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February 14, 2024

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RE: [redacted], THE STUDENT AND [redacted], THE PARENT V. KNOX COUNTY SCHOOLS, APD Case No. 07.03-240209J

Enclosed is a *Final Order*, including a *Notice of Appeal Procedures,* rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION DIVISION OF SPECIAL EDUCATION

IN THE MATTER OF:

[redacted] **THE STUDENT,** ***and***
[redacted] **THE PARENT,**
Petitioners,

v.

KNOX COUNTY SCHOOLS,
Respondent.

APD Case No. 07.03-240209J

FINAL ORDER

This matter was brought by the Petitioners, student [redacted] and [redacted] parent, [redacted] pursuant to the Individuals with Disabilities Educational Act (IDEA), and Title 49 of the Tennessee Code Annotated. The Petitioners are represented by attorneys Justin Gilbert and Christopher Sailer. The Respondent, Knox County Schools (KCS), is represented by Deputy Law Director Amanda Morse. The matter was set to be heard on February 1, 2024. However, on January 26, 2024, Respondent filed a MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS and Petitioners filed a MOTION FOR JUDGMENT ON THE PLEADINGS. On January 31, 2024, the undersigned heard oral arguments on these pending motions. For the reasons set forth below, RESPONDENT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS is **DENIED** and PETITIONERS' MOTION FOR JUDGMENT ON THE PLEADINGS is **GRANTED**.

STATEMENT OF THE ISSUE

The issue presented is whether a 12-inch crescent wrench that a student brings to school in [redacted] backpack for the purpose of self-defense or to confront another student is a weapon under 20 U.S.C. § 1415(k)(1)(G)(i) and 18 U.S.C. § 930(g)(2) such that the student may be placed in

an interim alternative educational setting (IAES) when the wrench remains undisturbed in the student's backpack and the Individualized Education Program (IEP) team determined that the student's behavior was a manifestation of [redacted] disability.

SUMMARY OF THE DETERMINATION

It is **DETERMINED** that Petitioners carried their burden of proof by a preponderance of the evidence. Petitioners have shown that when a wrench remains undisturbed in a student's backpack, it is not used for or readily capable of causing death or serious bodily injury. Therefore, it is not a weapon under 20 U.S.C. § 1415(k)(1)(G)(i) and 18 U.S.C. § 930(g)(2). Because the wrench is not a weapon and because the IEP team determined that the student's behavior was a manifestation of [redacted] alleged disability, the student was improperly placed in an IAES for 45 days. Accordingly, Petitioners are the prevailing party and are entitled to relief. This determination is based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. [redacted] is a [redacted] student who attends [redacted] in Knoxville, Tennessee, which is part of KCS. *See* Complaint ¶ 1-2; Response ¶ 1, 2.

2. On November 30, 2023, [redacted] learned that [redacted] had allegedly been unfaithful to [redacted] with another student who was larger in stature than [redacted] *See* Complaint ¶ 20; Response ¶ 20.

3. On December 1, 2023, [redacted] brought a 12-inch crescent wrench ("the wrench") to school in [redacted] backpack. *See* Complaint ¶ 22; Response ¶ 10. [redacted] intent with the wrench was either to use it to confront the larger student or to use it for self-defense if a confrontation occurred. *See* Complaint ¶ 22; Response ¶10.

4. On December 1, 2023, [redacted] engaged in a verbal confrontation with the larger student; however, the wrench remained dormant in [redacted] backpack. *See* Complaint ¶ 22, 23; Response ¶ 22, 23.

5. [redacted] IEP team convened on December 20, 2023, and determined that [redacted] actions on December 1, 2023, were a manifestation of [redacted] alleged disability. *See* Complaint ¶ 24, 25; Response ¶ 24, 25.

6. KCS concluded that the wrench was a weapon, and [redacted] was placed in an IAES for 45 days. *See* Complaint ¶ 27; Response ¶ 27, 40.

ANALYSIS

JURISDICTION

When enacting the IDEA, Congress clearly conferred jurisdiction of a student's IDEA claims upon hearing officers, also known as administrative law judges. 20 U.S.C. § 1415(f)(3)(A). In Tennessee, the Office of the Secretary of State, Division of Administrative Procedures, has jurisdiction over the subject matter and the parties of this proceeding and the undersigned administrative judge has the authority to issue final orders. *See* Tenn. Comp. R. & Regs. 0520-01-09-.18; *see also* Tenn. Code Ann. § 49-10-101.

The U.S. Supreme Court held in *Schaffer v. Weast*, that the burden of proof is on the party "seeking relief." 546 U.S. 49, 51 (2005). Thus, when a parent files a request for a due process hearing, the parent bears the burden of proof, or burden of persuasion in the due process hearing. *Id*. at 56; s*ee also Cordrey v. Euckert*, 917 F.2d 1460, 1469 (6th Cir. 1990) (the party challenging the IEP bears the burden of proof in an IDEA action). Thus, Petitioners bear the burden of proof in this matter.

STANDARD OF REVIEW

Motions for judgment on the pleadings are permitted by Tenn. R. Civ. P. 12.03. When such a motion is made, "all well-pled facts and all reasonable inferences drawn therefrom must be accepted as true." *McClenahan v. Cooley,* 806 S.W.2d 767, 769 (Tenn. 1991) (internal citations omitted). In addition, "[c]onclusions of law are not admitted nor should judgment on the pleadings be granted unless the moving party is clearly entitled to judgment." *Id*. "A motion for judgment on the pleadings tests only the validity of the legal theories pled by the party opposing the motion, and not the strength of the proof." *Brewer v. Piggee*, No. W2006-01788-COA-R3-CV, 2007 WL 1946632, at *6 (Tenn. Ct. App. July 3, 2007) (citing *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S .W.2d 934, 938 (Tenn. 1997). "A motion for judgment on the pleadings made by the plaintiff challenges only the legal sufficiency of the defenses pled by the defendant." *Id.* A defendant's motion for judgment on the pleadings should be granted only when "it appears that the plaintiff can prove no set of facts in support of the claim that will entitle him to relief." *Wilson v. Harris*, 304 S.W. 3d 824, 826 (Tenn. Ct. App. 2009).

RELEVANT FACTS AND APPLICABLE STATUTES

The relevant facts in this case are simple. If a student brings a weapon to school, the school is permitted to place the student in an IAES for up to 45 days for disciplinary purposes regardless of whether the behavior was a manifestation of the student's disability. 20 U.S.C. § 1415(k)(1)(G)(i). Here, [redacted] brought a 12-inch crescent wrench to school in [redacted] backpack intending to use the wrench to confront another student or to defend [redacted] if a confrontation occurred. [redacted] engaged in a verbal confrontation with the other student, but the wrench remained untouched in [redacted] backpack. [redacted] never touched or used the wrench at school. Subsequently, [redacted] IEP team determined that [redacted] actions were a manifestation of [redacted] alleged disability, and

KCS placed [redacted] in an IAES for 45 days based on its determination that the wrench was a weapon under 20 U.S.C. § 1415(k)(1)(G)(i) and 18 U.S.C. § 930(g)(2). It is this determination that is at the crux of this case.

Accordingly, both parties moved for judgment on the pleadings as to whether the wrench is a weapon. Petitioners assert that the wrench is not a weapon under 20 U.S.C. § 1415(k)(1)(G)(i)[1] while KCS asserts that the wrench is a weapon under the same statute. To that end, 20 U.S.C. § 1415(k)(1)(G)(i) provides:

> School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--
>
> (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

As used in the statute above, "[t]he term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of Title 18." 20 U.S.C. § 1415(k)(7)(C).[2] Pursuant to 18 U.S.C. § 930(g)(2):

> The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Given this definition, it is clear that the wrench is an inanimate instrument, and it is undisputed that the wrench was not used for causing death or serious bodily injury, as the wrench was remained undisturbed in [redacted] backpack. Therefore, the question is whether the wrench was "readily capable of causing death or serious bodily injury." *Id*.

[1] *See also* 30 C.F.R. § 300.530(g)(1).

[2] *See also* 30 C.F.R. § 300.530(i)(4).

THERE IS A DISTINCTION BETWEEN OBJECTS THAT ARE INHERENTLY DANGEROUS AND THOSE THAT ARE NOT

Before addressing the question is whether the wrench was "readily capable of causing death or serious bodily injury," one must distinguish between objects that are inherently dangerous and those that are not. The law recognizes that some objects are inherently dangerous. For example, "a gun is an article that is typically and characteristically dangerous; the use for which it is manufactured and sold is a dangerous one, and the law reasonably may presume that such an article is always dangerous even though it may not be armed at a particular time or place." *McLaughlin v. U.S.*, 476 U.S. 16, 17 (1986). A wrench is a common household object; unlike a gun or knife, it is not inherently dangerous. However, "an object need not be inherently dangerous to be a dangerous weapon. Rather, innocuous objects or instruments may become capable of inflicting serious injury when put to assaultive use." *U.S. v. Sturgis*, 48 F.3d 784, 787 (4th Cir. 1995). The object's latent capability, coupled with its manner of use, is determinative of whether an object can be characterized as a dangerous weapon. *U.S. v. Johnson*, 324 F.2d 264, 266 (4th Cir. 1963) (holding that defendant's use of a metal and plastic chair to strike a victim rendered the chair a dangerous weapon). Thus, when an object is not inherently dangerous, one must consider the use and characteristics of the object in order to determine whether the object is a dangerous weapon.

POSSESSION ALONE DOES NOT CONVERT AN OBJECT INTO A DANGEROUS WEAPON

KCS contends that the use of the wrench is irrelevant and that the only requirement is that a student carry or possess a weapon on school grounds. This position ignores the definition of "dangerous weapon" set forth at 18 U.S.C. § 930(g)(2) that was incorporated into the IDEA via 20 U.S.C. § 1415(k)(7)(C). Additionally, hearing officers and judges consistently focus their

analysis on the use and characteristics of the object when determining whether an object is a weapon under the IDEA. For example, in *G.D. v. Utica Cmty. Sch*., No. 20-12864, 2023 WL 2719426, at *4 (E.D. Mich. Mar. 30, 2023), the court noted that the definition of weapon under the IDEA is the same as the definition of dangerous weapon in the criminal code and that the administrative judge properly considered the manner of the object's use when determining whether an object was "readily capable" of causing harm. *See also California Montessori Project*, 56 IDELR 308 (SEA Cal. 2011) (determining that scissors were not a dangerous weapon after considering the type and size of the scissors as well as their manner of use); *Ind. Sch. Dist. No. 279, Osseo Area Schools*, 30 IDELR 645 (SEA Minn. 1999) (noting that a golf club or baseball bat could be used so as to make it readily capable of causing harm); *Pottstown School Dist*., 118 LRP 27959 (SEA Penn. 2018) (holding that an object was readily capable of causing harm where a student wielded the object as a weapon); and *Anchorage School Dist*., 45 IDELR 23 (SEA AK 2005) (rejecting the school's argument that scissors are weapons *per se*, but holding that student's use of the scissors rendered the scissors a dangerous weapon). Thus, while possession alone may be sufficient if the object is inherently dangerous, such as a gun or knife,[3] possession alone is insufficient where the object is not inherently dangerous.

In the case at hand, it is undisputed that [redacted] brought a 12-inch crescent wrench to school in [redacted] backpack. Unlike a gun or knife, a wrench is not inherently dangerous. It is simply a household tool that could be found in most anyone's garage or toolbox or in a high school's auto shop or technical education area. Therefore, consistent with the case law set forth above, one must examine how the wrench was used to determine whether it constitutes a dangerous weapon.

[3] *See Pittsburgh School District*, 115 LRP 17342 (Penn. 2015) (holding that unintentional possession of a knife that was "clearly capable of causing serious injury" constituted possession of a weapon under the IDEA such that IAES placement was appropriate).

The parties agree that [redacted] never used the wrench and that the wrench remained untouched in [redacted] backpack.[4] Because [redacted] never used or even touched the wrench while at school, the wrench was never "readily capable of causing death or serious bodily injury." 18 U.S.C. § 930(g)(2). Therefore, the wrench was not a dangerous weapon.

INTENT IS IRRELEVANT TO THE QUESTION OF WHETHER AN OBJECT IS A DANGEROUS WEAPON UNDER THE IDEA

KCS contends that the wrench was readily capable of causing death or serious bodily injury because [redacted] intentionally brought the wrench to school to confront another student or to use it for self-defense if a confrontation occurred. At oral argument, KCS sought to use intent to differentiate [redacted] from a student who unintentionally brings a wrench to school or who does so for a school-related project. However, neither the IDEA nor the definition at 18 U.S.C. § 930(g)(2) include an intent requirement with regard to weapons. *See Pittsburgh School District*, 115 LRP 17342 at 4 (Penn. 2015) (noting that intent is irrelevant because neither the IDEA nor 18 U.S.C. § 930(g)(2) make any mention of an intent requirement); *see also Utica Community Schools*, 120 LRP 28499 at 46 (Mich. 2020) (noting that intent to injure is not required). Intent alone does not render an object readily capable of causing death or serious bodily injury. Only some overt act, regardless of intent, can do that. Although [redacted] brought the wrench to school in [redacted] backpack, [redacted] made no overt act to render the wrench readily capable of causing death or serious bodily injury.[5] Therefore, the question of [redacted] intent is irrelevant.

[4] KCS alleges that [redacted] did not use the wrench because another student took the backpack away from [redacted] during [redacted] confrontation with the other student. Assuming, *arguendo*, that this is true, it does not change the fact that [redacted] did not use or even touch the wrench.

[5] *See* footnote 4.

CONCLUSIONS OF LAW

1. The wrench that [redacted] brought to school on December 1, 2023, was not a weapon under 20 U.S.C. § 1415(k)(1)(G)(i) and 18 U.S.C. § 930(g)(2) because it was not inherently dangerous and because it remained untouched in [redacted] backpack; thus, it was never used for or readily capable of causing death or serious bodily injury.

2. Because the wrench was not a weapon and because the IEP team concluded that [redacted] behavior on December 1, 2023, was a manifestation of [redacted] alleged disability, [redacted] was improperly placed in an IAES. *See* 20 U.S.C. § 1415(k)(1)(F).

3. Considering the standard of review set forth above, the undersigned finds that the defenses and facts Respondent pled are legally insufficient because they fail to show that the wrench was a weapon under the applicable law even when relevant well-pled facts and reasonable inferences therefrom are taken as true. Accordingly, PETITIONERS' MOTION FOR JUDGMENT ON THE PLEADINGS is **GRANTED**.

4. A respondent's motion for judgment on the pleadings should be granted only if "it appears that the [petitioners] can prove no set of facts in support of the claim that will entitle [them] to relief." *Wilson*, 304 S.W. 3d at 826. Based on the foregoing analysis, it is apparent that the Petitioners could prove a set of facts that entitles them to relief. Furthermore, having concluded that the wrench did not meet the definition of a weapon under the applicable law, all other issues raised in RESPONDENT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS are now moot, and said motion is **DENIED**.

5. Petitioners satisfied their burden of proof by a preponderance of the evidence and are the prevailing party.

REMEDY

Because [redacted] IEP team determined that [redacted] behavior on December 1, 2023, was a manifestation of [redacted] alleged disability and because the wrench was not a weapon under 20 U.S.C. § 1415(k)(1)(G)(i) and 18 U.S.C. § 930(g)(2), KCS shall comply with 20 U.S.C. § 1415(k)(1)(F). Accordingly, KCS must conduct a functional behavioral assessment and implement a behavioral intervention plan if it has not already done so, or if a behavioral intervention plan is already developed, then review and modify it as needed. 20 U.S.C. § 1415(k)(1)(F)(i)-(ii). Additionally, KCS shall return [redacted] to the placement from which [redacted] was removed, unless [redacted] parent and KCS have agreed to a change of placement. 20 U.S.C. § 1415(k)(1)(F)(iii).

POLICY STATEMENT

The policy reason for this decision is to uphold the federal and state laws pertaining to the education of children with disabilities.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **14th day of February, 2024.**

MARK GARLAND
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **14th day of February, 2024.**

IN THE MATTER OF: **APD CASE No. 07.03-240209J**
[redacted] THE STUDENT AND [redacted] THE PARENT V.
KNOX COUNTY SCHOOLS

NOTICE OF APPEAL PROCEDURES

REVIEW OF FINAL ORDER

The Administrative Judge's decision in your case in front of the **Tennessee Department of Education**, called a Final Order, was entered on **February 14, 2024**. If you disagree with this decision, you may take the following actions:

1. **File a Petition for Reconsideration:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is no later than **February 29, 2024.**

   The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal no later than **April 15, 2024**. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may file an appeal the decision in federal or state court within 60 days of the date of entry of the Final Order, which is no later than **April 15, 2024**, by:

   (a) filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," TENN. CODE ANN. § 4-5-322; or
   (b) bringing a civil action in the United States District Court for the district in which the school system is located, 20 U.S.C. § 1415.

   The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

STAY

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Final Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Final Order, which is no later than **February 21, 2024**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

NOTICE OF APPEAL PROCEDURES

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
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