children with disabilities be educated with their nondisabled peers to the maximum extent appropriate.

## WITNESSES

For the Board: Michelle “Leigh” Mobley, M.Ed., MStudent –  
WCPSS Special Education Services  
Bethany McKissick, Ph.D., M.Ed. - Expert Witness  
Principal, M.Ed. – Principal Elementary School (Elementary  
School)  
EBS Teacher, MAT, NBCT - EBS Teacher Elementary School  
General Education Teacher Elementary School  
Heather Boling, MSA - Director of Bridges Program

For the Family: Mother - Mother of Student  
Debra Leach, Ed.D, BCBA - Expert Witness  
Katharine Donlon, Ph.D. - Expert Witness  
Elizabeth Horne, LCSW - Behavior Therapist

## EXHIBITS

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the “Bates stamped” numbers.

**Stipulated Exhibits (“Stip. Ex.”):** Stipulated Exhibits numbers 1, 4, 5, 6, 7, 9, 10, 11, 13, 14, 16, 17, 18, and 24.

**Petitioner’s Exhibits (“Pet’r Ex.”):** Petitioner’s Exhibits numbered 1 (pp 1-2), 2, 3, 4 (with limitation to the chart included and the hearsay redacted), 5 (pp 326, 327, 330, 332, 334-336, 339), 6 (pp 344-350, 351-356, 358-361, 363-365, 367), 7, 10, 11, 13 (pp 417-420, 421), and 14 were submitted as evidence in support of Petitioner’s case-in-chief.

**Respondents’ Exhibits (“Resp’t Ex.”):** Respondents’ Exhibits numbered 1, 3, 7, 10, 14, and 17, 18, and 19 were submitted as evidence in support of Respondents’ case-in-chief.

**Offer of Proof:** Petitioner’s Exhibit 4.

Transcript Volumes 1-2 with Offer of Proof (T vol 2 p 312:12-313:3) were filed on February 23, 2026; Volume 3 was filed on February 27, 2026. All transcript citations are referenced as T vol p [page:line] in this Final Decision.

The aforementioned exhibits have been retained as part of the Official Record of this contested case.

## ISSUES

The Parties agreed to the issues identified for hearing as:

1. Has the Board established that maintaining Student’s current educational placement is substantially likely to result in injury to himself or others warranting a change of Student’s placement to an Interim Alternative Educational Setting (IAES) for forty-five (45) school days?

2. Is the Board’s proposed IAES appropriate for Student?

### **BURDEN OF PROOF**

The Board bears the burden of proof in North Carolina. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof “lies where it usually falls, upon the party seeking relief.” *Schaffer*, 546 U.S. at 57-58. The standard of proof is by a preponderance of the evidence. *Id.*; N.C. Gen. Stat. § 150B-34(a). Here, the Board bears the burden of proof as the Party seeking to modify Student’s placement to an IAES. Stip. 2.

### **PROCEDURAL HISTORY**

1. The sequence of events leading to the present action reflects a steadily escalating dispute regarding Student’s educational placement and the sufficiency of supports in his current school setting, Elementary School (“Elementary School”). The Family first requested an independent Functional Behavior Assessment (“FBA”) during an Individualized Education Program (“IEP”) meeting on June 12, 2025. Stip. 8.

2. Before completion of the FBA, on September 16, 2025, over the objection of the Parents, the IEP team met and reduced Student’s school day, determining that a modified schedule was warranted. Stip. 6. This decision prompted Student’s Parents—through different counsel at the time—to file a Petition for Contested Case Hearing the next day, invoking stay-put protections. Stip. 7.

3. As the administrative process unfolded, Dr. Bethany McKissick completed the independent FBA on October 8, 2025. Stip. 9. The IEP team met shortly afterward, on October 16, 2025, and restored Student to a full school day. Stip. 10. Four days later, the Board sought summary judgment in the Family’s pending case, contending that the September petition was now moot. Stip. 11. The Family subsequently dismissed that petition on November 3, 2025. Stip. 12.

4. As concerns continued regarding Student’s behavior at Elementary School, the IEP team met again on November 24, 2025 and altered his placement to a separate public school—the Bridges Program (“Bridges”) over his Parents’ objection. Stip. 13. The Board identified December 8, 2025 as the implementation date for this change. Stip. 14.

5. In response, the Family filed a second due process Petition (25 EDC 4499) on December 5, 2025, received by WCPSS on December 9, again invoking stay-put and preventing the transfer to Bridges. Stips. 15–16. In this second matter, the Board filed a counter-claim on December 10, 2025, not asserting that Student was “substantially likely to injure” himself or others, but instead arguing that his aggressive behaviors “constitute a significant disruption” and that a separate setting would offer better educational benefits. Resp. to Pet. and Counterclaim ¶ 17, p 17 (filed Dec. 20, 2025) (25 EDC 4499) (citing *Hartmann v. Loudon Cnty. Bd. of Educ.*, 118 F.3d 996, 1004–05 (4th Cir. 1997) (stating that whether a disabled student is a “disruptive force in the non-segregated setting” is an “entirely appropriate, indeed required” factor to consider for a child’s educational placement under the IDEA)).

6. This distinction underscores that the Board’s initial theory centered on *educational appropriateness and disruption*, not the heightened “substantial likelihood of injury” standard it later invoked in the instant Petition (26 EDC 0228).

7. During December 2025 and January 2026, external circumstances further affected Student’s attendance. Heightened viral concerns kept him home between December 12-19, 2025, and he was then hospitalized from January 1-19, 2026, followed by additional recovery at home until January 30, 2026. Stips. 17-18.

8. Against this backdrop, the Board pivoted its legal strategy. On January 21, 2026, initiated the present action seeking expedited modification of stay-put under the IDEA’s emergency removal provision—this time asserting substantial likelihood of injury as the legal basis for an interim alternative educational setting. Stip. 19. The Family was served January 27 and filed a timely response on February 6, 2026.

9. The weeks preceding the expedited hearing involved various procedural motions. A consolidation request filed by the Board on February 9, 2026 sought to merge this case with the Family’s pending petition (25 EDC 4499). Joint submissions followed, including a motion for a FERPA protective order and the Parties’ exhibit and witness lists. A Prehearing Conference occurred on February 11, 2026, the same day the Family moved to sequester witnesses. Protective and sequestration orders were subsequently entered on February 10 and February 13, 2026, respectively.

10. After the Board’s consolidation motion was denied on February 17, 2026, the Parties submitted a draft Pre-Hearing Order, which the Tribunal finalized the next day.

11. Inclement weather briefly closed WCPSS schools from February 2-4, 2026 with Student returning to Elementary School on February 5, 2026. Stip. 20–21.

12. The evidentiary hearing in this case proceeded in-person on February 18-19 and virtually on February 26, 2026. Transcripts from the first two days were received on February 23, and the final transcript on February 27, 2026.

13. Both sides filed their Proposed Final Decisions on February 27, 2026, and exhibits were filed on March 4, 2026. The Final Decision in this matter was issued on March 5, 2026 within the requisite 10-school day deadline.

14. Meanwhile, the related underlying case filed by the Family (25 EDC 4499) remains pending and, absent a continuance, is scheduled for hearing beginning March 23, 2026.

15. This procedural history demonstrates the evolving nature of the disputes between the Parties, the Family’s repeated reliance on stay-put protections, and the Board’s increasing concern that Student’s behaviors—as it interpreted them—necessitated alternative placement.

16. The procedural record also provides essential context for understanding why the Board sought to change Student’s placement through an expedited petition rather than through the ordinary IEP process, and why the Tribunal must carefully assess both the substantive evidence and the timing of the Board’s actions in light of the IDEA’s protections.

### **FINDINGS OF FACT**

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, Stipulated Facts, and the Proposed Final Decisions, the undersigned administrative law judge (“ALJ”) makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witnesses to see, hear, know, and remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in this case including, but not limited to verbal statements at IEP meetings, IEP meeting documents, prior evaluations, and all other competent and admissible evidence.

#### ***Stipulations of Fact***

1. At the start of the hearing in this matter, the Parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in a proposed Pre-Hearing Order, which was approved and filed in the Office of Administrative Hearings (“OAH”) on February 17, 2026. Stipulations are referenced as “Stip. 1,” “Stip. 2,” “Stip. 3,” etc. To the extent the Stipulations are not specifically stated herein, the Stipulations of Fact in the Final Pre-Hearing Order are incorporated fully herein by reference.

#### ***Prior Orders***

2. Unless specifically contradicted herein, this Final Decision incorporates and reaffirms all evidentiary Findings of Fact and Conclusions of Law contained in previous written and verbal Orders entered in this litigation.

#### ***Findings Generally***

3. To the extent that the foregoing Findings of Fact contain Conclusions of Law or the Conclusions of Law are Findings of Fact, they are intended to be considered without regard to their given labels.

4. The Tribunal need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

### ***The Parties***

5. Wake County Board of Education (the “Board”, “Petitioner”, or “WCPSS”) is a local educational agency (“LEA”) receiving monies pursuant to the IDEA and as defined by the IDEA 20 U.S.C. § 1401. Stip. 3.

6. The Family in this matter includes, Student, Mother, and Father. Respondent Mother is Student’s mother. Stip. 2. Respondent Father is Student’s father. Stip. 3. During all times relevant to the issues in this case, Student, Mother, and Father resided in Wake County, North Carolina.

### **Student’s Unique Circumstances**

7. Because the statutory standard focuses on whether *this* child presents a substantial likelihood of injury in *his* current placement, the Tribunal must first examine Student’s unique physical, developmental, and behavioral profile, as reflected in the record.

8. Student is a seven-year-old, first-grade student. Stip. 1.

9. He was born with hypoplastic left heart syndrome and underwent a heart transplant at age five. T vol 2 p 424:10-18 (T of Mother). Almost all of his first years were spent in the hospital, leaving him with limited exposure to typical childhood environments and a high need for structure and predictability. T vol 2 pp 423:20-424:5 (T of Mother).

10. As a result of his medical history, Student is physically fragile. He is significantly weaker than his twin sister, lacks balance, cannot independently dress, must hold an adult’s hand when walking outdoors, and cannot yet jump. He continues working to develop basic muscle strength. T vol 2 pp 424:19-426:4 (T of Mother). He has required a feeding tube since birth and currently consumes only liquids by mouth. T vol 2 p 426:5-22 (T of Mother).

11. At roughly forty-four pounds and three feet eight inches tall, Student is considerably smaller than his peers. T vol 2 p 425:11-15 (T of Mother). His stature and presentation are consistent with the expected profile of pediatric cardiac patients, who frequently demonstrate delayed growth, reduced coordination, and clumsiness. T vol 2 pp 347:14-24, 349:1-4 (T of Donlon). As Dr. Donlon explained, such children often appear noticeably uncoordinated and physically limited in comparison to same-age classmates.

12. Video evidence reviewed by the Tribunal showed Student engaging with his private tutor, family, and peers in community settings. In all clips, Student appeared significantly smaller and physically slower than both his twin and his same-age peers, with movements that were mild, tentative, and uncoordinated. Resp’t Exs. 14, 18.

13. Dr. Donlon further explained that children with Student’s cardiac profile often present with attention, speech-motor, pragmatic-language, and social-communication challenges. T vol 2 pp 347:25-348:8 (T of Donlon). These developmental realities affect how Student responds to classroom demands but does not make him physically dangerous.

14. Because of his multiple disabilities, Student requires extensive school-based related services, including physical therapy, occupational therapy, speech-language services, counseling, parent training, and school health supports. Stip. Ex. 1. Outside of school, he has participated in private counseling—primarily play-based therapy—to support his social-communication and peer-interaction skills. T vol 3 pp 7:17-8:5; 9:3-17 (T of Horne).

15. In addition to his physical limitations, Student’s immune system is compromised, necessitating absences during periods of increased viral spread pursuant to cardiology recommendations. T vol 2 pp 427:14-428:9 (T of Mother); Resp’t Ex. 7. These gaps in instruction also impact his academic and social/emotional skill acquisition.

16. Despite his significant limitation, witnesses, including Principal and Dr. McKissick, consistently described Student as charismatic, social, and eager to interact appropriately with peers as he gains school experience. T vol 1 pp 27:25-28:15 (T of Principal); T vol 1 p 202:6-24 (T of McKissick).

17. In his home environment, Student presents as calm and regulated. T vol 2 p 423:20-23 (T of Mother). He engages appropriately with his private tutor and interacts positively with others. T vol 2 p 440:1-7 (T of Mother). When provided hand-over-hand assistance—either by his mother or his tutor—Student remains cooperative and regulated, as reflected in video evidence. T vol 2 pp 435:14-18, 440:13-15 (T of Mother); Resp’t Exs. 14, 17. He also enjoys playing video games and participates in a children’s gym program (KidStrong), where he works on muscle strengthening and communication skills alongside peers. T vol 2 p 437:5-7 (T of Mother); Resp’t Ex. 19. Across all non-school settings, including KidStrong, private tutoring, and private therapies, there was no evidence that Student had ever injured or attempted to injure another person, and neither his tutor nor his therapist had ever felt unsafe with him. T vol 2 p 438:5-13 (T of Mother); T vol 3 p 9:18-23 (T of Horne).

18. Dr. McKissick, who observed Student in both the regular education and Emotional Behavior Support (“EBS”) classrooms, reported that Student demonstrated fewer behavioral incidents in the regular education setting. She attributed this to the first-grade teacher’s “excellent classroom management,” “tight” and “controlled” structure, and “explicit” instruction. She also noted that Student is “very social” and “highly motivated to be around his peers,” and that this environment was strongly reinforcing for him. T vol 1 p 202:6-24 (T of McKissick).

19. Importantly, Dr. McKissick emphasized that Student benefits from structured, peer-rich environments and supported intensive intervention aimed at transitioning him further into general education, not away from it. T vol 1 pp 205:25-206:6 (T of McKissick). Her testimony aligns with the conclusion that Student’s behavioral challenges relate to regulation and task demands—not force, strength, or a capacity to inflict meaningful injury.

## **WITNESSES**

### **Credibility Determinations.**

20. The Undersigned evaluated each witness’s credibility by considering demeanor, clarity, responsiveness, potential interests or biases, opportunity to observe the events at issue, internal consistency, and consistency with corroborating documents including IEPs, Behavior

Intervention Plans (BIPs), Crisis Plans, Prior Written Notices, data sheets, discipline reports, stipulated exhibits, and other competent evidence. Although portions of the Parties' proposed decisions are referenced, the credibility determinations herein are independently made by the Tribunal after reviewing the entire record.

### **The Board's Witnesses**

21. The Board presented one (1) expert witness – Dr. Bethany McKissick – and offered five (5) fact witnesses – Principal, EBS teacher, Regular Education teacher, Leigh Mobley, and Heather Boling.

#### ***Bethany McKissick, Ph.D., M.Ed. (T vol 1 pp 162-226)***

22. Dr. Bethany McKissick was accepted as an expert in inclusive practices, functional behavior assessment, and trauma-informed supports. She observed Student across settings for approximately eight hours on three separate days and opined that staff implemented multiple evidence-based strategies with fidelity. Her review recognized research-based methods embedded in the BIP and Crisis Plan. The Tribunal credits these observations and her professional expertise.

23. Nevertheless, aspects of her FBA (e.g., identification of the overarching function as “control”) were credibly challenged under Applied Behavior Analysis (“ABA”) standards, and several recommendations overlapped with existing strategies or were expressed in general terms. The Undersigned therefore affords some weight to her testimony on methods and implementation fidelity but accords less weight to her conclusions about behavioral function and the necessity of a more restrictive placement during the relevant timeframe. *See* T vol 1 pp 162–226, 179:7–13, 191:18–192:7, 192:4–23, 195:17–21, 196:4–21, 197:6–20, 200:9–23, 201:17–22, 212:9–23; Stip. Ex. 10 pp 122–134; Stip. Ex. 5 pp 58–59.

#### ***Principal, M.Ed., Principal Elementary School (T vol 1 pp 24-71)***

24. Ms. Principal has served as Principal at Elementary School since August 4, 2025, and is trained in Crisis Prevention Institute (“CPI”) techniques. Her testimony provided firsthand descriptions of several incidents and the school's safety responses, including episodes of dysregulation during which Student lays on his back “kicking his feet in the air,” a posture that allowed staff to withdraw and maintain distance. The Tribunal notes that such clarifications, elicited on cross-examination, materially contextualize the nature of the “kicking” documented in the behavior data and temper any inference of imminent injury to staff; they are therefore credited in assessing risk.

25. At the same time, Principal's testimony included memory gaps (e.g., recall of meetings and observations) and was less precise when attributing severity to particular episodes. Overall, the Undersigned finds Principal credible as to school routines, CPI usage, and general safety concerns, but affords moderate weight to her testimony regarding the immediacy and magnitude of injury risk. *See* T vol 1 pp 24–71, 47:6–21, 62:4–65:21.

***EBS Teacher MAT, NBCT, EBS Teacher (T vol 1 pp 72-161)***

26. The EBS Teacher is dual-certified and CPI-trained and offered classroom-level testimony concerning the implementation of supports and data collection instruments. She was Student’s Emotional Behavior Support classroom teacher (“EBS teacher”) during the relevant period. She had taught in the EBS classroom for only two years, having previously taught extended content standards for eight (8) years, a very different role. T vol 1 p 72:11-19 (T of EBS Teacher).

27. The Undersigned credits her descriptions of daily routines and her sincerity. However, several material inconsistencies were established through cross-examination—such as characterizing “throwing materials” later clarified as popsicle sticks, describing disconnection from a feeding tube as a safety concern later conceded to be permitted, and recounting an art-class event she did not witness—along with her inability to authenticate substantial portions of the data relied upon in the Board’s narrative. These factors, combined with over-inclusive BIP/Crisis Plan definitions of “aggression” (e.g., ripping paper or calling out a peer’s name), diminish the probative value of her severity characterizations.

28. Although Ms. EBS Teacher was certified in CPI, she was the only staff member with any documented injuries, consisting primarily of superficial scratches on her uncovered arms and legs, a small number of minor bruises, and an instance of hair pulling. Pet’r Ex. 6. Overall, the record reflects that her injuries were minor and limited in scope. These injuries are consistent with incidental contact and, notably, could likely have been prevented by using basic protective measures such as long sleeves, long pants, and securing her hair. Such preventative measures are reasonably expected in an EBS classroom where CPI techniques are used.

29. The only injury which might be characterized as “severe” was a bite to her hand. However, a photograph taken six minutes after the incident shows no visible mark, despite her claim of a “scar” and her subsequent filing of a Worker’s Compensation claim. Pet’r Ex. 10 p. 387. This discrepancy raises questions regarding the extent to which the injury was portrayed as more serious than the contemporaneous evidence suggests.

30. Accordingly, the Tribunal affords limited weight to her testimony insofar as it supports a substantial likelihood of injury, and moderate weight to testimony regarding classroom routines and fidelity of certain interventions. *See* T vol 1 pp 72–161, 87:11–14, 91:8–12, 122:21–25, 140:22–25, 151:2–8, 151:24–152:6, 155:5–17, 159:13–25; Stip. Exs. 5, 9, 11, 16; Pet’r Exs. 1, 2, 4.

***Regular Education Teacher (T vol 1 pp 227-239)***

31. Regular Education Teacher is Student’s first-grade regular education teacher who according to the Board’s expert provided the “excellent classroom management” and “explicit” instruction on which Student strived academically and behaviorally. Unlike, the EBS Teacher’s testimony and behavioral data, Regular Education Teacher’s testimony about an “art-on-a-cart” incident was measured and consistent with documentary evidence. She described the student knocking over popsicle-stick structures and throwing popsicle sticks, after which she removed peers to facilitate de-escalation; she did not recall any peer contact or injury during the event.

32. The Undersigned finds her testimony credible and helpful in contextualizing the classroom's response to property disruption and peer removal decisions and affords it modest weight as to peer impact while noting its limited scope regarding overall injury risk. *See* T vol 1 pp 227–239, 234:2–25, 236:10–14; Stip. Ex. 11 p 137 (staff response to “aggression towards property” includes room clearing).

***Michelle “Leigh” Mobley, M.Ed., MSA (T vol 1 pp 240-248)***

33. Ms. Leigh Mobley testified regarding district-level processes, including communications with the Parents (November 17, 2025 letter offering a Bridges' tour and an inclusion consultant) and the timing of placement deliberations. Pet'r Ex. 14. Her testimony establishes knowledge of programmatic options but also reveals contradictions (e.g., acknowledging limitations on touring Bridges while students are present and the absence of a contracted inclusion consultant at the time) and a lack of personal observation or participation in key meetings for the student. These inconsistencies reduce the probative value of her views on student-specific risk and appropriateness of placement. The Tribunal affords minimal weight to her testimony as to imminent injury and IAES necessity, while recognizing its administrative context. *See* T vol 1 pp 240:13–248:25, 242:7–243:1, 244:2–10, 247:1–23; Pet'r Ex. 14 p 425.

***Heather Boling, MSA (T vol 1 pp 249-287)***

34. Ms. Heather Boling described the Bridges Program's structure, staffing (three adults to six students), embedded behavioral supports (token economy; positive behavior supports), staff training (CPI; resilience-informed strategies), and school-wide routines designed to reduce stimuli and support regulation. The Tribunal credits her programmatic descriptions; however, she did not personally observe Student, lacked data on average duration to transition students back to less restrictive settings, and acknowledged the absence of a full-time nurse - contextually relevant given Student's medical needs. Consequently, her testimony is moderately weighted for general program capabilities but limited for student-specific appropriateness and risk mitigation. *See* T vol 1 pp 249–287, 257:17–258:6, 259:4–7, 260:5–23, 261:12–262:15, 266:19–269:19, 275:14–280:19, 281:24–282:9, 283:17–284:3, 283:23–284:3, 286:13–24.

**Credibility Determination for Board's Witnesses.**

35. Based on the foregoing, the Undersigned recognizes the Board's witnesses' professional experience and credits their programmatic and routine-level descriptions, CPI training, and efforts to address dysregulation. However, the probative value of their testimony supporting a narrative of substantial likelihood of injury is reduced by: (a) clarifications that substantially re-characterize documented “aggression” (e.g., kicking while supine with available space for staff withdrawal; “aggression towards property” including ripping paper or throwing popsicle sticks); (b) inconsistencies between BIP tallies and Crisis Plan entries (including instances of room-clearing recorded despite zero crisis behaviors); and, (c) limitations in authentication and precision of the underlying data. Accordingly, while the Board's witnesses are credited for describing school-based efforts and safety practices, their testimony is assigned limited-to-moderate weight as to the existence of a substantial likelihood of injury under IDEA § 1415(k)(3). *See generally*, T vol 1 pp 24–71, 47:6–21, 72–161, 87:11–14, 140:22–25, 151:24–152:6, 234:2–25, 236:10–14, 240:13–248:25, 249–287, 257:17–258:6, 259:4–7, 260:5–23, 266:19–269:19; Stip. Exs. 5, 9, 11, 16; Pet'r Exs. 1, 2, 4, 14.

## **The Family's Witnesses**

36. The Family presented two (2) expert witnesses – Dr. Debra Leach and Dr. Katharine Donlon – and two (2) fact witnesses – Mother and Elizabeth Horne.

### ***Katharine Donlon, Ph.D. (T vol 2 pp 337-373)***

37. Dr. Katherine Donlon was accepted as an expert in pediatric psychology with emphasis on cardiac neurodevelopment, including cognition, emotional, and behavioral needs, and her qualifications and testimony were credible and relevant to Student's unique medical profile. *See* T vol 2 pp 337–373; 341:16–19. Dr. Donlon explained that pediatric cardiac patients commonly present with motor delays, reduced coordination, smaller stature, and pragmatic/social challenges; the Tribunal credits this medical context as probative of how Student's physical presentation and neurodevelopment may influence school behaviors and peers' perceptions. *See* T vol 2 pp 347:14–24, 349:1–4.

38. Her testimony also established that, based on her evaluation, the record did not support clinical diagnoses of anxiety or depression during the relevant time, which the Tribunal notes to avoid conflating dysregulation with unsupported psychiatric labels. *See* T vol 2 p 356:2–11. Dr. Donlon recommended consideration of Attention Deficit Hyperactivity Disorder (“ADHD”) medication as part of a comprehensive approach, a recommendation grounded in her domain expertise and evaluation and credited here as medically reasonable within the broader intervention plan. *Compare* Resp't Ex. 1 p 4 *with* T vol 2 pp 352:23–353:15.

39. While her direct observations of Student were not within the immediate timeframe at issue, the Undersigned finds her medical and neurodevelopmental analysis to be carefully reasoned, consistent with the documentary record, and useful to calibrate risk assessment and appropriate supports; accordingly, this testimony is afforded significant weight in contextualizing behavior, stamina, and safety considerations. *See generally* T vol 2 pp 337–373.

### ***Debra Leach, Ed.D., BCBA (T vol 2 pp 374-421)***

40. Dr. Debra Leach was accepted as an expert in special education, behavior, Applied Behavior Analysis (“ABA”), conducting FBAs and developing BIPs, interpreting evaluations, inclusive programming, and appropriateness of placement and service delivery, and her qualifications and testimony were highly credible. *See* T vol 2 pp 374–421; 380:5–17. Dr. Leach provided a detailed analysis of the record data, identifying material inconsistencies in collection and reporting (including over-inclusive definitions of “aggression” and disparities between BIP tallies and Crisis Plan entries), and explained how such unreliability impairs valid functional assessment and intervention design. The Tribunal credits these observations given corroborating documentary examples. *See* T vol 2 p 398:11–14; *compare* Pet'r Ex. 1 (BIP data) *with* Pet'r Ex. 2 (Crisis Plan data).

41. Dr. Leach's critique of the independent FBA's global function (“control”) is persuasive under ABA standards; she explained that “control” is not a recognized functional class because it does not identify the consequence/reinforcer maintaining behavior, and opined the record more strongly supports escape/avoidance and predictable negative adult attention as

maintaining variables—observations the Tribunal finds consistent with Student’s dysregulation during task demands. *See* T vol 2 pp 386:17–23; 387:16–21. She further opined that the behaviors observed are not outside the realm of typicality for students with similar profiles and that, with appropriate de-escalation, explicit instruction, differentiation, and adult-facilitated peer supports, the school can mitigate the behaviors without segregating Student. *See* T vol 2 pp 405:4–9; 405:24–406:13; 407:6–11. The Tribunal credits these school-implementable strategies, which align with IDEA’s emphasis on appropriate supports in the current setting.

42. Although Dr. Leach did not tour the Bridges Program, observe Student in a school setting, or speak to school staff—limitations the record indicates were largely district-imposed—the Undersigned does not find this to materially diminish her analysis, which is grounded in the record and established ABA practice. *See* T vol 2 p 19:21–25; 411:17–412:2.

43. The Tribunal affords Dr. Leach’s testimony significant weight on behavioral function, data integrity, and feasible, evidence-based supports in the current placement, and finds her opinion—that Student is not substantially likely to cause injury to self or others if appropriately supported in his stay-put placement—to be credible and well-reasoned. *See* T vol 2 pp 405:24–406:13; 414:8–18; 418:10–15.

***Mother, Student’s Mother (T vol 2 pp 422-459)***

44. The Tribunal finds Mother to be forthright and sincere, with detailed knowledge of her son’s medical history, development, and functioning at home. The Undersigned credits her testimony regarding long-term hospitalization, reliance on a feeding tube since birth, current stamina, coordination, and stature (including comparisons with Student’s twin sister), which was corroborated by portions of the record and video evidence. *See* T vol 2 pp 422–459, 424:10–425:15, 425:11–15, 442:13–15; Resp’t Exs. 14, 18, 19. The record further supports her account of medical guidance that Student remain home during heightened viral concerns, which the Tribunal considers in weighing the overall timeframe and school attendance variables. *Compare* T vol 2 pp 427:14–428:9 *with* Resp’t Ex. 10 (letter excusing attendance due to viral spread).

45. While parental perspective is acknowledged, the Undersigned finds Mother’s testimony largely consistent with the documentary record and probative of medical and home-context factors relevant to behavior and safety. *See generally* T vol 2 pp 422–459; Resp’t Exs. 7, 10, 14, 18, 19. Accordingly, the Tribunal affords this testimony meaningful weight in corroboration, while relying on expert and authenticated school records for school-incident specifics.

***Elizabeth Horne (T vol 3 pp 468-475)***

46. Ms. Elizabeth Horne is a licensed clinical social worker who began working with Student on October 3, 2025, and provided approximately ten (10) sessions focused on pragmatics of social communication, reciprocity, and classroom adjustment. *See* T vol 3 pp 469:19-470:23 (T of Horne). She described clear session expectations, consistent reinforcement (including a prize box), and observed improvements in reciprocity and empathy across sessions. She also testified that sessions were safe, with no unsafe behaviors and no concerns for her safety or Student’s. *See* T vol 3 pp 471:10-473:14 (T of Horne).

47. The Tribunal credits Ms. Horne’s testimony as corroborative of skill acquisition in therapeutic settings and as evidence that, with structured expectations and positive reinforcement, Student engages safely and productively given the scope (1:1 therapy rather than school milieu). Her testimony is afforded limited-to-moderate weight regarding school safety and crisis dynamics, while supporting the feasibility of reinforcement-based strategies. *See* T vol 3 pp 470-474 (T of Horne).

#### **Credibility Determination for the Family’s Witnesses.**

48. Upon review of the entire record, the Tribunal finds that the Family’s witnesses—particularly Dr. Leach and Dr. Donlon—provide credible, well-supported, and domain-appropriate analyses that more persuasively explain Student’s behaviors, functional hypotheses, medical context, and the realistic interventions available within the current educational placement. *See* T vol 2 pp 337–373, 374–421.

49. Dr. Leach’s ABA-grounded critique of the data and functional assessment, coupled with detailed school-implementable strategies, and Dr. Donlon’s medical/neurodevelopmental framework, together offer a coherent understanding of Student’s profile that undermines the Board’s narrative of substantial likelihood of injury and supports mitigation through appropriate supports rather than removal to a separate school. *See* T vol 2 pp 386:17–23, 387:16–21, 405:4–9, 405:24–406:13, 347:14–24, 349:1–4, 356:2–11. Mother’s corroboration of medical and home-context factors and Ms. Horne’s observations of safe, structured engagement further reinforce the viability of potential supportive interventions. *See* T vol 2 pp 422–459 (T of Mother); T vol 3 pp 471:8-21 (T of Horne); Resp’t Exs. 7, 10, 14, 18, 19.

50. Accordingly, the Undersigned assigns significant weight to the Family’s expert testimony and supporting weight to the Parent and therapist testimony, and finds that, on the whole record, the credible evidence does not establish that maintaining Student’s stay-put placement at Elementary School is substantially likely to result in injury to him or others under 20 U.S.C. § 1415(k)(3).

#### **The Board Pursued Student’s Removal Before Any Alleged Safety Risk**

51. The record reflects that the Board began pursuing a separate-school placement for Student early in the fall of 2025 and continued doing so even in the absence of evidence that Student posed a safety risk.

#### ***Observation of Learner for Consideration of Separate School [Bridges] Form***

52. By September 30, 2025, the Board was already evaluating Student for placement in the Bridges Program—the same separate setting later proposed at the November 24, 2025 IEP meeting and again sought in this proceeding. Pet’r Ex. 7 (Draft Observation of Learner for Consideration of Separate School). The recommendation was based, in part, on observations conducted by the Board’s Behavioral Health Programming Specialist. These observations were conducted during a period that staff had reported anywhere from 0 to more than 455 “target behaviors” on classroom data sheets, almost entirely in the EBS environment. Pet’r Ex. 4 pp 7- 58; p 40 (September 22, 2025 - 455 incidents reported).

53. During the September 30, 2025 observation, however, none of these target behaviors were present. Student was observed during literacy instruction in both the general education and EBS classrooms. Pet'r Ex. 7. In the EBS classroom, he was receiving highly individualized, scaffolded 1:1 instruction with no other students. Pet'r Ex. 7 p 375. In the general education classroom, he participated in grade-level whole-group instruction. Pet'r Ex. 7 pp 369–70. ABC data collected during both observations reported no maladaptive behaviors. *Id.* pp 371–72. When systematically observed alongside two peers—a general education peer and an EBS peer—Student remained on task during 100% of intervals, demonstrated no unsafe or aggressive behaviors, and responded predictably to structured expectations and reinforcement. *Id.* p 374.

54. The Board's Specialist concluded that Student benefitted significantly from structured routines, consistent reinforcement, and clear expectations, noting that he willingly completed academic tasks and demonstrated emerging self-regulation and task endurance when those supports were present. *Id.* She further reported that Student maintained 100% on-task behavior in the regular education setting despite its faster pace and reduced individual attention, and that he showed a clear capacity for self-regulation, positive demeanor, and independence when transitions and academic routines were clearly defined. *Id.* p 376. Despite these favorable findings—which documented no unsafe behavior in either setting—the Board continued advocating for a separate placement at Bridges.

#### **October 28, 2025 Pre-IEP Meeting With School Staff to Discuss Bridges Placement**

55. After the September observation and the October 16, 2025 IEP meeting (which the Parents contested a modified school day), a Google meeting was held on October 28, 2025 with school staff to discuss the Bridges Program recommendation without parental participation. Stip. Ex. 24 p 264. The Parents were not invited to this meeting to discuss this placement option for Student, and the Board presented no evidence the Parents were even alerted this meeting was occurring. Moreover, the Board presented no evidence the Parents were provided the documentation from the meeting, and Ms. Boling testified she “did not supervise the delivery of the documents.” T vol 1 p 283:10-16 (T of Boling). This lack of transparency supports removal was predetermined.

#### ***November 17, 2025 Letter From Senior Administrator About Bridges' Placement***

56. On November 17, 2025, Senior Director Leigh Mobley wrote to the Parents indicating that the IEP team wished to discuss a Bridges' placement. Pet'r Ex. 14 p 425. In that letter, Ms. Mobley emphasized that Bridges would serve as a *temporary* placement designed to “stabilize” Student's behaviors; she did not assert that Student was substantially likely to injure himself or others. *Id.* (emphasis in original).

57. Subsequently this proposed “temporary” placement became a reality at the November 24, 2025 IEP meeting where the school-based IEP team members, again over the Parents' objection, changed Student's placement to Bridges. Stip. 13. For which the current matter evolved.

## **The Board's Expert Witness Was Not Persuasive**

### ***October 16, 2025 Independent Functional Behavior Assessment***

58. The Board's expert, Dr. McKissick, who conducted the October 16, 2025 FBA, did not conclude in her FBA that Student was dangerous or that a separate setting was warranted. In preparation, she observed Student for approximately eight hours over three separate days in both classroom settings, reviewed all data from August through mid-October, and noted that Student was more likely to demonstrate disruptive behaviors when tasks exceeded his skill level. Stip. Ex. 10 pp 121–122, 131. Even after reviewing the October 9, 2025 behavior sheet listing 543 maladaptive behaviors and 460 aggressive behaviors toward staff, she did not recommend an alternative placement or identify a substantial likelihood of injury.

### ***Expert's Testimony Not Consistent With Her FBA***

59. The Undersigned further observes a notable contrast between the opinion Dr. McKissick expressed at hearing and both her earlier FBA findings and the Board's long-standing pursuit of a separate-school placement. At hearing, when asked whether Student's behavior presents a substantial risk of injury, Dr. McKissick testified that it did, but clarified that this conclusion rested not on any observed physically aggressive conduct toward other students, but on her uncertainty about what might occur "if a staff member did not intervene." T vol 1 p 212:19-23 (T of McKissick). She acknowledged that "Student did not engage any physically aggressive behaviors toward other students," and that her concern was based solely on the fact that he was "crawling towards" a peer and verbalizing statements, adding, "I don't know what would have happened if a staff member did not intervene." T vol 1 p 212:9–23 (T of McKissick).

60. This testimony stands in contrast to the findings of Dr. McKissick's independent FBA, during which she directly observed Student for approximately eight hours across multiple settings and reviewed all behavioral data from August through October 2025. Stip. Ex. 10 pp 121–122. Her FBA documented no physically aggressive acts toward peers, attributed Student's dysregulation primarily to task difficulty or errors and did not recommend a separate placement or identify a substantial likelihood of injury. Stip. Ex. 10 p 131.

61. It also differs from the Board's own early observations and actions. As previously found, the Board began evaluating Student for the Bridges Program as early as September 30, 2025, weeks before raising any claim of safety-based risk. That September Observation—conducted by the Board's Behavioral Health Programming Specialist—showed no unsafe or aggressive behaviors, documented 100% on-task participation, and concluded that Student functioned well with clear structure, consistent reinforcement, and explicit expectations. Pet'r Ex. 7.

62. Likewise, at the October 16, 2025 IEP meeting, attended by Dr. McKissick and multiple Board staff, no member of the team expressed concern that Student was substantially likely to injure himself or others, and the IEP team increased his school day rather than propose a change in placement. Stip. Ex. 7 p 77; Stip. Ex. 13 pp 159–161.

63. At the October 16, 2025 IEP meeting, staff reported that Student demonstrated a positive attitude toward learning and was making steady academic and behavioral progress. Stip.

Ex. 7 p 77. Multiple witnesses who testified in this case attended that meeting, and the Prior Written Notice contains no reference to Student being substantially likely to injure himself or others. Stip. Ex. 13. Although the IEP team reviewed all documented acts of physical aggression toward staff from September 17 to October 15 and discussed the Bridges Program as a possible setting, the school-based members of the IEP team did not propose placing Student there and instead increased his schedule to a full school day at Elementary School. Stip. Ex. 13 pp 159–161.

64. The evidence concerning use of physical restraint further undermines the Board’s assertion that Student is substantially likely to cause injury. Student has been restrained only twice—once unnecessarily during a feeding session and once immediately after biting his EBS teacher – Ms. EBS teacher. T vol 1 pp 127:22–128:3. Staff testified that restraint is used solely as a last resort to protect a child’s safety and the safety of others. T vol 1 p 26:17–20 (T of Principal). The Board confirmed there was no medical documentation prohibiting the use of CPI restraint for Student T vol 1 p 48:5–9. Nevertheless, restraint was rarely employed because Student is medically fragile and relies on a feeding tube, and staff feared for *his* safety if a restraint were applied. T vol 1 p 37:11–21 (T of Principal). Staff consistently described restraint for Student as something they, understandably, “try to avoid if we can” and use only as the “very last resort.” *Id.*

65. Taken together, these facts demonstrate a long-standing and consistent effort by the Board to transition Student to the Bridges Program, beginning weeks before any claim of substantial likelihood of injury surfaced. The Board’s own observations, specialist assessments, internal communications, and limited use of restraint all fail to support the later shift to an injury-based justification for removal.

### **Data Collection and Reporting Inconsistencies of Targeted Behaviors**

66. The Board proffered significant data showing Student’s maladaptive behaviors. *See* Pet’r Ex. 4. However, the Board did not call any witness who actually collected the raw behavior data to authenticate the underlying data sheets. As a result, the anecdotal narratives and unverified statements appearing outside the numerical charts constitute hearsay and cannot be considered. This lack of foundation is particularly concerning because several pieces of documentation admitted into evidence directly contradict the Board’s BIP data.

67. Moreover, throughout the record, the Undersigned observed repeated inconsistencies between the Board’s various data sources—often within the same day. These discrepancies, underscored during cross-examination, materially undermine the accuracy and reliability of the behavior counts reported.

68. The BIP identifies “physical aggression” and “verbal aggression” as the two global target behaviors, and these definitions carry over into the Crisis Plan and the data-tracking sheets. Stip. Ex. 9 p 117; Pet’r Exs. 1–2. Under the BIP, “physical aggression” includes behaviors ranging widely in severity—biting, grabbing, scratching, throwing objects, and breaking or ripping property. Stip. Ex. 9 p 117. “Verbal aggression” is defined broadly as any “undesired language” deemed inappropriate for the situation. *Id.*

69. Because these definitions encompass both genuinely aggressive conduct (e.g., biting) and trivial actions (e.g., ripping paper, kicking the floor, throwing popsicle sticks, calling

out a peer's name, or saying "poop"), the numerical totals of "aggressive" behaviors are inflated and do not accurately reflect dangerous or potentially injurious behavior. Pet'r Ex. 4.

70. The Crisis Plan defines Crisis Behavior 1 as "running/crawling on the floor towards students," which appears to overlap with the BIP categories of "target behaviors to peers" or "attempts to get peers." Crisis Behavior 2 is defined as "aggression towards staff or peers or property (as defined in his Behavior Intervention Plan)." Stip. Ex. 11 pp 136–37. Thus, the Crisis Plan directly incorporates the BIP's expansive definitions.

71. Despite this direct cross-reference, the Crisis Plan data and the BIP data never aligned on a single school day between October 31 and December 12, 2025. For example:

- On 10/31/25, the BIP data reflected 244 total target behaviors (155 to staff; 71 to property), yet the Crisis Plan logged only 4 crisis-level incidents (CB2) and zero CB1 events.
- On 11/14/25, the BIP reported 418 total target behaviors—including 248 toward staff—while the Crisis Plan documented only 6 crisis behaviors.
- On 12/10/25, the BIP listed 501 total behaviors (352 to staff), whereas the Crisis Plan recorded zero crisis behaviors.

*Compare* Pet'r Ex. 1 p 2 with Pet'r Ex. 2 p 5.

72. The contrast between the behaviors identified in the BIP and those recorded as crisis-level behaviors is not merely a matter of minor or expected variation. The persistent and substantial mismatch—particularly given that Crisis Behavior 2 expressly incorporates the same BIP definitions—suggests a fundamental incongruity between the two data sets rather than normal observational differences.

73. This incongruity is further illustrated by the extraordinary volume of reported aggressive behaviors. On one date, staff documented 543 behavioral incidents during a 6.5-hour (390-minute) school day, an average of more than one incident per minute. Pet'r Ex. 4 p. 88 (Oct. 9, 2025). Even more implausibly, the same day's records reflect 278 aggressive acts toward staff during a single 30-minute math class, equating to approximately nine incidents per minute. *Id.* Such figures strain credibility and raise serious questions about the accuracy and reliability of the data collection.

74. The record also shows that the majority of Student's alleged aggressive behaviors occurred in the EBS classroom, directed toward EBS staff—the very personnel with the highest level of training and the most favorable staff-to-student ratio. Pet'r Ex. 4.<sup>2</sup>

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<sup>2</sup> See Pet. Ex. 4 (Date EBS incidents/Reg incidents: 9/8 EBS 75/Reg 9; 9/9 EBS 168/Reg 2; 9/10 EBS 32/Reg 0; 9/11 EBS 39/Reg 0; 9/15 EBS 45/Reg 0; 9/16 EBS 37/Reg 0; 9/17 EBS 324/EBS&Reg 18/Reg 0; 9/22 EBS 455/Reg 0; 9/24 EBS 242/Reg 0; 9/25 EBS 268/Reg 1; 9/30 EBS 275/Reg 0; 10/1 EBS 249/Reg 0; 10/2 EBS 144/Reg 0; 10/6 EBS 305/Reg 0; 10/8 EBS 197/Reg 0; 10/9 EBS 543/Reg 0; 10/10 EBS 224/Reg 1; 10/14 EBS 300+/Reg 1 peer aggression/12 property; 10/16 EBS 215/Reg 0; 10/21 EBS 354/Reg 0; 10/22 EBS 80/Reg 0; 10/23 EBS 155/Reg 9 (unkind); 10/24 EBS 346/Reg 0; 10/27 EBS 440/Reg 0; 10/29 EBS 176/Reg 1; 10/21 EBS 244/Reg 0; 11/3 EBS 116/ Reg 0 (in ISS); 11/6 EBS 149/Reg 0; 11/7 EBS 139/Reg 0; 11/10 EBS 139/Reg 0; 11/12 EBS 200/Reg 4 (verbal); 11/13 EBS 452/Reg 0 (half day); 11/24 EBS 393/Reg 25 (recess); 11/17 EBS 136/Reg 12 (verbal

75. This pattern further underscores the likelihood that the reported data reflects reporting inflation or definitional overreach, rather than an accurate depiction of Student’s behavior.

76. Taken together, these inconsistencies undermine the credibility of the Board’s numerical portrayal of Student’s behavior. The wide disparity between the BIP data, Crisis Plan data, and unverified anecdotal comments strongly suggests that the extreme behavior counts cited in Petitioner’s Exhibit 4 do not reliably represent what actually occurred and cannot support a conclusion that Student was substantially likely to injure himself or others.

77. Even assuming *arguendo*, the accuracy of the Board’s behavior-tracking data, the weight of the evidence shows that, although Student sometimes behaved inappropriately toward peers, he did not behave aggressively toward them nor did he cause any peer injuries. Pet’r Ex. 4. There is likewise no evidence of self-injurious behavior. Notably, the majority of the reported behavioral incidents occurred in the EBS classroom, and the most significant incident—the November 3, 2025 bite—took place when Student was in a 1:1 setting with the EBS Teacher who was responsible for both collecting behavior data and monitoring his conduct. This pattern indicates a disconnect between Student’s functioning and the instructional approaches, structure, and staffing of the EBS environment rather than any propensity to injure others.

78. The EBS classroom setting itself further underscores this disconnect. When Student is present, the EBS classroom includes no more than six students total, and during math instruction every other day, Student is the only student in the room. T vol 1 pp 151:13–23, 151:24–152:5 (T of EBS teacherd). Along with the EBS Teacher, instructional assistants are also present in the classroom. T vol 1 pp 27:5–17 (T of Principal). Despite this high staff-to-student ratio—more intensive than what he receives in general education—incidents documented by the Board predominantly occurred in this environment.

79. The Board expressly admitted that “Student exhibited a higher frequency of target behaviors in the special education setting,” yet nevertheless speculated that “this is likely due to the fact that little academic demands are placed on him in the general education setting...”. Pet’r Pro. Final Dec. p 9, FOF #15. This admission stands in direct conflict with the Board’s own expert, who attributed Student’s improved functioning in the general education environment to the “tight,” “controlled” structure and “explicit” instruction provided there—conditions the expert identified as the reason for Student’s behavioral regulation.

80. Even though based on the Board’s data, the BIP and Crisis Plan were admittedly ineffective, minimal changes were made. After the November 24, 2025 IEP meeting, EBS Teacher acknowledged in an email to staff that the revisions to Student’s Behavior Intervention Plan and Crisis Plan were minimal, stating, “We made some minor changes to his behavior intervention plan and crisis plan. I don’t think these changes are significant....” T vol 1 pp 157:16–25, 159:1–

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and unkind); 11/18 EBS 174/Reg 2 (recess/27 verbal); 11/19 EBS 139/Reg 0; 11/21 EBS 303/Reg 0; 12/11 EBS 169/Reg 1 (9 cafeteria); 12/3 EBS 184/Reg 0; 12/10 EBS 474/Reg & EBS 27/ Reg 0 (ISS)).

7 (T of EBS Teacher). Unsurprisingly, Student continued to struggle behaviorally in the absence of meaningful changes to his supports.

81. On December 12, 2025, he was suspended again after an incident in which he yelled “poop” repeatedly, sang, lightly struck staff, and ultimately hit his teacher once. Pet’r Ex. 5 p 339. No injury was reported to any staff member or peer. *Id.* Moreover, although the Behavior Detail Report described numerous staff responses, the corresponding Crisis Plan data for that day documented only one initial sign of escalation and one occurrence of aggression, again highlighting inconsistency in the data. Pet’r Ex. 2 p 5.

82. Following this December 12 incident, Student remained home from school, due to heightened viral concerns and upon medical recommendation, from December 12–19, 2025. Stip. 17; Resp’t Ex. 17 p 31. He was then hospitalized from January 1–19, 2026, and remained home recovering until January 30, 2026. Stip. 18. Student returned to Elementary School on February 5, 2026 and has remained there pending this action. Stip. 21.

83. Taken together, the above facts further undermine the Board’s assertion that Student’s behaviors present a substantial likelihood of injury. The absence of peer injuries, the concentration of incidents in the EBS environment, the presence of a high staff-to-student ratio during those incidents, the minimal revisions to his support plans, and the widely inconsistent data all point toward environmental and instructional mismatch—not dangerousness—as the primary driver of Student’s behavior.

84. The Undersigned finds that the Board has not met its burden of proof by the preponderance of the evidence that maintaining Student at Elementary School is substantially likely to result in injury to him or others.

85. Because the Board failed to meet its burden on the first issue, findings are unnecessary about the appropriateness of the proposed interim alternative educational setting.

**BASED UPON** the Findings of Fact, Stipulations, sworn testimony, relevant laws, legal precedent and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

### **CONCLUSIONS OF LAW**

1. The Individuals with Disabilities Education Act (“IDEA”) permits a local educational agency to seek an expedited change of placement only if it proves that maintaining the child’s current placement is substantially likely to result in injury to the child or others. 20 U.S.C. § 1415(k)(3)(A)–(B); 34 C.F.R. § 300.532(b)(2)(ii). This standard is extraordinary and overrides the automatic “stay-put” protection; thus, the Board bears a heavy burden and must present reliable, persuasive evidence of a significant and immediate risk of harm—not generalized concerns, programmatic preferences, or speculation.

#### **Stay-Put Legal Standard**

2. IDEA’s stay-put provision provides that, absent agreement by the parties, the child “shall remain in the then-current educational placement” during the pendency of proceedings. 20

U.S.C. § 1415(j); 34 C.F.R. § 300.518(a). The Fourth Circuit has emphasized that stay-put is “automatic” and requires no additional showing of harm by the student. *Wagner v. Bd. of Educ. of Montgomery Cnty.*, 335 F.3d 297, 301 (4th Cir. 2003). The Supreme Court has likewise underscored Congress’s intent to strip schools of unilateral authority to exclude students with disabilities from school. *Honig v. Doe*, 484 U.S. 305, 323 (1988).

3. Courts recognize this is a protective rule against unilateral disruption and exclusion, and any override is “extraordinary and drastic,” reserved for clear showings of irreparable harm. *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019).

4. Student’s stay-put placement is a full traditional school day at Elementary School under the October 16, 2025 IEP. The Parties did not agree to change that placement. When the Board previously moved to modify stay-put by motion in the parallel matter, the motion was denied as procedurally improper; the Board then filed the instant expedited Petition on January 21, 2026 seeking a 45-day interim alternative educational setting.

### **Standard for Modifying Stay-Put**

5. A hearing officer may order an interim alternative educational setting for not more than 45 school days only if maintaining the current placement is substantially likely to result in injury to the child or others. 20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii). Hearing officers exercise judgment after considering all factors and the whole record when determining whether the child’s behavior meets this threshold. 71 Fed. Reg. 46,722 (Aug. 14, 2006).

6. Although “injury” is not defined in § 1415(k), IDEA incorporates a definition of “serious bodily injury” elsewhere; in any event, courts have explained that danger must be distinctly significant—well beyond typical behavioral challenges—and not merely “possible,” but substantially likely. *Clinton Cnty. R-III Sch. Dist. v. C.J.K.*, 896 F. Supp. 948, 949 (W.D. Mo. 1995). Districts must also show reasonable efforts to accommodate the child’s disabilities to minimize any likelihood of injury. *Light v. Parkway C-2 Sch. Dist.*, 41 F.3d 1223, 1228 (8th Cir. 1994). In assessing risk, courts consider a district’s own real-world behavior (e.g., decisions to keep a student in school) and will not allow the district to “evade the evidentiary weight” of those actions. *Olu-Cole*, 930 F.3d at 529.

### **ISSUE 1: Has the Board established that maintaining Student’s current educational placement is substantially likely to result in injury to himself or others warranting a change of Student’s placement to an Interim Alternative Educational Setting (IAES) for forty-five (45) school days?**

7. On this record, the Board has not carried its burden on the primary issue. The evidence shows no peer injuries and no self-injurious behavior by Student. Even accepting the Board’s tallies at face value, the behaviors toward peers are inappropriate or disruptive—not aggressive conduct likely to result in harm—and the most serious incident (a bite) occurred in a one-on-one staff setting, not in a peer context.

8. The Board’s own observations and expert assessments contradict the claim of substantially likelihood of injury. The September 30, 2025 observation considering a separate

program documented no unsafe behavior, 100% on-task engagement, and positive responsiveness to structure and explicit expectations across general education and EBS settings. The Board's Behavior Specialist concluded Student completes tasks willingly and demonstrates emerging self-regulation when supports are in place.

9. Likewise, the Board's expert, Dr. McKissick, observed Student for approximately eight hours over a three-day period, reviewed the data through mid-October, and did not recommend a separate placement or find a likelihood of injury. Similarly, at the October 16, 2025 IEP meeting, the school based members of the IEP team agreed to increase Student's day and recorded no concern of substantial likelihood of injury.

10. Although the Board later asserted the substantial likelihood of injury, its data suffers from foundational defects and pervasive inconsistencies such as the Crisis Plan entries do not align with BIP counts on any day in the relevant period; over-inclusive definitions (e.g., ripping paper, calling out a peer's name) inflate "aggression" totals; and room clearings occurred even on days with zero documented crisis behaviors. These contradictions undermine the reliability of the Board's evidence.

11. The Board's limited use of restraint further undercuts the claim of substantial likelihood of injury. Staff testified restraint is a last resort and Student was restrained only twice, neither instance involving peer danger. Restraint was avoided with Student because of his medically fragility and safety concerns. Yet, all instructional and support staff assigned to Student were trained and certified in Crisis Prevention Institute ("CPI") physical restraint techniques, which are recognized by North Carolina school districts as compliant with N.C. Gen. Stat. § 115C-391.1. CPI training includes instruction in safe physical restraint, prevention and de-escalation strategies, and protection of medically fragile students.

12. North Carolina's restraint statute, N.C. Gen. Stat. § 115C-391.1(a)(1)&(2), establishes that public schools must "promote safety and prevent harm" and must "treat all public school students with dignity and respect" in the use of physical restraint. Under § 115C-391.1(d), physical restraint is permissible when "reasonably necessary to prevent imminent harm" to the student or others, or to prevent self-injurious behavior. Because staff were trained in CPI restraint, the Board has the ability and legal authority to use safe physical restraint when necessary to prevent harm. The Board's decision not to use trained restraint techniques, and instead to repeatedly evacuate classrooms, is inconsistent with § 115C-391.1 and does not satisfy the statutory requirement to promote safety nor did this exclusionary practice, that disrupted instruction for peers, mitigate Student's behaviors.

13. To be clear, the Undersigned is not recommending restraint of a medically fragile student like Student, however, the Board's inconsistent application of its own safety protocols undermines its claim that Student cannot be safely educated in his current placement.

14. Also, context matters. Student's behavioral variability correlates with environment and staffing. He met goals and showed fewer behaviors in general education with tight management and explicit instruction and struggled most in EBS—often alone with multiple adults and limited peer interaction. Even the Board's expert opined Student had fewer incidents in general education and supported intensive intervention to transition him more into that setting. Moreover,

while these contextual differences explain the behavior patterns; they do not establish dangerousness.

15. Finally, the procedural record shows the Board's pursuit of removal to Bridges predated any injury-based theory and was framed as a "temporary" stabilization, not a safety necessity—another indicator that the present injury claim is not grounded in contemporaneous evidence but other motivations.

## **ISSUE 2: Is the Board's proposed IAES appropriate for Student?**

16. Because the Board has not demonstrated that maintaining Student's stay-put placement is substantially likely to result in injury to himself or others, the requested modification of stay-put is denied. In light of this determination, the Tribunal need not reach the separate question of whether the proposed interim alternative educational setting at the Bridges Program is appropriate.

17. Student shall remain in his current, full-day placement at Elementary School as outlined in his October 16, 2025 IEP unless and until the Parties agree otherwise or final judgment in the related matter provides a lawful basis for change.

## **FINAL DECISION**

Having considered the entire record and the applicable law, and for the reasons stated in the Conclusions of Law, it is **ORDERED** as follows:

1. Respondent/Family's Motion to Dismiss under N.C. Gen. Stat. § 1A-1, Rule 41(b) was **GRANTED *nunc pro tunc*** on February 19, 2026 as to the allegation that Student was substantially likely to injure himself. The Motion was **DENIED** as to the allegation that Student was substantially likely to injure others. Respondent's Rule 41(b) Motion is **DENIED** as **MOOT** as to all remaining claims.

2. The Petitioner/Board's Petition to Modify Stay-Put under 20 U.S.C. § 1415(k)(3) is **DENIED**. The Petitioner/Board has not demonstrated by a preponderance of the evidence that maintaining Student's current placement is substantially likely to result in injury to Student or to others. All claims are hereby **DISMISSED WITH PREJUDICE**.

3. Considering this determination, the Tribunal need not reach the separate question of whether the Petitioner/Board's proposed interim alternative educational setting at the Bridges Program is appropriate.

4. Pursuant to IDEA's stay-put protection, Student shall remain in his current, full-day educational placement at Elementary School as outlined in his October 16, 2025 IEP, unless and until the Parties agree otherwise or a final judgment in the related matter provides a lawful basis for change.

5. Any other relief requested in the Petitioner/Board's Petition and not expressly granted herein is **DENIED**. To the extent that ancillary claims have not been specifically

addressed, Petitioner has failed to meet its burden of proof as to any of those ancillary claims and they are also **DISMISSED WITH PREJUDICE**.

6. The Respondent/Family is the prevailing party.

#### **ORDER SEALING VIDEO EVIDENCE IN RESPONDENT'S EXHIBIT 19**

7. Respondent/Family's Exhibit 19 was admitted as evidence and is a video depicting identifiable minor children. Although the recording was made in a public location, the parents of the minor children did not consent to its use or disclosure in this proceeding. The Administrative Law Judge finds that public release of the video would compromise the privacy interests of the minors involved.

8. Pursuant to N.C. Gen. Stat. §§ 150B-23 and 150B-29, and the authority to regulate evidence under 26 NCAC 03 .0122, as well as the principles governing restricted access to judicial records under N.C. Gen. Stat. § 1-72.1, the compelling interest in protecting the privacy of minor children outweighs any presumption of public access.

9. It is therefore **ORDERED** that the video admitted as Respondent's Exhibit 19 is **SEALED**. The video shall remain part of the Official Record for purposes of review and appeal but shall not be disclosed to the public or to any unauthorized person.

#### **REDACTION ON FINAL DECISION**

10. Moreover, because Student's medical condition is sufficiently unique that it could permit his identification even after standard redactions of personally identifiable information (such as the student's and parents' names), the published Final Decision shall also redact the name of Student's current placement—Elementary School—as well as the names of school staff. This additional redaction is necessary to ensure that Student cannot be indirectly identified through contextual details.

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## NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision.

**Any party aggrieved by the findings and decision of a hearing officer may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.**

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

This Final Decision is immediately enforceable by the State Board of Education and remains in effect until the party aggrieved moves the reviewing court for a Stay of the Final Decision and the reviewing court grants the Stay pursuant to N.C. Gen. Stat. § 150B-48.

### **IT IS SO ORDERED.**

Original Final Decision served on the 5th day of March, 2026.  
Amended Final Decision served on the 6th day of March, 2026.  
Redacted Amended Final Decision for Publication Purposes Only.

Served on the 9th day of March, 2026.



Stacey Bice Bawtinheimer  
Administrative Law Judge

