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**SPECIAL EDUCATION  
SERVICES**

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

[REDACTED]	)	
	)	
Student	)	
vs.	)	Case No. 2008-0124
	)	
[REDACTED]	)	
	)	
Local School District	)	

KRISTINE L. ANDERSON, Hearing Officer

**DECISION AND ORDER**

This matter comes before me pursuant to the Parent's Due Process Hearing request on behalf of her son, [REDACTED]. The Parent, [REDACTED] was not represented by counsel but acted on her son's behalf. The District originally was represented by [REDACTED] of [REDACTED], of the same firm, assumed responsibility for the case in early January, 2008. I have jurisdiction to hear and decide this matter pursuant to 105 ILCS 5/14-8.02(a) et. seq., and 23 Illinois Administrative Code 226.600 et. seq.

**PROCEDURAL HISTORY**

[REDACTED] filed this request for a due process hearing on behalf of her son on October 15, 2007. I set a status conference for November 14, to discuss the parties' resolution efforts, and if necessary, to set dates for the pre-hearing conference and hearing. I was unable to reach the Parent for that call, and subsequently set December 5 as the date for the pre-hearing conference. The pre-hearing conference took place on December 5, as planned. The conference could not be completed on that day, however, because the Parent had not prepared a witness or document list. The pre-hearing conference was continued to December 14, 2007, and was completed on that day.

The hearing originally was set for January 9, 2008. After setting the hearing date, the parties continued to discuss settlement. The District believed that the Parent had accepted its settlement offer, but learned that was not the case just a few days before the hearing was to take place. The District, therefore, requested, and was given a continuance until January 25, 2008. The hearing was convened on January 25, as planned. At that time, the District informed me that the student was due for his three year reevaluation. Because the results of the evaluation would undoubtedly be relevant to the issue in dispute -- the appropriate placement for the Student -- and because I wanted to ensure that there was finality of judgment, I chose to continue the hearing to allow the reevaluation to be completed. The parties also agreed to hold another IEP conference prior to the hearing to discuss the reevaluation. The IEP meeting was held on March 11, 2008, but the Parent ultimately refused to attend. The hearing was reconvened on March 14, 2008 and was completed on that day.

Time was of the essence in rendering a decision in this matter, because the Parent had removed her son from school pending my decision.<sup>1</sup> That fact, coupled with the overwhelming evidence in favor of the District, led me to issue an oral ruling in favor of the District at the close of the presentation of evidence. This written decision expounds on that ruling.

### **ISSUES IN DISPUTE**

The sole issue in dispute is whether the Student's current placement in a self-contained emotional disability instructional classroom provides him with a free appropriate public education (FAPE) in the least restrictive environment.

### **RELIEF REQUESTED**

The Parent requests a ruling by the Hearing Officer that [redacted] current placement in the self-contained ED classroom has denied her son a free appropriate public education because the placement is not the least restrictive environment. The Parent also seeks an order requiring the District to place [redacted] in a regular education 4<sup>th</sup> grade classroom at [redacted] his home school.

The District, conversely, requests a finding by the Hearing Officer that [redacted]s current placement does provide him with FAPE in the least restrictive environment. The District also requests an order stating that [redacted] will be transferred from [redacted] and begin attending a self-contained ED classroom at [redacted] school.

### **FINDINGS OF FACT**

[redacted] is a 9 year old boy in the 4<sup>th</sup> grade. Prior to his third grade year, [redacted] attended a regular second grade class at [redacted] School with some special education support in a cross categorical resource room. At the end of his second grade year, (2005-06) [redacted] was found eligible to receive special education services pursuant to a diagnosis of emotional disability. (3/9/05 IEP; DX 10) The IEP team determined that a self-contained Emotional Disability instructional classroom at [redacted] School was the appropriate least restrictive placement for [redacted] (*Id.*) [redacted] began attending [redacted] at the beginning of his third grade year continuing to the present. [redacted]s mother believes that [redacted] would be better served by attending a regular 4<sup>th</sup> grade classroom at [redacted] his home school. She requested that the District change [redacted]s placement accordingly. When the District refused, [redacted] filed a request for a due process hearing. Following is a summary of the testimony and evidence presented at the due process hearing in this matter.

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<sup>1</sup>On Wednesday, March 12, I spoke with the Parent and counsel for the District. The Parent informed us that following a recent incident that resulted in [redacted]s suspension, she had removed her son from the self-contained classroom that he had been attending. She stated that her son would not attend school pending the outcome of the hearing. If I ruled in her favor, she said her son would return to [redacted] in a regular education class. If I ruled in the District's favor, however, the Parent stated that she intended to place her son in a private school or home school him.

█████

█████ believes the self-contained emotional disability instructional classroom is not an appropriate placement for her son. She stated that she believes her son is brilliant and needs a stimulating, positive environment. According to ██████ the self-contained classroom is a negative environment in which her son can't learn.

In support of her position, ██████ maintained that ██████'s behavior was better when he attended a regular ed classroom in second grade. In his current ED class, ██████ believes ██████ is subjected to constant antagonism and bullying. This causes her son to lose his temper and react in ways that get him into trouble. While she does not condone his inappropriate outbursts, she testified that the majority of these incidents have not been his fault. ██████ asserted that ██████'s behavior problems would decrease if allowed to return to a regular education classroom because the bullying would subside.

Second, ██████ stated that she believes school personnel (primarily the principal and ██████'s teacher) have become more "untruthful" in reporting ██████'s behavior. Specifically, the Mother testified that on several occasions, school staff have given her inconsistent or differing reports involving ██████. On one occasion, ██████ testified she was initially told to come to school to get her son because he had knocked over a study carrel in his classroom. When ██████ arrived, however, the principal then reported that ██████ had not knocked the carrel over, but had in fact, just shoved it.

█████ gave other examples of incidents that she believed illustrated the school's propensity to change its story. On cross examination, however, it became clear that most of ██████'s examples did not involve school personnel giving inconsistent reports. Rather, her examples involved differing accounts by the school and *her son*. Because she chooses to believe her son's account, ██████ believes that school personnel are untruthful. Recently, for example, ██████ was suspended from school because he and another boy were accused of threatening to sexually assault another student. Both the other boy who made the threat, and the girl who was threatened had reported to the principal that ██████ had threatened her too. ██████ denied it to his mother, however, and she chose to believe him.<sup>2</sup> Indeed, ██████ made clear that she most often accepts ██████'s version of events and discounts what the school says.

In addition to her direct testimony, ██████ also was questioned by the attorney for the District concerning an attempt to enroll ██████ in a regular 4<sup>th</sup> grade classroom at ██████ School. ██████ admitted that, last July,<sup>3</sup> she had enrolled ██████ in a regular 4<sup>th</sup> grade classroom at ██████ without telling the school about ██████'s ED placement. The experiment apparently did not go well. ██████ admitted that ██████'s teacher at ██████ called her three times in one week to discuss ██████

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<sup>2</sup> Significantly, later in the hearing, the school social worker testified that she was in the principal's office when ██████ was questioned, and that he admitted to threatening the girl.

<sup>3</sup> ██████ apparently is a year-round school.

At the end of that week, when the school finally became aware of [redacted]'s placement at [redacted] it immediately informed [redacted] that [redacted] would not be allowed to return to [redacted]

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[redacted] testified briefly about his experience in the self-contained class at [redacted]. He stated that his day usually starts out well. At lunch time, however, [redacted] said people start calling him names. They also accuse him of doing things he doesn't really do. [redacted] testified that he tells his teacher but she doesn't believe him. [redacted] believes that his outbursts are not his fault, but are caused by his teacher and the other students. During [redacted]'s brief testimony, it was very apparent -- and troubling -- that [redacted] does not take responsibility for his behavior.

[redacted]  
Dr. [redacted] is a behavior and autism consultant who has been employed by the District for the last seven years. She is a clinical psychologist, and was a credible and helpful witness.

Dr. [redacted] testified that she first became familiar with [redacted] at the beginning of this school year. The team at [redacted] asked her to become involved in drafting a behavior plan for [redacted] to address his escalating negative behaviors. (See 9/11/07 Functional Assessment and Behavior Plan, [redacted] 3) To prepare, Dr. [redacted] reviewed [redacted]'s file and learned that prior to his placement at [redacted] [redacted] attended a regular second grade classroom at [redacted]. At [redacted] [redacted]'s behavior was of concern to the staff. The behaviors ranged in severity from an inability to complete tasks, to physical aggression against students and staff. Indeed, [redacted] was suspended on November 1, 2005 for being physically aggressive with another student. (11/1/05 [redacted] Letter to [redacted] [redacted] 2) He was suspended six more times throughout the course of the school year for various reasons, including threatening and hitting or kicking staff member. (See Letters of Suspension and Behavior Log; [redacted] 2)

According to Dr. [redacted], the team at [redacted] responded by creating a behavior plan for [redacted] that was intended to help him improve his behavior while allowing him to remain in the regular classroom. The plan took effect in January 2006 and remained in place until the end of the school year. According to Dr. [redacted] however, [redacted]'s behaviors did not improve, but actually became more worrisome. The team at [redacted] concluded that [redacted] needed a more restrictive setting so his troublesome behaviors could be more closely monitored. On May 31, 2006, the IEP team met and agreed to change [redacted]'s placement from a regular education classroom with resource room support, to a self-contained ED classroom. (5/31/06 IEP, [redacted] 3) [redacted] attended that IEP meeting, though it is unclear whether she supported the team's decision to change [redacted]'s placement.

[redacted] had a fairly successful third grade year in his new placement at [redacted] according to Dr. [redacted]. By the end of the year, however, [redacted]'s negative behaviors were beginning to escalate again. Thus, as [redacted] began his fourth grade year, the IEP team (and Dr. [redacted]) met to create a new and individualized behavior plan for [redacted] (See 9/11/07 Functional Assessment and Behavior Plan; [redacted] 3) In creating the plan, the team first identified three target behaviors of concern: physically inappropriate and aggressive behaviors, verbally inappropriate behaviors and not following behaviors. (*Id.*) Next, according to Dr. [redacted], the team tried to identify the cause

of those behaviors. In [redacted]'s case, the team determined that the behaviors are most frequently observed when [redacted] is in a less structured setting, like lunch or recess. Finally, the team articulated a number of interventions and strategies to promote appropriate behavior. Some of these interventions and strategies include: small class size, frequent feedback to [redacted] concerning his behavior, and continuing to offer a system that frequently rewarded [redacted] for his positive behavior. (*Id.*)

Dr. [redacted] testified that [redacted] has not responded to the plan as the team had hoped. His behavior is not improving. He is becoming more physically aggressive with his peers and staff. Dr. [redacted] finds this "worrisome." When asked why this is the case, she responded that children change over time. One reason, though, could be that the school and the Parent are not working together. She stated that students usually make good progress when there is cooperation between home and school.

Dr. [redacted] concluded that, in her opinion, [redacted] would not succeed in a regular class. She believes [redacted]'s behaviors would deteriorate -- not improve -- since a regular class has less structure and more students. Dr. [redacted] specifically disagreed with the Parent's position that [redacted]'s behavior would improve in a regular classroom, because he wouldn't be bullied by those students. [redacted] stressed that she has observed [redacted] in his current self-contained classroom and has never seen other students pick on him. To the contrary, Dr. [redacted] noted that [redacted] is one of the oldest and tallest students in the class, and believes his presence is threatening to his classmates. In short, Dr. [redacted] concluded that in order to benefit from his education, [redacted] should remain in his current self-contained ED placement and not be returned to a regular classroom.

[redacted]

Ms. [redacted] is a social worker for the District. She conducted a social development study of [redacted] as part of his three year reevaluation. She also meets with [redacted] regularly through weekly instruction to the class on issues such as discussing feelings and anger management.

In completing the social developmental study, Ms. [redacted] observed [redacted] in the classroom for about thirty minutes at the beginning of the school day. (3/11/08 Social Developmental Study, [redacted] 9) She noted that when [redacted] arrived in class his first words were, "I hate this. I don't want to do this" (*Id.*) [redacted] was out of his seat several times without permission during that time. On one occasion when he was redirected, [redacted] slammed his desk top down. Ms. [redacted] also noted that [redacted] needed frequent reminders to stay quiet and wait his turn.

As a second component of the study, Ms. [redacted] asked [redacted]'s mother and teacher to complete an adaptive behavior scale called the Behavior Disorders Identification Scale. This scale analyzes a variety of emotional and behavioral concerns from the teacher's and parent's perspective. The scale measures: learning problems, interpersonal relations, inappropriate behavior, unhappiness/depression, and physical symptoms/fears. [redacted] received standard scores of 4 and below in each area as completed by his teacher. A standard score of 4 or below is said to demonstrate a "significant behavior deviance in the educational environment." (*Id.*) [redacted]'s responses to the BDIS were quite different. Her responses resulted in standard scores for [redacted] ranging from 7 (unhappiness/depression) to 11. All of these scores are considered to be average.

Ms. [REDACTED] noted in her report that [REDACTED]'s behavior at home is apparently extremely different than at school. [REDACTED] says [REDACTED]'s behavior is "fine," but at school, [REDACTED] exhibits inappropriate social skills with his peers, and has a great deal of difficulty with anger management. [REDACTED] manifests his anger by destroying materials, yelling at adults and peers, slamming his desk, etc. (*Id.*) Accordingly, the study concludes that "[REDACTED]'s] significant behavioral difficulties are a barrier to his academic progress and need to be continually monitored and addressed... It appears as though [REDACTED] would continue to benefit from a structured classroom and small class size." (*Id.*)

As noted above, [REDACTED] contacts with [REDACTED] go beyond the completion of the social developmental study. She teaches weekly group lessons to the class and conducts individual crisis management as needed. Through these interactions she has observed that [REDACTED] has great difficulty describing how he feels. In particular, when she has attempted to engage in crisis management with [REDACTED] he is often unable to process what has happened because he can't discuss his feelings. [REDACTED] also stressed that in her visits to the class, she has never seen students pick on [REDACTED] as he has claimed. To the contrary, [REDACTED] stated that [REDACTED] intimidates his peers. [REDACTED] noted, however, that [REDACTED] believes he is being picked on. For example, if a student is looking in [REDACTED]'s direction, [REDACTED] might become agitated and claim the student is "staring" at him when the student isn't.

Finally, [REDACTED] offered important insight into the incident in which [REDACTED] was said to have sexually threatened another student. She testified that she was summoned into the principal's office to speak with [REDACTED] immediately after the incident occurred. While [REDACTED] now denies that he threatened the girl (and his mother stated she believes him), [REDACTED] testified that she was present and heard [REDACTED] admit to making the threatening statements.

Based on the results of the developmental study and her contacts with [REDACTED] believes that [REDACTED] needs a classroom environment with "significant" support services, such as his current self-contained placement. She does not believe [REDACTED] could succeed in a regular classroom, but that it would be detrimental to his educational progress.

[REDACTED]

Dr. [REDACTED] is the school psychologist who conducted part of [REDACTED]'s three year reevaluation. Dr. [REDACTED] has extensive experience in the field. Her contact with [REDACTED] was somewhat limited, but her testimony interpreting results of [REDACTED]'s evaluation was helpful.

Dr. [REDACTED] first provided testimony concerning [REDACTED]'s cognitive ability as indicated by past results of the Wechsler Intelligence Scale for Children. (*See Documentation of Evaluation Results, [REDACTED] 5*)<sup>4</sup> According to Dr. [REDACTED] the team decided not to administer the WISC for this evaluation because past results have indicated [REDACTED] has average to above average intelligence. Specifically, the results of the WISC administered in March, 2005, indicated that "[REDACTED]'s] most likely level of cognitive ability is average as the Perceptual Reasoning Index suggests." (*Id.*)

<sup>4</sup> The report is somewhat misleading in that it seems to indicate that [REDACTED] was administered portions of the WISC on 2/27/08.

█'s performance on the Woodcock-McGrew-Werder Mini Battery of Achievement is consistent with the WISC results, and also indicate that he is making academic progress in his current placement. Specifically, the scores demonstrate that █'s reading and math skills are average for his grade level. █'s writing skills were found to be within the low average range. Of concern, however, is █'s factual knowledge score, which fell within the very low range of scores compared to other students at his grade level.

Dr. █ noted that the team believes that it is █'s behavior -- not his cognitive ability -- that impedes his school performance. She therefore administered the Behavior Assessment System for Children (BASC-2) to assess █'s emotional and behavioral levels of functioning. █ testified that the BASC is a very reliable measure that identifies a variety of behavioral and emotional disorders and suggests responses. The assessment was completed by the classroom teacher and scored by Dr. █. It includes 119 items in five areas: Externalizing Problems, Internalizing Problems, Social Problems, Behavioral Symptoms Index, and Adaptive Skills. Within these five areas, █'s scores ranged from "at -risk" to "clinically significant." (*Id.*) Clinically significant scores, according to Dr. █ indicate that █ requires support in modifying his behavior. Some examples of █ clinically significant scores include aggression, hyperactivity, depression, and attention problems. Accordingly, Dr. █ concluded that █ should continue to receive support in his current placement. She testified that she believed it is "highly unlikely" that █ could be successful in a regular classroom.

When asked about related services, Dr. █ stated that she believed █ should continue to receive group social work services. She also stated her belief that family counseling is the best way to address █'s refusal to accept responsibility for his behavior. Absent that, the team should include a goal on █'s IEP that addresses this problem. (Such a goal has been included in █'s IEP.) (*See* 3/11/08 IEP, p. 13; █ 4)

█  
Ms. █ has been █'s teacher since he was placed in the self-contained ED classroom at █ at the beginning of his third grade year. (2006-07) Ms. █ has over thirty years of experience teaching ED students. She described her role with the students as one in which she always tries to communicate with them in a positive way, but is not their buddy.

Ms. █ described the current structure of her class. It consists of 12 students ranging from first through fourth grade. She is assisted by two paraprofessionals -- one of whom was recently hired, in part, to assist with █. Ms. █ maintains a set schedule each day to help provide needed structure to the students. Each student's behavior is monitored and recorded by using a chart system, and students have frequent opportunities to earn rewards throughout the day. They also can earn special rewards for good behavior over time.

█ attends █ classroom for all of his academic subjects. █ believes that █ has average intellectual ability, and has made academic progress this year as indicated by his most recent progress report. (*See* Student Progress Report: █ 7) █ is mainstreamed for P.E. and music and his behavior in those classes has been good. (Each class meets once a week.) With respect to his day to day performance in her classroom, Ms. █ described █ as a student who loves adult attention. He can be very pleasant, but is also very moody. █'s mood can

change quickly when things don't go his way. His motivation also is a problem. In particular, [REDACTED] will refuse to do his work if he believes it is too easy, or if he finds it too hard. [REDACTED] testified that to avoid triggering an outburst, she carefully individualizes [REDACTED]'s instruction.

Besides his frustration with school work, Ms. [REDACTED] testified that other areas of concern are [REDACTED]'s constant seeking of adult attention, and his inability to get along with his peers. With respect to his peers, [REDACTED] does not agree with the Parent's contention that the other students bully [REDACTED]. To the contrary, [REDACTED] testified that [REDACTED] knows how to "push [his classmates'] buttons" and frequently does so. She conceded, however, that [REDACTED] often perceives that a student is intentionally bothering him when it isn't so. For example, [REDACTED] explained that one of the students in the classroom needs to hum to himself. The student's humming bothers [REDACTED] who then accuses the student of deliberately trying to bother him.

To help [REDACTED] improve his behavior, [REDACTED] relies primarily on a reward system that consistently charts [REDACTED]'s behaviors throughout the day. (See 8/28 chart; [REDACTED] 6) She has individualized [REDACTED]'s behavior plan to allow [REDACTED] to earn rewards -- like more time on the computer -- that are especially important to him. When [REDACTED] engages in inappropriate behavior, [REDACTED]'s first response is to try to redirect him through a positive oral prompt or a reminder to get him back on track with his reward system. [REDACTED] however, often responds negatively to redirection by screaming and yelling. He also throws pencils or breaks crayons. [REDACTED] also calls the Parent when she is unable to get [REDACTED] to calm down, or when his misbehavior is of a more serious nature.

[REDACTED] is aware that [REDACTED] has been physically aggressive to other students in less structured settings such as the playground or bus. She does not see that level of aggression in the classroom, though she conceded that [REDACTED] will trip or shove his classmates. [REDACTED] also stated that [REDACTED] seems to be exhibiting more physical aggression toward adults. Recently, for example, [REDACTED] threw some math manipulatives at the principal, and thrust his body at [REDACTED] when she tried to redirect his behavior. She also is concerned about [REDACTED]'s escalating verbal threats.

According to Ms. [REDACTED] [REDACTED] exhibits more anger this year than he did last year. One reason may be that last year, [REDACTED] participated in a group therapy program through the [REDACTED]. This year, [REDACTED] has not participated in that program, though his mother stated she is willing to pursue that again. Another reason for [REDACTED]'s worsening behavior might be due to the fact that [REDACTED]'s relationship with [REDACTED] has not been as good this year. [REDACTED] asserted she is unsure why the relationship has deteriorated, but she is aware that [REDACTED] questions her truthfulness more this year. [REDACTED] stated that [REDACTED] tends to believe [REDACTED] if he denies engaging in a behavior that [REDACTED] has reported to the Parent.

[REDACTED] does not believe [REDACTED] would succeed in a regular classroom. While she does believe [REDACTED] would benefit from being with students his own age, (he is one of two 4<sup>th</sup> graders in the class) he needs the structure and accommodations provided in his current placement to allow him to succeed. Without them, [REDACTED] believes [REDACTED] would fail. She also stressed that in a regular classroom, [REDACTED] would likely be subject to negative consequences -- like staying in at lunchtime -- when he fails to complete assignments or homework.

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Ms. ██████ is the Special Education Supervisor for the District. She provided brief testimony concerning the District's proposal to transfer ██████ to another self-contained ED classroom. Specifically, Ms. ██████ testified that after ██████ filed her request for a due process hearing, the District offered her the opportunity to transfer her son to a self-contained ED class at ██████. According to ██████ given ██████'s frustration with ██████'s placement in Ms. ██████'s class, the District believed such a transfer would allow ██████ and his mother to make a fresh start. Ms. ██████ also noted that the class at ██████ is comprised of older students, grades 4-6, and also is smaller, with approximately eight students. While ██████ refused the District's offer in favor of proceeding to a due process hearing, the District still believes that the classroom at ██████ would be the best placement for ██████.

### CONCLUSIONS OF LAW

Congress created the Individuals With Disabilities Education Act (IDEA) to ensure that all children with disabilities have access to a public education. IDEA requires school districts to provide children with a free appropriate public education. 20 U.S.C. §1412(1). *See also, Beth B. v. Van Clay*, 282 F.3d 493, 497 (7<sup>th</sup> Cir. 2002). A free appropriate public education is an education "specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Board of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). This includes the requirement that the child be educated in the least restrictive environment. *See Beth B.*, 282 F.3d at 496. The least restrictive environment (LRE) is one that allows the disabled child to be educated with nondisabled peers (mainstreamed) to the greatest extent appropriate. *Id.* at 498. This does not mean, however, that every child has a right to be educated in a regular classroom. To the contrary, as the court put it in *Wilson v. Marana Unified Sch. Dist. Of Pima County*, 735 F.2d 1178, 1182 (9<sup>th</sup> Cir. 1984):

Although the policy of mainstreaming is to be applied "to the maximum extent appropriate," where, as here, "the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily ..., " a handicapped child may be removed from "the regular educational environment." (Citations omitted.)

Deciding what constitutes LRE is the responsibility of the IEP team. (*See* 23 Ill. Admin. Code § 226.240(a) and (b))(placement decision must be made by the IEP team and must be consistent with the student's IEP). Moreover, courts have recognized that in this type of situation deference should be given to the decisions of trained educators. *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1057 (7<sup>th</sup> Cir. 1997). In this case, the IEP team has determined that the self-contained ED class that ██████ currently attends constitutes the least restrictive environment. The Parent disagrees. She asserts that this placement is too restrictive and that a regular education classroom is the appropriate placement for ██████. Because the Parent is the moving party, she shoulders the burden of persuasion. *Schaffer v. Weast*, 126 S. Ct. 528 (2005). For reasons that are discussed below, the Parent has failed to meet her burden.

In asserting that [REDACTED] should be placed in a regular classroom, [REDACTED] maintains that the self-contained classroom is a negative environment for [REDACTED] and that his behavior is actually worse in that classroom than it would be in a regular classroom. In support, [REDACTED] contends that [REDACTED] had better behavior when he attended a regular education class -- the last time was when he was in second grade -- than he does now. [REDACTED] believes that the type of students in the self-contained class are a negative influence on [REDACTED]. As she put it, the kids, "pick on [REDACTED]" and are responsible for his outbursts. Indeed, [REDACTED] believes that almost all of [REDACTED]'s inappropriate behavior is caused by the students' antagonism of [REDACTED].

[REDACTED]'s contention that [REDACTED]'s behavior was better in the regular classroom is contradicted by the evidence. As noted above, [REDACTED] was last assigned to a regular classroom during his second grade year, in 2005-06. During that time [REDACTED] was suspended from school seven times for such egregious behavior as hitting, kicking and threatening staff members. He also was physically aggressive with other students. According to Dr. [REDACTED], the staff at [REDACTED] had serious concerns about [REDACTED]'s behavior. They sought to help [REDACTED] by drafting a behavior plan aimed at modifying [REDACTED]'s behavior while allowing him to remain in the regular classroom. Dr. [REDACTED] testified that the plan was in effect from January to June, but the results were inconsistent at best. [REDACTED] did have some good days, but overall his negative behaviors continued to escalate. By May of 2006, the team convened an IEP meeting and decided that [REDACTED] needed the more structured, self-contained placement at [REDACTED].

Neither is there credible evidence to support [REDACTED]'s claim that the students in the ED class bully [REDACTED] and are thereby responsible for his outbursts. To the contrary, [REDACTED]'s teacher, Ms. [REDACTED] testified that it is the other way around -- [REDACTED] likes to antagonize his classmates, or "push their buttons" as [REDACTED] put it. She also testified that [REDACTED]'s outbursts are most often triggered when [REDACTED] doesn't get his way, and when [REDACTED] is given an assignment that he doesn't want to do. [REDACTED] did state that there are times when [REDACTED] believes another student is deliberately trying to bother him, but that [REDACTED] often has misperceived the situation.

[REDACTED], the school social worker who frequently is present in the ED class, also contradicted the assertion that the students pick on [REDACTED]. Ms. [REDACTED] stated that [REDACTED] is physically larger than the other students, and, in her opinion, [REDACTED] intimidates his classmates. While she has observed many instances of inappropriate behavior by [REDACTED] she stated that she has not observed [REDACTED] being bullied.

It must be noted that Ms. [REDACTED] testified that [REDACTED] has had good behavior when he attends P.E. and music with the regular ed fourth grade students, and [REDACTED] pointed to that testimony in support of her position. This evidence alone, though, does not support a change in placement for [REDACTED]. This is particularly true because those classes only meet once a week and they do not require [REDACTED] to complete any academic tasks -- a primary trigger of [REDACTED]'s outbursts.

Since the evidence does not support [REDACTED]'s claim that a regular classroom is the least restrictive environment for [REDACTED] the Parent has failed to meet her burden of proof and the inquiry could end there. But it also is important to note that the District has provided ample proof that the ED self-contained placement is the appropriate placement for the Student. Indeed, all of the District's witnesses testified that they believed [REDACTED]'s current ED placement is the least restrictive environment for [REDACTED] and that they do not believe he would succeed in a regular classroom.

Dr. [REDACTED], for example, described [REDACTED]'s current behavior patterns as "worrisome," and recommended that he continue to receive services in a self-contained ED class. She believes that [REDACTED]'s negative behaviors would escalate in a less structured regular classroom setting. Likewise [REDACTED] testified that her social developmental study of [REDACTED] revealed that he had "significant behavior deviance" in such areas as interpersonal relations, unhappiness/depression, and learning problems. These results coupled with her personal contact with [REDACTED] caused [REDACTED] to conclude that [REDACTED] needs a classroom environment with "significant support services" such as his current self-contained placement.

In addition to [REDACTED]'s social developmental study, [REDACTED], the school psychologist, administered a similar behavior scale. The results of this measure indicated virtually all of [REDACTED] behaviors that were measured were found to be at-risk or clinically significant. Included were such behaviors as aggression, depression and hyperactivity. Dr. [REDACTED] therefore, concluded that [REDACTED]'s behavior hinders his ability to learn, and it is "highly unlikely" that [REDACTED] could succeed in a regular classroom.

Ms. [REDACTED], [REDACTED]'s teacher, agrees that [REDACTED] should remain in a self-contained ED class. She believes he has made academic growth, and would continue to benefit from the structure and the accommodations he receives in her class. While [REDACTED] does believe [REDACTED] benefits from being around peers his age, she doesn't believe he could succeed in a regular classroom.

Finally, Ms. [REDACTED] testified that while the District believes a self-contained ED classroom is the appropriate placement for [REDACTED] it recognizes that [REDACTED] has made clear that she is no longer supportive of Ms. [REDACTED]. The District has, therefore concluded that transferring [REDACTED] to a different classroom that provides the same placement (self-contained ED) would provide [REDACTED] and his mother with a fresh start. The District, therefore has proposed that [REDACTED] be transferred to a class at [REDACTED] School. In addition to providing the same placement, this class is smaller (approximately 8 students) and is comprised of students in grades 4-6, which will allow [REDACTED] to be with older students.

**Pursuant to the above findings of fact and conclusions of law, it is hereby ordered:**

1. [REDACTED]'s current placement in a self-contained ED classroom has provided [REDACTED] with a free appropriate education in the least restrictive environment;
2. The Parent's request that [REDACTED] be placed in a regular education classroom is denied.
3. [REDACTED] shall be transferred to [REDACTED] and immediately begin attending that school's self-contained ED classroom for grades 4-6. The District will provide the Student with transportation.

DATED: March 19, 2008

  
Kristine L. Anderson  
Impartial Hearing Officer  
P.O. Box 7065  
Evanston, Il. 60204

### **RIGHT TO REQUEST CLARIFICATION**

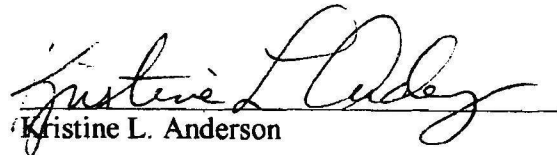
Either party may request clarification of this decision by submitting it in writing to the undersigned Hearing Officer within five days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party and to the Illinois State Board of Education. The right to request such a clarification does not permit a party to request reconsideration of the decision itself, and the Hearing Officer is not authorized to entertain a request for reconsideration.

### **RIGHT TO FILE A CIVIL ACTION**

This decision shall be binding upon the parties unless a civil action is commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i)(2004), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the aforesaid Decision and Order was transmitted to the parties by email and by U.S. Mail on March 19, 2008 with first class postage prepaid and directed to the Parent, District's Counsel, and the Illinois State Board of Education at their respective addresses.

  
Kristine L. Anderson

Kristine L. Anderson  
Impartial Hearing Officer  
P.O. Box 7065  
Evanston, Il. 60204