

---

**INDEX NO. 2058-5147**

---

**IN THE**  
**SUNNYDALE COURT OF APPEALS**

---

**WILLOW and ANGEL ROSENBURG,**

*Appellants,*

*– against –*

**SUNNYDALE DEPARTMENT OF  
CHILD PROTECTIVE SERVICES,**

*Appellee.*

---

*On Appeal from Sunnydale  
Third Appellate Division*

---

**BRIEF FOR APPELLEE SUNNYDALE DEPARTMENT  
OF CHILD PROTECTIVE SERVICES**

---

Team 46

*Attorneys for Appellee Sunnydale Department of Child Protective Services*

---

**Oral Argument Requested**

## **QUESTION PRESENTED**

- I. Whether a biological uncle should be considered a person legally responsible who inflicted excessive corporal punishment on a child constituting child neglect when he considered himself a full-time caregiver, was the child's primary caregiver, disciplined the child, and physically punished the child leaving her with a bruise that took up the entire side of her chest and torso area.
- II. Whether a mother should be found to have neglected her special needs daughter by failure to supervise when her unwillingness to seek treatment for her own mental health issues left her daughter uncared for, unloved, and without proper treatment for her special needs, and where she should have known her daughter would be harmed by her brother, yet she continues to promote an arrangement that puts her daughter in imminent danger of further harm.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iv
STATEMENT OF THE CASE.....	1
I. SUMMARY OF THE FACTS .....	1
II. NATURE OF PROCEEDINGS .....	4
SUMMARY OF THE ARGUMENT .....	4
ARGUMENT.....	5
STANDARD OF REVIEW .....	5
I. THE THIRD APPELLATE DIVISION COURT CORRECTLY DETERMINED THAT THE UNCLE WAS A PERSON LEGALLY RESPONSIBLE FOR THE SUBJECT CHILD AND HE INFLECTED EXCESSIVE CORPORAL PUNISHMENT UPON THE CHILD CONSTITUTING CHILD NEGLECT .....	5
A. The Uncle Was A Person Legally Responsible Because He Acted As The Functional Equivalent Of Buffy’s Parent When He Had Nearly Daily Contact With Her, Considered Himself The “Adult Of The House” And Her “Full- Time” Caregiver, And Disciplined Her To Teach Better Manners .....	6
1. The Uncle had nearly daily contact with Buffy while taking on the parental responsibilities of teaching her how to behave and escorting her to the bus stop.....	8
2. The duration of the Uncle’s relationship with Buffy favors him being a person legally responsible because he had always taken care of her and had been her primary caretaker since 2022 .....	10
3. The Uncle exercised significant control over Buffy by watching her alone and discipling her.....	11
4. The Uncle has a familial relationship with Buffy because he is her biological uncle.....	12
B. The Uncle Inflicted Excessive Corporal Punishment Upon Buffy Constituting Child Neglect When He Physically Disciplined Her On Two Separate Occasions, Caused A Bruise That Covered The Entire Side Of Her Torso, And Attempted To Cover Up Her Injuries .....	12

II. THE THIRD APPELLATE DIVISION CORRECTLY FOUND THAT THE MOTHER’S LACK OF SUPERVISION CONSTITUTED CHILD NEGLECT BECAUSE SHE FAILED TO EXERCISE A MINIMUM DEGREE OF CARE, SUBJECTING BUFFY TO ACTUAL AND IMMINENT IMPAIRMENT OF HER PHYSICAL, MENTAL, AND EMOTIONAL CONDITION .....	15
A. Buffy, A Child With Special Needs, Was Unreasonably Inflicted With Unreasonable Mental And Emotional Harm That Is Clearly Attributable To The Mother’s Unwillingness To Address Her Own Mental Health Issues .....	16
1. Buffy is a child with special needs who felt isolated, lonely, uncared for, and unloved, which put her in imminent danger of mental and emotional impairment .....	17
2. The Mother’s failure to exercise the appropriate degree of parental care for Buffy, who has special needs, is clearly attributable to her unwillingness to address her own mental health, which disturbed her judgment and decision-making.....	18
B. The Mother Should Have Known That Leaving Buffy In The Uncle’s Care Posed A Substantial Risk Of Harm To Buffy, Yet She Took No Action To Protect Her, Exposing Buffy To Actual And Imminent Impairment To Her Physical, Mental, And Emotional Condition, And The Mother’s Failure To Intervene Continues To Endanger Buffy .....	20
1. The Uncle subjected Buffy to actual and imminent unreasonable physical, mental, and emotional impairment when he hit, disparaged, humiliated, and terrorized her .....	21
2. The Mother knew or should have known that leaving Buffy, a child with special needs, in the Uncle’s care, posed actual or imminent danger, yet she did not take action to protect Buffy and continues to stand with the Uncle, exposing Buffy to further harm.....	22
CONCLUSION.....	24

## TABLE OF AUTHORITIES

CASES:	<i>Page(s)</i>
<i>In Interest of L.J.</i> , 436 N.W.2d 558 (N.D. 1989) .....	20
<i>In re Aaron MM.</i> , 544 N.Y.S.2d 29 (App. Div. 3d Dep’t 1989).....	19
<i>In re Anthony YY.</i> , 608 N.Y.S.2d 580 (App. Div. 3d Dep’t 1994).....	9
<i>In re Christopher JJ.</i> , 721 N.Y.S.2d 692 (App. Div. 3d Dep’t 2001).....	15, 16
<i>In re Elizabeth G.</i> , 680 N.Y.S.2d 32 (App. Div. 4th Dep’t 1998).....	24
<i>In re Eric J.</i> , 636 N.Y.S.2d 762 (App. Div. 1st Dep’t 1996) .....	20
<i>In re Faridah W.</i> , 579 N.Y.S.2d 377 (App. Div. 1st Dep’t 1992) .....	18
<i>In re Heith S.</i> , 592 N.Y.S.2d 795 (App. Div. 2d Dep’t 1993).....	17
<i>In re Hofbauer</i> , 393 N.E.2d 1009 (N.Y. 1979).....	5
<i>In re Jamaal NN.</i> , 878 N.Y.S.2d 205 (App. Div. 3d Dep’t 2009).....	11
<i>In re Katherine C.</i> , 471 N.Y.S.2d 216 (Fam. Ct. 1984).....	15
<i>In re Katie R.</i> , 673 N.Y.S.2d 792 (App. Div. 3d Dep’t 1998).....	16
<i>In re Krystin M. (Anonymous)</i> , 742 N.Y.S.2d 575 (App. Div. 2d Dep’t 2002).....	24
<i>In re Melissa U.</i> , 538 N.Y.S.2d 958 (App. Div. 3d Dep’t 1989).....	24

<i>In re Nathaniel TT.,</i> 696 N.Y.S.2d 274 (App. Div. 3d Dep’t 1999).....	7
<i>In re Rita XX.,</i> 672 N.Y.S.2d 481 (App. Div. 3d Dep’t 1998).....	24
<i>In re Robert YY.,</i> 605 N.Y.S.2d 418 (App. Div. 3d Dep’t 1993).....	21
<i>In re Sayeh R.,</i> 693 N.E.2d 724 (N.Y. 1997).....	20, 24
<i>In re Yolanda D.,</i> 673 N.E.2d 1228 (N.Y. 1996).....	<i>Passim</i>
<i>Matter of Aiden LL. (Christa LL.),</i> 89 N.Y.S.3d 394 (App. Div. 3d Dep’t 2018).....	20
<i>Matter of Alexandria X.,</i> 915 N.Y.S.2d 716 (App. Div. 3d Dep’t 2011).....	9
<i>Matter of Amarion M. (Faith W.),</i> 185 N.Y.S.3d 478 (App. Div. 4th Dep’t 2023).....	14
<i>Matter of Amoria S. (Sharon M.M.),</i> 62 N.Y.S.3d 542 (App. Div. 2d Dep’t 2017).....	13
<i>Matter of Angelo P. (Jose C.),</i> 952 N.Y.S.2d 2 (App. Div. 1st Dep’t 2012).....	8
<i>Matter of Bryan O. (Zabiullah O.),</i> 61 N.Y.S.3d 409 (App. Div. 4th Dep’t 2017).....	21
<i>Matter of Christian EE.,</i> 822 N.Y.S.2d 666 (App. Div. 3d Dep’t 2006).....	13
<i>Matter of David M. (Sonia M.-C.),</i> 989 N.Y.S.2d 511 (App. Div. 2d Dep’t 2014).....	21
<i>Matter of Eliora B. (Kennedy B.),</i> 45 N.Y.S.3d 144 (App. Div. 2d Dep’t 2017).....	13
<i>Matter of Gary J. (Engerys J.),</i> 62 N.Y.S.3d 499 (App. Div. 2d Dep’t 2017).....	11

<i>Matter of Henry B. (Cynthia M.),</i> 115 N.Y.S.3d 688 (App. Div. 2d Dep’t 2020).....	16
<i>Matter of Isaac C. (Isom C.),</i> 42 N.Y.S.3d 585 (Fam. Ct. 2016).....	11
<i>Matter of Isabella S. (Nicole S.),</i> 162 N.Y.S.3d 826, 827 (App. Div. 4th Dep’t 2022).....	19
<i>Matter of Jack P. v. Joi Q.,</i> 914 N.Y.S.2d 406 (App. Div. 3d Dep’t 2011).....	13, 21
<i>Matter of Jacob W. (Jermaine W.),</i> 51 N.Y.S.3d 236 (App. Div. 3d Dep’t 2017).....	15
<i>Matter of Jade F. (Ashley H.),</i> 51 N.Y.S.3d 236, 238 (App. Div. 3d Dep’t 2017).....	15
<i>Matter of Jason Brian B.,</i> 824 N.Y.S.2d 329 (App. Div. 2d Dep’t 2006).....	19
<i>Matter of Jaxxon WW. (Donald XX.),</i> 160 N.Y.S.3d 437 (App. Div. 3d Dep’t 2021).....	23
<i>Matter of John O. v. Sharon Q.,</i> 839 N.Y.S.2d 605 (App. Div. 3d Dep’t 2007).....	17
<i>Matter of Jonah B. (Riva V.),</i> 85 N.Y.S.3d 597 (App. Div. 2d Dep’t 2018).....	7
<i>Matter of Jonah M. (Isabel S.),</i> 128 N.Y.S.3d 151 (Fam. Ct. 2020).....	18
<i>Matter of Jonathan L. v. Poole,</i> 96 N.Y.S.3d 400 (App. Div. 4th Dep’t 2019).....	14, 16, 21
<i>Matter of Jordyn WW. (Tyrell WW.),</i> 111 N.Y.S.3d 416 (App. Div. 3d Dep’t 2019).....	15
<i>Matter of Jose E. (Jose M.),</i> 109 N.Y.S.3d 672 (App. Div. 2d Dep’t 2019).....	23, 24
<i>Matter of Justin O.,</i> 813 N.Y.S.2d 800 (App. Div. 3d Dep’t 2006).....	21, 24

<i>Matter of Katelyn P. (Christian G.),</i> 129 N.Y.S.3d 857 (App. Div. 2d Dep’t 2020).....	10
<i>Matter of Kavon A. (Kavon A.--Monetta A.),</i> 145 N.Y.S.3d 115 (App. Div. 2d Dep’t 2021).....	6
<i>Matter of Kayla W. v. Atara W.,</i> 850 N.Y.S.2d 86 (App. Div. 1st Dep’t 2008) .....	19
<i>Matter of Kishanda S. (Stephan S.),</i> 138 N.Y.S.3d 204 (App. Div. 2d Dep’t 2021).....	12
<i>Matter of Lamarcus E. (Jonathan E.),</i> 942 N.Y.S.2d 647 (App. Div. 3d Dep’t 2012).....	17
<i>Matter of Mackenzie P.G. (Tiffany P.),</i> 48 N.Y.S.3d 778 (App. Div. 2d Dep’t 2017).....	8, 11
<i>Matter of Marjorie P. (Gerardo M.P.),</i> 198 N.Y.S.3d 215 (App. Div. 2d Dep’t 2023).....	12
<i>Matter of Mary Kate VV. v. Dennis VV.,</i> 5873 N.Y.S.2d 375 (App. Div. 3d Dep’t 2009).....	13
<i>Matter of Matthew C. (Joshua L.),</i> 121 N.Y.S.3d 856 (App. Div. 1st Dep’t 2020) .....	10
<i>Matter of Nialani T. (Elizabeth B.),</i> 83 N.Y.S.3d 206 (App. Div. 2d Dep’t 2018).....	16, 18
<i>Matter of Paul M. (Tina H.),</i> 48 N.Y.S.3d 679 (App. Div. 2d Dep’t 2017).....	13
<i>Matter of Raelene B. (Alex D.),</i> 116 N.Y.S.3d 787 (App. Div. 3d Dep’t 2020).....	9
<i>Matter of Robert W. (Francine H.),</i> 927 N.Y.S.2d 819 (Fam. Ct. 2011).....	15
<i>Matter Tarelle J. (Walter J.),</i> 58 N.Y.S.3d 539 (App. Div. 2d Dep’t 2017).....	14
<i>Matter of Teresa L. (Tina L.),</i> 965 N.Y.S.2d 382 (App. Div. 2d Dep’t 2013).....	20



<i>Matter of Thaddeus R. (Gabrielle V.),</i> 156 N.Y.S.3d 305 (App. Div. 2d Dep’t 2021).....	6
<i>Matter of Trenasia J. (Frank J.),</i> 32 N.E.3d 377 (N.Y. 2015).....	7, 10, 12
<i>Matter of Tyler MM. v. Stephanie NN.,</i> 918 N.Y.S.2d 644 (App. Div. 3d Dep’t 2011).....	7
<i>Matter of Unity T. (Dennis T.),</i> 87 N.Y.S.3d 330 (App. Div. 2d Dep’t 2018).....	8, 10
<i>Matter of Warren RR. (Brittany Q.),</i> 39 N.Y.S.3d 267 (App. Div. 3d Dep’t 2016).....	21
<i>Matter of Wunika A. (Wilda G.),</i> 65 N.Y.S.3d 421 (Fam. Ct. 2017).....	14
<i>Matter of X.B.,</i> 816 N.Y.S.2d 702 (Fam. Ct. 2006).....	23
<i>Matter of Yanni D. (Hope J.),</i> 944 N.Y.S.2d 923 (App. Div. 2d Dep’t 2012).....	13, 14
<i>Nicholson v. Scoppetta,</i> 820 N.E.2d 840 (N.Y. 2004).....	12, 15, 24
<i>People in Interest of K.,</i> 245 N.W.2d 644 (S.D. 1976).....	20
<i>People v. Goddard,</i> 614 N.Y.S.2d 480 (App. Div. 3d Dep’t 1994).....	9
<i>People v. Phelps,</i> 701 N.Y.S.2d 494 (App. Div. 3d Dep’t 2000).....	17
<b>STATUTES:</b>	
N.Y. Soc. Serv. Law § 384-b(6)(a) (Consol. 2023).....	16
Sunnydale Fam. Ct. Act § 3523(a).....	6
Sunnydale Fam. Ct. Act § 3523(f)(i)(B).....	6, 15
Sunnydale Fam. Ct. Act § 3523(g) .....	6

Sunnydale Fam. Ct. Act § 3523(h) .....	16
--	----

**OTHER AUTHORITIES:**

Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013).....	3
---	---

Besharov, Practice Commentary, Book 29A, N.Y. Fam. Ct. Act § 1012 (McKinney 1999).....	15
---	----

## STATEMENT OF THE CASE

### I. SUMMARY OF THE FACTS

Willow Rosenberg (the “Mother”) works two jobs: (1) weekdays at Sunnydale High School and (2) night shifts Tuesday-Saturday at Sunnydale’s Waffle House. R. at 7. So the Mother could work her two jobs Kendra (the “Aunt”) and Angel (the “Uncle”) have always helped her care for her now 6-year-old daughter, Buffy. R. at 7. The Aunt passed away in 2022, which left the Uncle as Buffy’s primary caregiver. R. at 7. Although the Uncle lives with a friend, he spends a great deal of his time at the Mother’s apartment watching Buffy. R. at 7. The Uncle “almost always” walks Buffy to and from the bus stop and has never been late in this duty. R. at 7.

***Agency’s Testimony/Incidents Reported.*** In May 2023, Buffy’s teacher sent her to the nurse because she had trouble walking caused by pain in her side. R. at 12. The nurse observed a bruise on Buffy’s entire chest and torso on her left side, noting that Buffy was very sore and could barely walk. R. at 8. When the nurse asked Buffy what happened, Buffy cried and pleaded with her not to tell her Uncle or he would “get meaner.” R. at 8. The nurse called Child Protective Services (the “Agency”), and within two days a neglect hearing was initiated. R. at 8, 9.

At the hearing, an Agency caseworker gave testimony on the interview with the Mother. R. at 10. The Mother struggled with mental health issues and to properly care for herself and Buffy. R. at 9. The caseworker provided the Mother with a list referrals for mental health services. R. at 10. Further, the Mother’s apartment was clean, but there were no personal items in the house, no family photos, and no signs of Buffy’s artwork or accomplishments. R. at 9-10.

The caseworker also testified about the interview with Buffy. R. at 9. Buffy reported her life became increasingly difficult after her Aunt died and she felt “very lonely.” R. at 10. No one in the home helped her do homework, played with her, or talked to her much. R. at 10-11. She also

had to give up soccer and play dates. R. at 8, 10. Buffy experienced more severe angry outbursts, and although she saw a counselor a few times, she had a hard time trusting others. R. at 10.

Buffy also claimed that she was terrified of the Uncle and going through an uncomfortable experience that her Mother failed to protect her from. R. at 9, 10. It started with the Uncle's cruel remarks, like she was a baby that no one wanted to be around, no one cared about her, and that the Mother and the Uncle would be better off without her. R. at 11. As Buffy's angry outbursts escalated, her Uncle began locking her in a dark closet until the Uncle felt she "learned her lesson." R. at 11. During one of these "time-outs," Buffy urinated on herself out of fear. R. at 11.

The Uncle's responses started to get physically violent. R. at 11. After Buffy failed a spelling test, the Uncle called Buffy "dumb" and dismissed her efforts as not trying hard enough, prompting Buffy to cry and claim that she hated him and wished he would disappear. R. at 11. The Uncle responded by punching Buffy in the face. R. at 11. After punching Buffy, the Uncle threatened her, saying that if anyone asked, she should lie and tell them a basketball hit her in the face while playing, and if she told anyone the truth, he would "make it much worse for her." R. at 11. The Uncle's next physical response came after Buffy asked his permission to go to a friend's house for dinner. R. at 11. The Uncle denied Buffy because she had not listened to him, telling her to stop being a hassle. R. at 12. Buffy mumbled under her breath, implying that she wished her Uncle was dead. R. at 12. Enraged, the Uncle pushed Buffy to the ground and kicked her, again threatening that she better not tell anyone or let them see the bruise. R. at 12. The caseworker reiterated Buffy's feelings that her Mother "failed to protect her" and "did not love or care for her." R. at 10.

***Mother's Testimony.*** The Mother reported struggling with her mental health, which worsened after the Aunt died. R. at 12. She could not help but feel "extremely depressed and overtired." R. at 13. Work provided a "positive distraction" from her stress, which led to her decision to pick up

extra shifts. R. at 13. Despite the Uncle suggesting that the Mother see a therapist, she did not, choosing to work, over seeking treatment. R. at 13.

With the Mother overworking, she appreciated the Uncle caring for Buffy. R. at 13. Although the Mother knew the Uncle had a “strict authoritative method to childcare,” she overlooked its severity, believing that it could not have been that bad, since it caused Buffy to behave better. R. at 12-13. The Mother noticed Buffy seemed different when the Uncle started taking care of her, but she was “not in the right mindset to intervene or check-in with Buffy.” R. at 13. The Mother endorsed counseling for Buffy’s intermittent explosive disorder<sup>1</sup>, but since the Uncle began caring for Buffy, she found that Buffy had less outbursts. R. at 13-14. “No matter what” the Mother continues to stand with the Uncle, and she hopes that he continues to care for Buffy. R. at 14.

***Uncle’s Testimony.*** The Uncle had always struggled with anger issues, which worsened after he became Buffy’s primary caretaker. R. at 14. The Uncle did not view his relationship with Buffy as one of a parent/child and he despised having to take care of her “full-time.” R. at 14. However, he loved Buffy and felt responsible for teaching Buffy better manners and “how to behave better.” R. at 14. The Uncle emphasized that he did not want his relationship with Buffy to be unhealthy, like the one he had with his parents, and he would “do anything” to help the Mother, especially in her current emotional and psychological state. R. at 14, 15.

To fulfill his childcare responsibilities, he tried different methods of disciplining Buffy, including putting her time-outs in a locked closet, to prevent her from escaping, and two incidents of physical punishment. R. at 15. The Uncle rationalized that physical punishment was the only way of getting Buffy to listen to him, the self-proclaimed “adult of the house.” R. at 15.

---

<sup>1</sup> Intermittent Explosive Disorder is a behavioral disorder defined by a failure to control aggressive impulses manifested by recurrent behavioral outbursts of varying frequency. Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013).

## II. NATURE OF PROCEEDINGS

***Sunnydale Family Court.*** The Sunnydale Family Court (the “Family Court”) granted the Uncle and Mother’s Motion to Dismiss, finding the Mother did not neglect Buffy and the Uncle was not a person legally responsible (“PLR”). R. at 21. The court noted that the record was devoid of facts regarding the nature and duration of the Uncle’s relationship with Buffy. R. at 19.

***Third Appellate Division.*** The State of Sunnydale Third Appellate Division reversed the Family Court’s decision, granting the Agency’s application. R. at 29. The court found that the Family Court’s analysis of the relevant case law was flawed and reversed the finding that the Mother did not neglect Buffy. R. at 24. Also, the court reversed the Family Court’s decision that the Uncle was not a PLR and thus, had not neglected Buffy, noting that the lower court misapplied the facts to the law. R. at 27, 28.

## SUMMARY OF THE ARGUMENT

This Court should affirm the Third Appellate Division’s decision that (1) the Uncle is a PLR for Buffy who inflicted excessive corporal punishment upon her constituting child neglect and (2) the Mother’s failure to supervise Buffy constituted child neglect.

First, the Third Appellate Division properly determined that the Uncle was a PLR for Buffy and he inflicted excessive corporal punishment upon her consisting of child neglect. The Uncle was a PLR because he acted as the functional equivalent of a parent. He had nearly daily contact with Buffy while taking on the parental responsibilities of teaching her how to behave and escorting her to and from the school bus stop. The duration of the Uncle’s relationship with Buffy was significant because he had always taken care of her and had been her primary caregiver since 2022. The Uncle exercised significant control over Buffy by watching her alone and disciplining her. Moreover, the Uncle has a familial relationship with Buffy because he is her biological uncle.

Finally, the Uncle inflicted excessive corporal punishment upon Buffy constituting neglect when he physically disciplined her on two separate occasions, caused a bruise that covered the entire side of her torso and chest, and attempted to cover up her injuries. Thus, this Court should affirm the finding that the Uncle was a PLR who neglected Buffy and grant of an Order of Protection.

Second, the Third Appellate Division correctly determined that the Mother's lack of supervision constituted child neglect because she failed to exercise a minimum degree of care, which caused actual and imminent impairment to Buffy's physical, mental, and emotional condition. The Mother's unwillingness to address her own mental health caused her special needs daughter mental and emotional harm. Buffy was systematically isolated, causing her to feel very lonely, uncared for, and unloved due to her Mother's disturbed judgment and decision-making. Furthermore, the Mother should have known the substantial risk of harm that leaving Buffy in the Uncle's care would cause, yet she took no action to protect Buffy. The Uncle hit, disparaged, humiliated, and terrorized Buffy, but the Mother did not appreciate the intrinsic danger of leaving Buffy in the Uncle's care and continues to support this arrangement, rather than Buffy's safety.

Therefore, This Court should affirm the judgment of the Third Appellate Division.

## **ARGUMENT**

***Standard of Review.*** The State of Sunnydale Third Appellate Division certified both questions to be heard on appeal. R. at 29-30. This Court reviews child neglect cases de novo. *In re Hofbauer*, 393 N.E.2d 1009, 1013 (N.Y. 1979).

### **I. THE THIRD APPELLATE DIVISION COURT CORRECTLY DETERMINED THAT THE UNCLE WAS A PERSON LEGALLY RESPONSIBLE FOR THE SUBJECT CHILD AND HE INFLECTED EXCESSIVE CORPORAL PUNISHMENT UPON THE CHILD CONSTITUTING CHILD NEGLECT**

This Court should affirm the decision of the Sunnydale Third Appellate Division which properly determined the Uncle was a PLR for Buffy who inflicted excessive corporal punishment

upon her, constituting child neglect. The Family Court of Sunnydale Act defines a respondent in a child protective proceeding as any parent or PLR for a child's care alleged to have neglected such child. Sunnydale Fam. Ct. Act § 3523(a). A PLR is defined as "the child's custodian, guardian, or any other person responsible for the child's care at the relevant time." Sunnydale Fam. Ct. Act § 3523(g). A PLR is someone who acts as the functional equivalent of a parent. *In re Yolanda D.*, 673 N.E.2d 1228, 1230-31 (N.Y. 1996). Moreover, a PLR who inflicts excessive corporal punishment upon a child constitutes child neglect. *See* Sunnydale Fam. Ct. Act § 3523(f)(i)(B); *Matter of Thaddeus R. (Gabrielle V.)*, 156 N.Y.S.3d 305, 307 (App. Div. 2d Dep't 2021).

The Uncle was a PLR because he acted as the functional equivalent of Buffy's parent when he had nearly daily contact with her, considered himself the "adult of the house" and her "full-time" caregiver, and disciplined her to teach better manners. Also, the Uncle inflicted excessive corporal punishment upon Buffy that constituted neglect when on two separate occasions he was physically violent, causing her to bruise on the entire left side of her torso, and tried to cover up her injuries.

**A. The Uncle Was A Person Legally Responsible Because He Acted As The Functional Equivalent Of Buffy's Parent When He Had Nearly Daily Contact With Her, Considered Himself The "Adult Of The House" And Her "Full-Time" Caregiver, And Disciplined Her To Teach Better Manners.**

The Uncle acted as the functional equivalent of a parent of Buffy, his biological niece, because he was her primary caregiver when the Mother worked the night shift five days a week, called himself the "adult of the house", and exercised great control of Buffy when he would discipline her. A PLR is one that serves as the functional equivalent of a parent, even if the care and custody of the child is temporary. *Matter of Kavon A. (Kavon A.--Monetta A.)*, 145 N.Y.S.3d 115, 117 (App. Div. 2d Dep't 2021) (citing *In re Yolanda D.*, 673 N.E.2d at 1231). Whether a person serves as the function equivalent to a parent is fact-intensive and the facts are looked at in the totality of



the circumstances. *Matter of Trenasia J. (Frank J.)*, 32 N.E.3d 377, 380 (N.Y. 2015); *see In re Nathaniel TT.*, 696 N.Y.S.2d 274, 276 (App. Div. 3d Dep't 1999).

The factors to consider in determining whether a person is a PLR are (1) "the frequency and nature of the contact," (2) "the nature and extent of the control exercised by the respondent over the child's environment," (3) "the duration of the respondent's contact with the child," and (4) "the respondent's relationship to the child's parent(s)". *In re Yolanda D.*, 673 N.E.2d at 1231. Lastly, a PLR should not include people who provide fleeting care like teachers or babysitters. *Matter of Jonah B. (Riva V.)*, 85 N.Y.S.3d 597, 599 (App. Div. 2d Dep't 2018).

In addressing the dissent in *Matter of Trenasia J.*, the Family Court properly acknowledges that the dissent is not binding; however, it misapplies the dissent to the situation here. R. at 18. The dissent in *Matter of Trenasia J.*, argues that the facts there are devoid of information regarding the nature and duration of the respondent's relationship to the child. 32 N.E.3d at 381 (Rivera, J., dissenting). Unlike in *Matter of Trenasia J.*, the record here demonstrates that the Uncle has "always" helped the Mother take care of Buffy and that the Uncle has been the primary caregiver since 2022. R. at 7; *see Matter of Tyler MM. v. Stephanie NN.*, 918 N.Y.S.2d 644, 646 (App. Div. 3d Dep't 2011) (finding that the respondent was a PLR after caretaking for around one year).

The Family Court ignores testimony from the Uncle that illustrates his childcare responsibilities, including that the Uncle walked Buffy to and from the bus stop for school "almost always", he disciplined her because he believed it was his duty to teach her how to behave better, and that he considers himself "the adult of the house". R. at 7, 14-15, 20. Lastly, the Family Court misstated that the Uncle provided temporary care that was fleeting in nature when he was the primary caregiver when the Mother worked the night shift from Tuesday to Saturday. R. at 7, 20;

see *Matter of Angelo P. (Jose C.)*, 952 N.Y.S.2d 2, 3 (App. Div. 1st Dep’t 2012) (finding the respondent was a PLR when he took on parenting responsibilities four days a week).

A careful analysis of the factors in *In re Yolanda D.* demonstrates that each factor weighs in favor of the Uncle being a PLR. Even if this Court does not find every factor persuasive it may make a finding that he was a PLR based on the others. See *Matter of Unity T. (Dennis T.)*, 87 N.Y.S.3d 330, 334 (App. Div. 2d Dep’t 2018).

**1. The Uncle had nearly daily contact with Buffy while taking on the parental responsibilities of teaching her how to behave and escorting her to the school bus stop**

The frequency and nature of the Uncle’s relationship with Buffy favor a finding that he is a PLR because he “almost always” escorts Buffy to and from the bus stop for school, he feels responsible for teaching Buffy how to learn proper manners, he is the primary caregiver when her Mother is at work, and he considers himself a “full-time” caretaker. In determining whether the frequency and nature of contact between the child and respondent favor a finding that the respondent was a PLR, the court looks at the level the respondent participated in the child’s care and whether they were a regular member of the household. See *In re Yolanda D.*, 673 N.E.2d at 1232. Furthermore, the greater the responsibilities of the respondent, including transporting the child to and from daycare, will favor a finding that the Respondent had a parental nature with the child. See *Matter of Mackenzie P.G. (Tiffany P.)*, 48 N.Y.S.3d 778, 780 (App. Div. 2d Dep’t 2017).

In *In re Yolanda D.*, the court found that the frequency and nature of an uncle’s relationship with his niece favored the uncle being a PLR because he regularly visited his niece’s home when he would visit her mother and attend birthday parties, his niece visited his home approximately six times throughout three months, and he testified that he viewed his relationship with his niece as “pretty close, you know as family”. 673 N.E.2d at 1232. Similarly, in Buffy’s situation, the Uncle testified to spending “a great deal of time” at the Mother’s apartment and takes the responsibility

of escorting Buffy to and from the bus stop almost daily. R. at 8. Like in *In re Yolanda D.*, when the respondent considered himself as “family” to his niece, the Uncle here testified that he was the “adult of the house”, that he felt responsible for teaching his niece proper manners, and he compared his relationship with Buffy to that of him and his parents. R. at 14-15. The record also establishes that Buffy would ask and need the Uncle’s permission to go to her friend’s house, which further establishes the parental nature of their relationship. R. at 12.

Furthermore, in *Matter of Alexandria X.*, the court held that nature and frequency favored a finding of a PLR when the respondent testified that he saw the child every day and treated the child as a son because his father was not around. 915 N.Y.S.2d 716, 718 (App. Div. 3d Dep’t 2011). Here, analogously, the Uncle testified to being responsible for teaching Buffy how to behave because no one else would. R. at 14-15. The Uncle also testified that he takes care of Buffy “full-time”. R. at 14. Similarly, in *Matter of Raelene B. (Alex D.)*, the respondent was found to be a PLR when he testified that he was the only adult present when the mother worked overnight shifts and that he viewed himself as the primary caregiver. 116 N.Y.S.3d 787, 790 (App. Div. 3d Dep’t 2020). The Uncle here, nearly identically, is the primary caregiver when the Mother works the overnight shifts from Tuesday through Saturday. R. at 7.

On the other hand, in *People v. Goddard*, the court held that a casual babysitter and someone who did not agree “to assume any obligations associated with parenthood” is not considered an in loco parentis. 614 N.Y.S.2d 480, 482 (App. Div. 3d Dep’t 1994). Similarly, in *In re Anthony YY.*, the court found that the frequency and nature of a great-grandmother who babysat the child on separate occasions weighed against a finding that she was a PLR because there was no evidence that she had any type of parenting role. 608 N.Y.S.2d 580, 581 (App. Div. 3d Dep’t 1994). The record here demonstrated that the Uncle was nearly an everyday visitor to Buffy’s home, he called

himself a “full-time” caretaker, and he even compared his relationship with Buffy to that of his and his own parents. Therefore, the case law demonstrates that the record provides sufficient support that the Uncle had a frequent and parental nature with Buffy.

**2. The duration of the Uncle’s relationship with Buffy favors him being a person legally responsible because he had always taken care of her and had been her primary caretaker since 2022**

The duration of the Uncle’s contact with the child favors a finding that he is a PLR because he has “always” taken care of Buffy and he has been her primary caregiver since 2022. R. at 7. In determining whether the duration of the respondent’s contact with the child favors the respondent being a PLR courts have looked at how long the respondent has been taking care of the child. *See Matter of Trenasia J.*, 32 N.E.3d at 380.

Courts have consistently found that a respondent who provides childcare lasting over nine months weighs in favor of them being considered a PLR. *See Id.* at 778-80 (finding an uncle to be a PLR when they visited the child around nine times throughout a year); *see Matter of Katelyn P. (Christian G.)*, 129 N.Y.S.3d 857, 858 (App. Div. 2d Dep’t 2020) (Finding the respondent to be a PLR after she took on child care duties for nine months); *see Matter of Matthew C. (Joshua L.)*, 121 N.Y.S.3d 856, 856 (App. Div. 1st Dep’t 2020). In contrast, when the respondent’s contact with the child is around one month it will weigh against them being a PLR. *See Matter of Unity T.*, 87 N.Y.S.3d at 334 (finding that the respondent was a PLR based on the other three factors).

Similarly to *Matter of Trenasia J.*, *Matter of Katelyn P.*, and *Matter of Matthew C.*, where the respondents assumed childcare responsibilities for around or over a year, and unlike *Matter of Unity T.*, the Uncle here has “always” helped the Mother take care of Buffy and has been her primary caregiver for around a year. R. at 7. Therefore, the record demonstrates that the duration of the Uncle’s and Buffy’s relationship favors a finding that he is a PLR.

### **3. The Uncle exercised significant control over Buffy by watching her alone and disciplining her**

The nature and extent of control the Uncle had over Buffy favors finding him as a PLR because he regularly supervised her alone while the Mother worked both day and night shifts, he disciplined Buffy multiple times to teach her proper manners, and she ask him permission to go to her friend's house. In determining whether the nature and extent of control exercised by the respondent over the child's environment favors a finding of a PLR, courts look at whether the respondent supervises the child alone and disciplines the child. *See Matter of Gary J. (Engerys J.)*, 62 N.Y.S.3d 499, 502 (App. Div. 2d Dep't 2017); *In re Jamaal NN.*, 878 N.Y.S.2d 205, 207 (App. Div. 3d Dep't 2009).

In *Matter of Gary J.*, the court found that the respondent exercised significant control over the children when he supervised them while their mother was away and disciplined them. 62 N.Y.S.3d at 501-02. Here, the Uncle watched Buffy unsupervised while the Mother was at work, and he believed it was his responsibility to discipline Buffy. R. at 7 14-15. He testified to trying different methods of disciplining Buffy, including controlling Buffy by locking her in the closet for long enough for her to urinate herself. R. at 15. Similarly, in *Matter of Mackenzie P.G. (Tiffany P.)*, the respondent was found to have exercised significant control when he transported the child to and from daycare and watched her when the mother was not home. 48 N.Y.S.3d 778, 780 (App. Div. 2d Dep't 2017). The Uncle here analogously escorted Buffy to and from the school bus stop and he was the primary caregiver when the Mother worked day and night shifts. R. at 7.

Conversely, in *Matter of Isaac C. (Isom C.)*, the court ruled that a grandfather did not exercise control over the child's environment because he did not take him outside of the home, or make any decisions relating to the child's well-being. 42 N.Y.S.3d 585, 599 (Fam. Ct. 2016). The Uncle here escorted her to and from the bus stop, disciplined Buffy for her to behave better, and would

admit or deny her permission to hang out with her friends. R. at 12, 14. Therefore, the record supports a finding that the Uncle exercised a significant amount of control over Buffy.

**4. The Uncle has a familial relationship with Buffy because he is her biological uncle**

The familial relationship between the Uncle and Buffy is one that favors finding him a PLR because he is her biological uncle. *See Matter of Trenasia J.*, 32 N.E.3d at 381. The existence of a familial relationship weighs in favor of the respondent being a PLR, however, it is not dispositive. *Id.* Here, there is the existence of a familial relationship because he is her biological uncle. R. at 7. The Uncle has testified that he loves his Buffy and would do “anything” to help his sister. R. at 14. Thus, the Uncle’s devotion to his sister and familial relationship to Buffy as her biological uncle weighs in favor of him being a PLR. *See In re Yolanda D.*, 673 N.E.2d at 1231; *see Matter of Marjorie P. (Gerardo M.P.)*, 198 N.Y.S.3d 215, 217 (App. Div. 2d Dep’t 2023).

Therefore, the record substantially establishes that the Uncle is a PLR because his relationship with Buffy was frequent, of a parental nature, controlling, and extended over a significant duration.

**B. The Uncle Inflicted Excessive Corporal Punishment Upon Buffy Constituting Child Neglect When He Physically Disciplined Her On Two Separate Occasions, Caused A Bruise That Covered The Entire Side Of Her Torso, And Attempted To Cover Up Her Injuries**

The Uncle inflicted excessive corporal punishment upon Buffy when he punched and kicked her causing a bruise that covered up the entire side of her torso, which led her to have trouble walking. Neglect can be established, by a preponderance of the evidence, when (1) the child is in imminent danger of physical impairment and (2) that PLR for the child failed to exercise a minimum degree of care in inflicting harm to the child. *Nicholson v. Scoppetta*, 820 N.E.2d 840, 845 (N.Y. 2004). A PLR has the right to use reasonable force against a child for disciplinary or welfare purposes. *Matter of Kishanda S. (Stephan S.)*, 138 N.Y.S.3d 204, 206 (App. Div. 2d Dep’t 2021). However, courts have consistently inferred that subjecting a child to excessive corporal

punishment puts them in imminent danger of impairment thru a failure to exercise a minimum degree of care. *Matter of Amoria S. (Sharon M.M.)*, 62 N.Y.S.3d 542, 544 (App. Div. 2d Dep’t 2017); *Matter of Paul M. (Tina H.)*, 48 N.Y.S.3d 679, 681 (App. Div. 2d Dep’t 2017).

Furthermore, isolated incidents of excessive corporal punishment can also constitute neglect. *Matter of Eliora B. (Kennedy B.)*, 45 N.Y.S.3d 144, 147 (App. Div. 2d Dep’t 2017). A court’s decision in finding excessive corporal punishment is further supported when corroborated by a caseworker and others. *Matter of Yanni D. (Hope J.)*, 944 N.Y.S.2d 923, 923 (App. Div. 2d Dep’t 2012). In determining excessive corporal punishment courts often look at whether the harm inflicted has left any bruises or marks on the child. *See Matter of Jack P. v. Joi Q.*, 914 N.Y.S.2d 406, 408 (App. Div. 3d Dep’t 2011). Slapping and kicking a child accompanied by bruises or marks can constitute excessive corporal punishment that puts a child in imminent danger of impairment. *See Matter of Christian EE.*, 822 N.Y.S.2d 666, 667 (App. Div. 3d Dep’t 2006).

Corporal punishment inflicted upon a child becomes “grossly out of proportion” when it causes welts, bruising, and mental anguish. *See Matter of Mary Kate VV. v. Dennis VV.*, 873 N.Y.S.2d 375, 377 (App. Div. 3d Dep’t 2009) (finding neglect on the basis of excessive corporal punishment when the youngest child was commonly struck by a stick while doing his homework, had red marks on his neck that the respondent tried to cover up, and feared being home). The Uncle here kicked and punched Buffy and on one occasion told Buffy to lie and tell people that she got her potential bruise playing basketball. R. at 11. Buffy also told the case worker that she was terrified of her Uncle and that she had urinated herself out of fear the Uncle has caused her. R. at 9, 11. In *Matter of Christian EE.*, the court found neglect based on excessive corporal punishment when the mom kicked and slapped the child causing an imminent risk of impairment when the child had bruises around her shins. 822 N.Y.S.2d at 667. Similarly, here, the Uncle pushed Buffy to the

ground and kicked her causing a bruise that took up the entire left side of her torso and chest affecting her ability to walk. R. at 8. When the school nurse asked Buffy where she got the bruise Buffy pleaded for her not to say anything because he would “get meaner”. R. at 8.

Moreover, In *Matter of Amarion M. (Faith W.)*, the court found neglect based on excessive corporal punishment where the child feared the mother and had red marks, bruises, and broken blood vessels on their neck. 185 N.Y.S.3d 478, 480 (App. Div. 4th Dep’t 2023). Here, the Uncle terrified Buffy and he caused significant bruising. R. at 8-9. Similarly, in *Matter Tarelle J. (Walter J.)*, a father committed neglect based on the infliction of excessive corporal punishment when he hit his child once with a wooden ruler, and the child had visible marks and swelling as a result. 58 N.Y.S.3d 539, 541 (App. Div. 2d Dep’t 2017). Here, the punishment was much more excessive than in *Matter Tarelle J.* A finding of excessive corporal punishment here is further supported by the testimony of the school nurse who evaluated the significant bruise, and the teacher who witnessed Buffy’s difficulty walking. R. at 12; see *Matter of Yanni D.*, 944 N.Y.S.2d at 923.

On the other hand, in *Matter of Jonathan L. v. Poole*, the court found that corporal punishment was not excessive when the child was “upset” and the marks on the child resolved the day after he was struck and before the case worker was able to examine the child. 96 N.Y.S.3d 400, 402 (App. Div. 4th Dep’t 2019). In *Matter of Wunika A. (Wilda G.)*, the court ruled that even if the parents used a belt, there was no evidence of any “marks” observed on the children thus it did not result in excessive corporal punishment. 65 N.Y.S.3d 421, 424 (Fam. Ct. 2017). Unlike in *Matter of Jonathan L.* or *Matter of Wunika A.*, two officials corroborated the pain Buffy was in. R. 8. The nurse testified that she noticed the bruise took up Buffy’s entire chest and torso on her left side. R. at 8. Additionally, the harm inflicted caused Buffy to have a hard time walking. R. 12.



Therefore, the record shows that by a preponderance of the evidence, the Uncle committed excessive corporal punishment upon Buffy which constituted child neglect.

**II. THE THIRD APPELLATE DIVISION CORRECTLY FOUND THAT THE MOTHER’S LACK OF SUPERVISION CONSTITUTED CHILD NEGLECT BECAUSE SHE FAILED TO EXERCISE A MINIMUM DEGREE OF CARE, SUBJECTING BUFFY TO ACTUAL AND IMMINENT IMPAIRMENT OF HER PHYSICAL, MENTAL, AND EMOTIONAL CONDITION**

Parents are obligated to dedicate themselves consistently and zealously to their child's welfare. *In re Katherine C.*, 471 N.Y.S.2d 216, 220 (Fam. Ct. 1984). As the first line of defense, a parent demonstrates a fundamental flaw in understanding their duties, when they prioritize their needs and desires over their child’s welfare. *In re Christopher JJ.*, 721 N.Y.S.2d 692, 694 (App. Div. 3d Dep’t 2001). This underscores the statutory intent of Sunnydale Family Court Act § 3523.

Neglect by failure to supervise requires a preponderance of the evidence to show (1) the child’s physical, emotional, or mental state has been impaired or is in imminent danger of impairment (2) due to a failure of the parent or any PLR to exercise a minimum degree of care in providing the child proper supervision by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including excessive corporal punishment.” *Matter of Robert W. (Francine H.)*, 927 N.Y.S.2d 819, 819 (Fam. Ct. 2011); *Nicholson*, 820 N.E.2d at 845; Sunnydale Fam. Ct. Act § 3523(f)(i)(B). The first prong requires serious or potentially serious harm to the child, not just undesirable parental behavior. *Matter of Jordyn WW. (Tyrell WW.)*, 111 N.Y.S.3d 416, 417 (App. Div. 3d Dep’t 2019). Whether a parent failed to exercise a minimum degree of care is an objective evaluation of whether a reasonably prudent parent would have acted or failed to act under the circumstances. *Matter of Jade F. (Ashley H.)*, 51 N.Y.S.3d 236, 238 (App. Div. 3d Dep’t 2017); *see* Besharov, Practice Commentary, Book 29A, N.Y. Fam. Ct. Act § 1012 (McKinney 1999).

Impairment of a child’s mental or emotional condition includes “a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors

as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including ungovernability” that is clearly attributable to the inability or unwillingness of the parent or PLR to exercise a minimum degree of care. *Sunnydale Fam. Ct. Act* § 3253(h); *In re Christopher JJ.*, 721 N.Y.S.2d at 693-94. Physical impairment occurs when a child experiences substantially diminished physical functioning, *Matter of Jonathan L. v. Poole*, 96 N.Y.S.3d at 402. If the child was in imminent danger of impairment or injury, actual injury or impairment is not required. *In re Katie R.*, 673 N.Y.S.2d 792, 793 (App. Div. 3d Dep’t 1998).

The Third Appellate Division held that the Mother neglected Buffy by failing to supervise her. Here, the Mother’s fundamental defect in her understanding of her parental duties, caused Buffy’s actual and imminent impairment to her physical, mental, and emotional condition.

**A. Buffy, A Child With Special Needs, Was Unreasonably Inflicted With Unreasonable Mental And Emotional Harm That Is Clearly Attributable To The Mother’s Unwillingness To Address Her Own Mental Health Issues**

Proof of a parent’s mental illness is insufficient to support a finding of neglect; however, like here, when evidence establishes a causal connection between such mental illness and the child’s actual or potential harm it supports a neglect determination. *See Matter of Henry B. (Cynthia M.)*, 115 N.Y.S.3d 688, 689 (App. Div. 2d Dep’t 2020). Mental illness means “an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.” *Matter of Nialani T. (Elizabeth B.)*, 83 N.Y.S.3d 206, 208 (App. Div. 2d Dep’t 2018); N.Y. Soc. Serv. Law § 384-b(6)(a) (Consol. 2023). The record, buttressed by precedent, establishes, by a preponderance of the evidence, that the harm inflicted upon Buffy, which rises to

the level of actual and imminent impairment of her physical, mental, and emotional condition, was a consequence of her Mother's unwillingness to address her own mental health issues.

**1. Buffy is a child with special needs who felt isolated, lonely, uncared for, and unloved, which put her in imminent danger of mental and emotional impairment**

When a child with special needs, like Buffy, has not been provided with proper treatment for their condition, courts have found that it rises to the level of actual or imminent of the child's mental or emotional condition. *In re Heith S.*, 592 N.Y.S.2d 795 (App. Div. 2d Dep't 1993). Courts have also found that signs of depression or a declining condition to be indicative of impairment to a child's mental or emotional condition. *Matter of Lamarcus E. (Jonathan E.)*, 942 N.Y.S.2d 647, 650 (App. Div. 3d Dep't 2012). Competent testimony concerning the actual or imminent impairment of a child's mental or emotional condition can constitute sufficient evidence in lieu of expert testimony or a psychological evaluation, *See Matter of John O. v. Sharon Q.*, 839 N.Y.S.2d 605, 607 (App. Div. 3d Dep't 2007), particularly, the child's testimony about their mental or emotional condition provides valuable insight into whether they suffered harm. *See People v. Phelps*, 701 N.Y.S.2d 494, 496 (App. Div. 3d Dep't 2000).

Here, Buffy indicated that her living conditions became "increasingly more difficult" after her Aunt's death. R. at 10. She was trapped in an environment cultivated to prevent her from thriving, as there was no one who would help her with homework, play with her, or even do something as simple as talk with her. R. at 10-11. Buffy's ostracization became systematic, extending to outside interaction with her friends and social activities, as she had to give up soccer and was no longer able to go on play dates. R. at 8, 10. Further, there was nothing in the house that nurtured a familial atmosphere, no family photos, and no signs of Buffy's artwork or achievements. R. at 10. Buffy despondently characterized her isolation as "very lonely." R. at 8.

Further, Buffy's declining condition exacerbated her intermittent explosive disorder, escalating her ungovernable behavior, which caused her to experience "more severe and angry outbursts." R. 11. This escalation of Buffy's aggressive impulses was not met with understanding, but with being disciplined. R. at 11. While Buffy had seen a school counselor for her behavioral issues, these sessions were marred by Buffy's distrust, and prevented her from the benefits of the treatment she requires to address her special needs. R. at 10. Despite the Mother knowing about Buffy's diagnosis, she never followed up or checked in with Buffy to ensure proper treatment. R. at 26.

Under these circumstances, it is no surprise that Buffy told the caseworker she felt her Mother "did not love or care for her." R. at 10; *see In re Faridah W.*, 579 N.Y.S.2d 377, 379 (App. Div. 1st Dep't 1992) (finding neglect of the child's emotional needs where the child was exposed to "a systematic pattern of behavior" that convinced the child she was "unwanted and unloved"). Thus, the Mother's failure to ensure adequate treatment for Buffy's special needs, coalesced with Buffy's declining condition, escalating ungovernability and aggressive impulses, inability to trust, and feelings of being uncared for and unloved, establish, by a preponderance of the evidence, that Buffy suffered harm, which put her in imminent danger of mental and emotional impairment.

**2. The Mother's failure to exercise the appropriate degree of parental care for Buffy, who has special needs, is clearly attributable to her unwillingness to address her own mental health, which disturbed her judgment and decision-making**

Courts have found that when a parent refuses to seek treatment or does not comply with an Agency's referrals for mental health treatment it creates imminent danger of impairing the child's physical, mental, and emotional condition. *Matter of Nialani T.*, 83 N.Y.S.3d at 208; *Matter of Jonah M. (Isabel S.)*, 128 N.Y.S.3d 151 (Fam. Ct. 2020).

In *In re Aaron MM.*, the court found neglect, where a mother testified to being "very depressed" and feeling so "overwhelmed with her problems" that it impaired her ability to care for her children

and seek treatment for her mental health. 544 N.Y.S.2d 29, 30 (App. Div. 3d Dep’t 1989). Similarly, in *Matter of Jason Brian B.*, the court found neglect, where the evidence established that a mother suffered from mental health issues and rather than capably caring for her child, she relied on the child’s grandmother for care. 824 N.Y.S.2d 329, 330-31 (App. Div. 2d Dep’t 2006). Comparably, in *Matter of Kayla W. v. Atara W.*, the court found a mother unable to adequately care for her child where she was “very depressed” and “extraordinarily tired,” exhibiting poor impulse control and lack of insight into her condition. 850 N.Y.S.2d 86, 87 (App. Div. 1st Dep’t 2008). Conversely, in *Matter of Isabella S. (Nicole S.)*, the court found insufficient evidence to clearly attribute actual or imminent harm to any act or failure to act by the mother because she acknowledged her mental health issues and was compliant with treatment. 162 N.Y.S.3d 826, 827 (App. Div. 4th Dep’t 2022).

Here, like *In re Aaron MM.*, the Mother was so depressed and overwhelmed with stress that she could barely take of herself, let alone a child with special needs, yet she decided to work rather than seek counseling and like *Matter of Jason Brian B.*, relied on the Uncle for Buffy’s care. R. at 13. Even the Uncle noticed the Mother’s aberrant state and suggested that she seek professional help to address her current emotional and psychological condition. R. at 13, 14. Similar to *Matter of Kayla W.*, the Mother was so extremely depressed and overtired that she “was not in the right mindset to intervene or check-in with Buffy,” and her lack of insight into her condition caused her failure to acknowledge her mental health issues and comply with treatment. R. at 13.

This disturbance in the Mother’s judgment also caused to her ignore treatment for Buffy’s intermittent explosive disorder. A child's special needs must be considered when determining the minimum standard of care, even if those needs are not physical in nature. *In re Sayeh R.*, 91 693 N.E.2d 724, 728 (N.Y. 1997). Particularly, courts have found a failure to supervise when the parent fails to ensure that their child receives proper mental health treatment. *Matter of Teresa L. (Tina*

L.), 965 N.Y.S.2d 382, 382-83 (App. Div. 2d Dep't 2013). Other State high courts have similarly recognized that the minimum degree of care must fluctuate to accommodate children with special vulnerabilities who may require greater care, attention, and skill. *See, e.g., In Interest of L.J.*, 436 N.W.2d 558, 561 (N.D. 1989); *People in Interest of K.*, 245 N.W.2d 644, 650 (S.D. 1976).

Here, the Mother was aware of Buffy's intermittent explosive disorder, and while she recognized that Buffy was seeing a counselor, she did not check-in on the progress of the counseling, nor did she take any additional actions to further address Buffy's special needs, which demonstrated a failure to exercise the appropriate degree of care. R. at 13, 26.

Thus, the Mother's failure to exercise the appropriate degree of parental care for Buffy is clearly attributable to her unwillingness to address her own mental health, which caused actual and imminent impairment to Buffy's mental and emotional condition.

**B. The Mother Should Have Known That Leaving Buffy In The Uncle's Care Posed A Substantial Risk Of Harm To Buffy, Yet She Took No Action To Protect Her, Exposing Buffy To Actual And Imminent Impairment To Her Physical, Mental, And Emotional Condition, And The Mother's Failure To Intervene Continues To Endanger Buffy**

The Mother failed and continues to fail to fully appreciate how her attitudes and self-serving conduct created an atmosphere that endangered Buffy, demonstrating a fundamental and dangerous failing in her understanding of her parental duties. *In re Eric J.*, 636 N.Y.S.2d 762, 763-64 (App. Div. 1st Dep't 1996). Case law makes clear that even where harm comes to the child at the hands of another, when a preponderance of the evidence shows that the parent knew or should have known of the circumstances that required action and failed to intervene or otherwise protect the child, a finding of neglect properly may be entered against the parent. *See Matter of Aiden LL. (Christa LL.)*, 89 N.Y.S.3d 394, 396 (App. Div. 3d Dep't 2018); *Matter of Justin O.*, 813 N.Y.S.2d 800, 802 (App. Div. 3d Dep't 2006); *Matter of Warren RR. (Brittany Q.)*, 39 N.Y.S.3d 267, 270 (App. Div. 3d Dep't 2016); *In re Robert YY.*, 605 N.Y.S.2d 418, 420 (App. Div. 3d Dep't 1993).

**1. The Uncle subjected Buffy to actual and imminent unreasonable physical, mental, and emotional impairment when he hit, disparaged, humiliated, and terrorized her**

As set forth in Section I, the Uncle was a PLR who inflicted excessive corporal punishment upon Buffy and feels no regret, in fact the Uncle feels he did right by Buffy. R. at 14-15. Even if this Court finds the Uncle was not a PLR who inflicted excessive corporal punishment upon Buffy, he was physically violent with Buffy, disparaged her, and she lived in perpetual fear of him hurting her again. R. at 9. Disparagement, degradation, and humiliation are verbal aggressions that can cause actual or imminent impairment to a child's mental or emotional condition, *see Matter of Jack P. vs. Joi Q.*, 914 N.Y.S.2d at 408, particularly, where fear or apprehension is involved. *Matter of Jacob W. (Jermaine W.)*, 96 N.Y.S.3d 398, 399 (App. Div. 4th Dep't 2019).

In *Matter of Bryan O. (Zabiullah O.)*, the court determined that a father put his child in imminent danger of harm where the record showed considerable testimony that the child exhibited distress due to his threats and verbal abuse and the child became hysterical, crying uncontrollably when asked about his experiences with the father. 61 N.Y.S.3d 409, 411 (App. Div. 4th Dep't 2017). Similarly, in *Matter of David M. (Sonia M.-C.)*, the court upheld a determination that the stepfather harmed the child's mental and emotional condition where the child testified to being scared and showed symptoms of trauma and fear when discussing the stepfather. 989 N.Y.S.2d 511, 513 (App. Div. 2d Dep't 2014). Conversely, in *Matter of Jonathan L. v. Poole*, the court found no harm to the child where the only evidence was a general reference that the child seemed to be "upset" about the incident. 96 N.Y.S.3d at 402.

Here, the Uncle degraded and humiliated Buffy calling her a baby that no one cared about or wanted to be around and telling her she was a nuisance that he and her Mother would be better off without. R. at 11. The Uncle called Buffy "dumb" after she failed a spelling test and belittled her

efforts, which triggered Buffy claim she “hated him and wished that he would disappear.” R. at 11. The Uncle’s response escalated to physical violence, punching Buffy in the face. R. at 11. Another time, Buffy asked permission to go to dinner at a friend’s house and the Uncle denied her, telling her to stop being a hassle, to which Buffy mumbled something that implied she wished her Uncle was dead. R. at 12. Again, the Uncle got physically violent, pushing Buffy to the ground and kicking her. R. at 12. After these incidents, the Uncle threatened Buffy, telling her that “he would make it much worse for her next time” if she told anyone the truth, which caused Buffy to live in fear that anything she did could provoke her Uncle. R. at 8, 12. Similar to *Matter of Bryan O.*, when the nurse asked Buffy what happened, she burst into tears and begged the nurse to not say anything to her Uncle. R. at 8. This kind of visceral terror is much like the trauma and fear exhibited by the child in *Matter of David M.*, and speaks to Buffy’s actual and imminent impairment.

Thus, the physical violence, disparagement, and threats that caused Buffy to exhibit symptoms of trauma and fear, establish, by a preponderance of the evidence, that the harm the Uncle cause Buffy led to the actual or imminent impairment of her physical, mental, and emotional condition.

**2. The Mother knew or should have known that leaving Buffy, a child with special needs, in the Uncle’s care, posed actual or imminent danger, yet she did not take action to protect Buffy and continues to stand with the Uncle, exposing Buffy to further harm**

The Family Court opined that the Mother exercised a minimum degree of care because she was unaware of the Uncle’s harm; however, she should have known the substantial risk of harm of placing Buffy in the Uncle’s care. R. at 17. Courts have found a parent failed to exercise a minimum degree of care to ensure the well-being of their child when they should have known the risk of imminent harm caused by leaving their child in the hands of someone with anger issues. *Matter of Jaxxon WW. (Donald XX.)*, 160 N.Y.S.3d 437, 438, 440 (App. Div. 3d Dep’t 2021). Further it constitutes a failure to exercise a minimum degree of care when a parent fails to intervene or take



steps to remove the child from an environment that perpetuates harm or a substantial risk thereof. *Matter of Jose E. (Jose M.)*, 109 N.Y.S.3d 672, 674 (App. Div. 2d Dep’t 2019).

This case bears a striking resemblance to *Matter of X.B.* 816 N.Y.S.2d 702 (Fam. Ct. 2006). In *Matter of X.B.*, the mother’s boyfriend slapped her son and inflicted him with “blunt trauma to the abdomen” that was described as somebody punched him or kicked him. *Id.* The boyfriend was a man who had no children, no successful child care experience, and his actions demonstrated poor judgment and an inability to control his anger. *Id.* The court found that the mother failed to exercise a minimum degree of care because she should have realized the intrinsic risk of harm of leaving her son alone with her boyfriend. *Id.* The court noted that it would not have found the mother should have known of the imminent danger had the record shown no basis whatsoever for believing her boyfriend would harm the child and evidence of his caring behavior around children. *Id.*

Similar to *Matter of X.B.*, the Mother had knowledge of the Uncle’s anger issues that worsened after he became Buffy’s full-time caretaker and knew he was a strict, authoritative disciplinarian. R. at 13-14. This should have alerted the Mother to the imminent danger of leaving Buffy alone with the Uncle for an extended period of time unsupervised, particularly, as Buffy was susceptible to having angry outbursts that caused her to defy any kind of authority, triggering the Uncle. R. at 14. As Buffy has been diagnosed with intermittent explosive disorder, it was incumbent upon the Mother to be vigilant in recognizing imminent danger that could arise from an environment where Buffy’s special vulnerability could expose her to potential harm, yet, she testified that she “overlooked the severity” of the Uncle’s childcare practices. R. at 13; *In re Sayeh R.*, 693 N.E.2d at 728. Parents do not have the privilege to ignore the fact that their conduct is actively impairing their child's health. *In re Sayeh R.*, 693 N.E.2d at 728. Due to the Mother’s unwillingness to protect

Buffy from the very real threat presented by the Uncle, it became essential that the Agency intervene on Buffy's behalf. *In re Melissa U.*, 538 N.Y.S.2d 958, 960 (App. Div. 3d Dep't 1989).

Even after the Mother was apprised of the Uncle's harm, she testified that "no matter what" she hopes that the Uncle continues care for Buffy. R. at 14. The Mother's steadfast intention to continue subjecting Buffy to further harm underscores her unwillingness to intervene and exercise the minimum degree of care necessary to protect Buffy's wellbeing. *Nicholson*, 820 N.E.2d at 845; *see In re Rita XX.*, 672 N.Y.S.2d 481, 482 (App. Div. 3d Dep't 1998) (finding a mother failed to exercise a minimum degree of care and failed to adequately intervene on the child's behalf when she defended and protected the father after learning that the father assaulted the child). By allowing the Uncle to remain in the home and care for Buffy, the Mother demonstrated a fundamental defect in her understanding of her parental duties and created an environment detrimental to Buffy's physical, mental, and emotional condition. *In re Krystin M. (Anonymous)*, 742 N.Y.S.2d 575 (App. Div. 2d Dep't 2002); *see Matter of Jose E.*, 109 N.Y.S.3d at 674; *Matter of Justin O.*, 813 N.Y.S.2d at 802; *In re Elizabeth G.*, 680 N.Y.S.2d 32, 34 (App. Div. 4th Dep't 1998).

Thus, the Mother's constructive knowledge of the imminent risk of harm she exposed Buffy to and her ensuing intention to stand with Uncle over Buffy, establishes, by a preponderance of the evidence, her failure to exercise a minimum degree of care for Buffy.

### **CONCLUSION**

Appellee Sunnydale Department of Child Protective Services respectfully requests that this Court affirm the decision of the Third Appellate Division.

Respectfully submitted,

---

ATTORNEYS FOR APPELLEE  
SUNNYDALE DEPARTMENT OF CHILD PROTECTIVE SERVICES