

Case Number: 2010-0158

[Redacted] vs [Redacted]

Hearing Officer: Kristine Anderson

Illinois State Board of Education  
Special Education Services  
100 North First Street  
Springfield, Illinois 62777

### Impartial Due Process Hearing Decision Cover Page

Instructions: Complete this form and return it along with the decision. The information collected on this form will be used for the purpose of indexing the decision by subject matter as required by 23 Illinois Administrative Code 226-695

District Name [Redacted]

Phone: [Redacted]

Superintendent  
Address [Redacted]  
Represented by [Redacted]

Parent Name [Redacted]

Phone: [Redacted]

Address [Redacted]  
Represented by [Redacted]

#### Date and Timelines

Date of Written Request: 10/30/2009

Date of Pre-hearing Conf: 01/08/2010

Date of Hearing: 01/26/2010 to 1/27/2010 12:00:00 AM

Date of Decision: 2/8/10

#### Summary of Decision

Parent filed due process complaint alleging that IEP team's decision to change Student's placement from self-contained classroom to therapeutic day school violated requirement that Student be educated in the least restrictive environment. The Hearing Officer ruled that the Parent failed to demonstrate that the team's decision was inappropriate. In contrast, the District presented ample evidence showing that the Student had failed to make progress both academically and behaviorally in a self-contained classroom. Moreover, the Student's behavior had deteriorated to the point where staff agreed that he posed a danger to himself and others.

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

- )
- ) **ISBE CASE NO. 2010-0158**
- )
- ) **Kristine Anderson**
- ) Impartial Due Process
- ) Hearing Officer

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

█	)	
	)	
Student	)	
vs.	)	Case No. 2010-0158
█	)	
	)	
Local School District	)	

KRISTINE L. ANDERSON, Hearing Officer

**HEARING DECISION AND ORDER**

This matter comes before me pursuant to the Parent's due process complaint on behalf of her son, █. The Parent, █ is not represented by counsel, but has represented her son's interests *pro se*. The District is represented by █. 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**

The procedural history of this matter is uncomplicated. The Parent filed a request for a due process hearing on October 30, 2009. I was assigned to be the Hearing Officer on November, 13, 2009. The parties participated in mediation on November 18, 2009, but were unable to resolve the issue in dispute.

The parties held a pre-hearing conference in this matter on December 21, 2009. The pre-hearing conference was not completed on that day, because the Parent was not prepared to address issues relating to witnesses and documents. By agreement, we reconvened the pre-hearing conference on January 8, 2010. The hearing took place on January 26 and 27, 2010.

**Issues Presented:**

There is only one issue in dispute. In an October 30, 2009 IEP meeting, the IEP team determined the Student's appropriate placement to be a therapeutic day school. The Parent disagrees with the District's determination and asserts that her son's current placement at █ is the least restrictive environment (LRE). Placing her son at a separate day school, according to the Parent, would deny █ his right to a free appropriate public education. (FAPE)

The District maintains that a separate day school is the Student's LRE.

**Request for Relief:**

The Parent requests that the Hearing Officer enter an order finding that █ is the least restrictive environment (LRE) for █. Additionally, at the pre-hearing conference and again at the hearing, the Parent requested that the I order that the Student be allowed to attend a different █ public school, because she contends that her son's behavior issues are unfairly singled out by █ staff.

The District objects to the Parent's request that I order CPS to place [REDACTED] in another public school as being outside the scope of my authority. The District also requests that I enter an order finding that a therapeutic day school is the Student's LRE.

I agree with the District that my authority is limited to determining whether a therapeutic day school or [REDACTED] is the Student's least restrictive environment. Ordering [REDACTED] to place [REDACTED] in a different elementary school is beyond the scope of my authority. I explained this to the Parent both at the pre-hearing conference and at the hearing.

### FINDINGS OF FACT

[REDACTED] is a 5th grade student at [REDACTED]. He has been diagnosed as having an [REDACTED] and currently attends a self-contained special education class. Because of his severe [REDACTED], [REDACTED] is not mainstreamed for any academic subjects. The events that led to the Parent's decision to file a due process complaint occurred in the fall of this school year. The IEP team met on September 18, 2009 to discuss the results [REDACTED] three year reevaluation. (See 9/18/09 IEP, SD 8-35, Ex. 1) During that meeting, all of the team members -- except for the Parent -- agreed that [REDACTED] required a more restrictive placement due to his [REDACTED] and [REDACTED] and lack of academic progress. They recommended that he be placed in a therapeutic day school. [REDACTED] disagreed with the District's recommendation, and wanted to pursue outside counseling and consider medication for [REDACTED] instead.

To accommodate the Parent, and because additional time was needed to complete the necessary paperwork, the team agreed to reconvene on October 30, 2009. (See 10/30/09, SD 1-5, Ex 4) At the meeting, school staff still believed a separate day school placement was the appropriate placement for [REDACTED]. The Parent continued to disagree, and provided the team with a written dissent and her request for a due process hearing. (Id at 2-3) The relevant evidence concerning [REDACTED] decision to change [REDACTED] placement, as well as the Parent's opposing evidence is presented below.

#### The 2008-09 School Year

Though [REDACTED] has been receiving special education services from [REDACTED] for several years, the evidence showed that staff first began to have concerns about the appropriateness of his placement in the spring of [REDACTED] 4th grade year. (2008-09) [REDACTED] is a counselor and case manager at [REDACTED] who has been [REDACTED] case manager throughout the relevant time period. He provided helpful testimony about the reasons for the team's decision to recommend a separate day school for [REDACTED]. According to [REDACTED], [REDACTED] attended a self-contained classroom during his 4th grade year to address his emotional disability. [REDACTED] recalled that in the spring of 2009, [REDACTED] behavior began to deteriorate. [REDACTED], [REDACTED] 4th grade teacher, expressed concern that the Student's behavior was highly inappropriate, and that incidents were occurring on an almost daily basis. [REDACTED] behaviors were so extreme that [REDACTED] reported to [REDACTED] that she was unable to integrate him into class activities.

[REDACTED] testified that he regularly spoke with [REDACTED] communicating the staff's concerns. He recalled that [REDACTED] did not share their concerns about [REDACTED] behaviors. Rather, she made it clear that she believed teachers were singling [REDACTED] out for discipline and failing to recognize the role other students played in antagonizing her son. When asked whether [REDACTED]'s [REDACTED] were valid, [REDACTED] agreed that other students were not "angels" and [REDACTED] was not always the initiator of conflicts. [REDACTED] stressed, however, that based on his [REDACTED] negative behaviors were above and beyond that of other students. In [REDACTED] opinion, [REDACTED] was very belligerent, aggressive, and defiant, and seemed determined that he didn't have to listen to anyone.

█████' testimony concerning █████ behavior was consistent with █████. According to █████, █████ exhibited a number of negative behaviors during the 2008-09 school year. █████ tried to address and reduce those behaviors through IEP goals and by including functional analyses and behavior intervention plans in █████ IEP's. The first behavior plan targeted the following behaviors: 1) out of seat; 2) physical fighting; 3) bothering other students and taking things; and 4) refuses work. (See Ex. 12 at SD 86) Though █████ had not been involved in writing that IEP, she confirmed that each of the target behaviors -- except out of seat -- was a concern in her classroom. When the team met to write a new IEP for █████ on February 4, 2009, they updated █████ behavior intervention plan. (See Ex. 5 at SD 67-8) The target behaviors for █████ were similar, but not identical to the previous IEP. They were: 1) leaves classroom; 2) physically fighting with other students; and 3) distracting other students. (*Id.*)

█████ testified that she implemented the strategies included in █████ behavior plans to address his inappropriate behaviors. Her strategies included a reward system, allowing █████ to help out in class, (to encourage positive behavior) and pairing █████ with a mentor to work with in the school. When █████ was agitated and needed calming, █████ also allowed him to take breaks and wear headphones that he brought from home. Unfortunately, none of these intervention strategies proved to be effective and, according to █████, █████ behavior worsened.

Notably, █████ effort to help █████ reduce his negative behaviors was made more difficult by the Student's refusal to take responsibility for his actions -- █████ blamed his behaviors on other students. Like █████, █████ agreed that other students sometimes teased or verbally antagonized █████ She stressed, however, that █████ was nearly always the first one to get physical, and that █████ responses were out of proportion with the other student's actions. For example, according to █████, █████ would hit students if he thought they were looking at him funny.

█████ kept anecdotal records which confirm that █████ negative behaviors were frequent and serious. (See █████' anecdotal records, SD 106-09, Ex 14; SD 113-26, Ex. 13) In November 2008, for example, █████ recorded six instances of inappropriate behavior where █████ hit and threatened other students, spit on a student, and broke a student's [lunch] box with a chair. (Ex. 14 at SD 109) █████ contemporaneous records confirm that █████ behaviors worsened in the spring of 2009. Indeed, █████ outbursts in May and June were particularly violent. During that period, █████ choked a student, hit another with a broomstick, banged a student's head into a door, and threatened to cut a student. He also left the classroom without permission on several occasions. (*Id.* at SD 106) As █████ behavior deteriorated, so did his academic performance. According to █████, though █████ had started the year performing well academically, by the end of the year he was refusing to do his school work and was making D's and F's in all of his subjects.

On June 3, 2009, █████ provided the school principal, █████ with a letter confirming █████ ongoing concerns about █████ behavior. (6/3/09 █████ Letter to █████ Ex 6) █████ also described some steps that were being taken to address the Student's needs. In particular, █████ stated that he was meeting with █████ on a weekly basis, and had spoken with the Parent about seeking outside counseling for the Student, as well. █████ noted that █████ was open to the idea, but had not yet initiated any counseling. █████ also stated that he and the school psychologist had discussed the possibility of adding psychological services during the 2009-10 school year if █████ "serious behavior problems continue." *Id.*

### The 2009-10 School Year

As █████ entered the 5th grade, he continued to attend a self-contained special education classroom for all of his academic subjects. The class size is small. According to █████, his teacher, there are seven

students in the classroom, ranging from 4th to 6th grade. [REDACTED] testified about [REDACTED] behavior and academic performance in the class. I found him to be a credible and informative witness. [REDACTED] testified, for example, that on the first day of school (August 10, 2009), [REDACTED] began the day as a quiet [REDACTED]. After a while, he began to play with the other students. The play quickly became aggressive, however, and deteriorated into fighting. According to [REDACTED], as the school year has continued [REDACTED] aggressive and often violent behavior has persisted. [REDACTED] also stressed that [REDACTED] is frequently defiant. He often ignores or threatens adults, for example. He also tries to physically elude or confront adults when trying to get at another student or escape the building. Academically [REDACTED] believes that [REDACTED] is capable of doing the work presented in class, but simply refuses to complete assignments, even when the work is modified for him.

Like [REDACTED] [REDACTED] currently implements the behavior intervention plan contained in [REDACTED] February 2, 2009 IEP. (See Ex. 5 at [REDACTED] 8) He confirmed that the target behaviors in the plan continue to be of concern. [REDACTED] has implemented several strategies to address [REDACTED] behaviors, such as providing immediate rewards, or allowing [REDACTED] to earn a bigger reward at the end of the day. He has enacted a "time out" consequence when [REDACTED] misbehaves. Additionally, [REDACTED] noted that he has spoken with [REDACTED] about [REDACTED] on several occasions and that she has been supportive and cooperative. While [REDACTED] violent behavior seemed to decrease for a while, for the most part, his behavior had remained unchanged. Indeed, [REDACTED] testified that just that day, [REDACTED] had threatened and slapped a student. When the student responded by assuming a fighting stance, [REDACTED] grabbed a pole and approached him. [REDACTED] intervened and took the pole from [REDACTED].

In addition to his testimony, [REDACTED] has kept anecdotal records documenting [REDACTED] negative behaviors since school began. (See [REDACTED] anecdotal records, SD 93-99, 101, 103-05, Ex. 2; SD 110-12, Ex. 3; SD 127, Ex. 11) The entries are frequent and support [REDACTED] contention that [REDACTED] poses a danger to others and to himself. [REDACTED] s first entry, for example, details an incident that occurred on August 12 --just two days after school began. [REDACTED] kicked a student and [REDACTED] asked him to go to the "reflection desk" to calm down. The incident quickly escalated, however, when [REDACTED] refused to comply with [REDACTED] s request and left the room, instead. [REDACTED], the assistant principal, brought him back to the classroom, but had to remove [REDACTED] because he continued to act in a hostile way toward the student. [REDACTED] then ran away from [REDACTED] and tried to leave the building.

The following week, [REDACTED] engaged in several incidents of serious misbehavior. On August 19, for example, [REDACTED] threatened to stick another student with his pencil and threw a book at a student when he thought the student was making fun of him. (See Ex. 3 at SD 111-12) Later that same day [REDACTED] took a student's shoes. When the student asked to have the shoes back, [REDACTED] punched him in the mouth. He then threw desks, knocked things off of [REDACTED] desk, and tried to push past the assistant principal to get out of the class. (Id.) The next day, [REDACTED] tried to hit a student with a chair, and tried to punch another student. (Id. at SD 101) The third day, (August 21) [REDACTED] tried to attack another student in the classroom, and chased him down the hall. He refused to comply when adults instructed him to stop. Later, after he had been controlled by several adults, he still tried to fight past them to attack the student again. Notably, when asked what had prompted [REDACTED] rage, [REDACTED] recalled that the other student had simply stuck his tongue out at [REDACTED].

[REDACTED] behavior outbursts and non-compliance continued to be frequent and severe throughout August and September, as demonstrated by [REDACTED] anecdotal reports and testimony. [REDACTED] staff began to question whether the self-contained placement at [REDACTED] was sufficient to meet [REDACTED] needs. Recognizing that [REDACTED] was due for a triennial review in a matter of months, the District -- with the Parent's consent -- decided to move it up to September. (See Ex. 8 at SD 46)

The psychological portion of the evaluation was conducted by [REDACTED] a [REDACTED] school

psychologist. (See 9/17/09 Report of Psychological Re-Evaluation, SD 40-44, Ex. 8) [REDACTED] testified about his findings and about his involvement in the team's decision to recommend a therapeutic day school for [REDACTED]. Specifically, [REDACTED] stressed that he made two attempts to evaluate [REDACTED] cognitive skills and academic achievement. Both times, [REDACTED] refused to be tested. [REDACTED] psychological evaluation, therefore, consisted of a record review, interviews, and results of the Behavior Assessment System for Children (BASC) completed by [REDACTED].

In describing his interviews, [REDACTED] noted that [REDACTED] the assistant principal, reported that [REDACTED] behavior had been a problem for the last two years. To that end, she shared disciplinary records showing that [REDACTED] had been suspended ten times during the same period for fighting and bullying other students. (See Ex 8 at SD 41) Also relevant to [REDACTED] was [REDACTED]'s report [REDACTED] behavior problems, as well as [REDACTED] failure to complete approximately 90 percent of his classwork.

With respect to the [REDACTED] report shows that there were differences between the Parent's and teacher's responses. (Id. at SD 41) Specifically, [REDACTED] reported [REDACTED] to be at-risk for [REDACTED], [REDACTED] problems and [REDACTED] problems. She did not believe any of [REDACTED] behaviors were clinically significant. [REDACTED], however, reported that [REDACTED] exhibited clinically significant behaviors in the areas of hyperactivity, aggression, conduct problems, externalizing problems, school problems, behavioral symptoms and adaptive behaviors. (Id.) Based on his evaluation, [REDACTED] concluded that without support and improvement in his social, emotional and behavioral functioning, "it is unlikely that [REDACTED] will make adequate academic growth..." (Id. at SD 42) He recommended that the team consider the appropriateness of [REDACTED] placement and program. (Id.)

[REDACTED] is [REDACTED] school social worker. She conducted the social work evaluation that is part of [REDACTED] triennial review. (Ex. 8 at 45-7) She testified about her evaluation report and about her [REDACTED] during their weekly group social work sessions. [REDACTED], who was employed at a separate day school prior to her assignment at [REDACTED], also provided helpful testimony about the types of supports and services that therapeutic day schools offer to students. Notably, [REDACTED] first encounter with [REDACTED] occurred early in the school year when she happened to witness the Student trying to elude a security guard and leave the building. [REDACTED] intervened and tried to diffuse the situation by talking to [REDACTED]. Her efforts were unsuccessful, however, and according to [REDACTED], the incident escalated into [REDACTED] becoming enraged and "tearing up" the building. [REDACTED] recalled that [REDACTED] did not begin to calm down until his mother arrived nearly forty minutes later.

[REDACTED] testified that she has met with [REDACTED] a number of times since that day through scheduled sessions, and when [REDACTED] has been in crisis. With respect to scheduled sessions, [REDACTED] meets with a group of students (including [REDACTED] in [REDACTED] class every week. The sessions are intended to help the students improve their interactions with each other. [REDACTED] focus with the group is consistent with [REDACTED] social work IEP goal, which requires [REDACTED] to identify and learn socially acceptable behavior in situations of conflict. (See Ex 1 at SD 20) [REDACTED] candidly testified that [REDACTED] does not appear to have benefited from her services. To the contrary, [REDACTED] stated that [REDACTED] generally refuses to talk to her, either one-to-one, or during the group sessions. She recalled that [REDACTED] has chosen to participate with the group only on two occasions. In addition to her [REDACTED] of [REDACTED] in the group, [REDACTED] testified that she has seen him try to leave the building several times, including one instance when she was running a group session and [REDACTED] simply ran out of the room with no provocation or confrontation. Finally, when asked, [REDACTED] testified that she had not [REDACTED] to be a victim or picked on in the classroom. Rather, [REDACTED] believes it's the other way around -- she has [REDACTED] that [REDACTED] is generally the aggressor in the classroom and that the other children are afraid of him.

Ms. Branch's social work evaluation report is consistent with her testimony about [REDACTED] (9/17/09 Social

Work Evaluation, SD. 45-7, Ex. 8) Her summary of an interview with the Parent is particularly relevant. Specifically, [REDACTED] worried that she may have fostered some of [REDACTED] aggression by encouraging him to fight other children she believed to be bullying him. Indeed, according to [REDACTED] report, when [REDACTED] was in kindergarten and first grade, [REDACTED] threatened [REDACTED] with a whipping if he *didn't start fighting*. By the time of the interview, however, [REDACTED] had become concerned about [REDACTED] behavior and had sought outside counseling for him. She stated her belief that [REDACTED] behavior was partly due to his grief over losing his father. [REDACTED] also asserted her belief that [REDACTED] is a victim in the classroom at times. She conceded, however, that [REDACTED] doesn't take responsibility for his actions. (*Id.* at SD 46)

As noted, [REDACTED] testified about her experience at the therapeutic day school to which she previously was assigned. According to [REDACTED], the school had a small population -- approximately 100 kids. Students received academic instruction at the school, but also were provided with services to address their other needs. According to [REDACTED], for example, the day school had at least one social worker on site daily, as well as a nurse and a psychologist. She stressed that, unlike [REDACTED] school staff at the therapeutic day school were specially trained to know how to respond to student's negative behaviors, including the appropriate way to restrain a student when necessary. [REDACTED] made clear that she believes a therapeutic day school is the appropriate placement for [REDACTED] because he has not benefited from his services at [REDACTED] and because he poses a danger to himself and others.

In addition to the evaluations of [REDACTED] and [REDACTED], [REDACTED] testified that she was asked to conduct a classroom [REDACTED]. [REDACTED] is a Specialized Services Administrator for [REDACTED] who has extensive experience working with students with behavioral and emotional disabilities. She testified that whenever a student within her area is being considered for a therapeutic (or separate) day school placement, it is her responsibility to [REDACTED] the student and assess whether she believes the recommendation is appropriate. According to [REDACTED], students who attend separate day schools have a high frequency of behaviors beyond what is seen in a regular setting. Such students often don't have control over their impulses and anger. Thus, in a separate day school, the goal is to help students acquire the skills they need so they can return to the regular setting. [REDACTED] stated that, in her experience, students often return to a regular public school setting in slightly less than a year. She emphasized, however, that the length of a student's stay at a separate day school depends, in part, on the parents' participation.

Though she could not recall the exact dates, [REDACTED] testified that she conducted two [REDACTED]. Her first [REDACTED] lasted about 30 minutes. [REDACTED] was conducting a reading lesson. [REDACTED] that [REDACTED] was using appropriate teaching and behavior management techniques. [REDACTED] made sure, for example, that [REDACTED] was given work that was appropriate for his level of ability. He also had posted a behavior plan in the classroom, so the students knew the rules and what to expect. [REDACTED] also stressed that [REDACTED] was firm, but warm, and she got the impression that [REDACTED] liked his teacher.

With respect to [REDACTED], [REDACTED] testified that he was frequently off-task and often left his seat to walk around the room. [REDACTED] noted, however, that [REDACTED] returned to his seat each time, and she did not [REDACTED] any outbursts. Crockett was surprised and troubled, however, when she [REDACTED] lean over and pretend to sniff the buttocks of a classroom aid.

On the day of her second [REDACTED], [REDACTED] testified that she received an urgent call from the school principal requesting that she come to the school immediately. [REDACTED] was informed that [REDACTED] had tried to attack a student in the classroom, and that it had taken four adults to restrain him. When she arrived, [REDACTED] that [REDACTED] was very angry and could not calm himself. She also noticed that he was the only student in the class. [REDACTED] had asked the other students to leave the classroom

during the altercation because [REDACTED] refused to leave. Also significant to [REDACTED] was the fact that [REDACTED] would not take responsibility for his actions and, in fact, denied trying to attack the other student. [REDACTED] testified that she was there for about an hour. [REDACTED] finally began to calm down only after his mother arrived.

[REDACTED] testified that she reviewed [REDACTED] school records in addition to [REDACTED] him in the classroom. From his records, [REDACTED] learned that [REDACTED] behaviors have been consistent for some period of time, and have not improved with school intervention. Indeed, they appear to have gotten worse. That fact, as well as her [REDACTED] caused [REDACTED] to conclude that [REDACTED] needs the more restrictive placement of a separate day school.

The team convened an IEP meeting on September 19, 2009. There were a number of attendees including the Parent, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] and [REDACTED] shared their triennial evaluation reports. School staff also shared their concerns about [REDACTED] worsening behaviors and his lack of academic progress in his self-contained placement. All of the participants in the meeting, except for [REDACTED] agreed that [REDACTED] required a more restrictive placement at a separate day school. [REDACTED] believed that [REDACTED] issues could be addressed through outside counseling and medication. Though the team did not agree with [REDACTED] position, they did not finalize their decision to place [REDACTED] in a separate day school on that day. Rather, the decision was formally made by the team in a meeting held on October 30, 2009. [REDACTED] presented a written dissent and request for a due process hearing at that meeting.

At the hearing, [REDACTED] made clear that she continues to oppose a separate day school placement for [REDACTED]. As noted above, [REDACTED] believes that, to the extent [REDACTED] engages in inappropriate behaviors, it is because he has been unfairly singled out by [REDACTED] staff. In her opinion, staff members always blame [REDACTED] for his outbursts, but fail to consider that other students antagonize him. [REDACTED] also believes that it's the teachers' responsibility to intervene before [REDACTED] gets physical, and she faulted them for not doing so. When asked, [REDACTED] testified that her opinion is based on [REDACTED] version of events. As [REDACTED] puts it, he always gets the worst end of the deal, and he feels like he's by himself at school.

Though she disagrees with the District about [REDACTED] placement (and the severity of his problem), [REDACTED] does agree that [REDACTED] needs help controlling his anger. Thus, she arranged for [REDACTED] to begin seeing a private counselor in early November. [REDACTED] believes that the weekly sessions are helping [REDACTED]. Though the counselor, [REDACTED] did not appear at the hearing, [REDACTED] introduced a letter that he had written. (1/12/10 [REDACTED] Letter, P1, Ex 7) In it, [REDACTED] stated his belief that [REDACTED] is presently improving. He also cautioned against changing [REDACTED] school environment because, in [REDACTED] opinion, the change will stunt [REDACTED] progress. Significantly, [REDACTED] conceded that [REDACTED] knowledge of [REDACTED] behavior at school is limited to information that [REDACTED] has shared with him. [REDACTED] has not spoken with any of [REDACTED] teachers, or [REDACTED] the Student in the school setting. Nor has [REDACTED] provided him with any of [REDACTED] school records.

In addition to seeking outside counseling, [REDACTED] testified that [REDACTED] is under the care of a psychiatrist, [REDACTED] who has prescribed medication for [REDACTED] depression. She introduced [REDACTED] evaluation [REDACTED] and his notes of [REDACTED] appointments with [REDACTED] (See 11/5/09 Psychiatric Evaluation and Physician Notes, P14-15, Ex. 7) According to [REDACTED] psychiatric evaluation, [REDACTED] described [REDACTED] as being angry, depressed and unable to concentrate. Significantly, she also reported that [REDACTED] symptoms had recently become worse. [REDACTED] diagnosed [REDACTED] with [REDACTED] and [REDACTED] and prescribed medication. [REDACTED] met with [REDACTED] again on December 3, 2009 and January 5, 2010. Significantly, [REDACTED] description [REDACTED] emotional state is consistent with the testimony offered by [REDACTED] staff. In his January 5 entry, for example, [REDACTED] stated: "Although [REDACTED] is improved, still his condition fluctuates. He is restless, angry and cannot take no for an answer...easily angered." (*Id.* at P

15)

In addition to asserting that counseling and medication are helping [REDACTED] [REDACTED] also maintains that [REDACTED] does not exhibit the severe anger at home that the District claims he manifests at school. To that end, [REDACTED] offered the testimony of [REDACTED] and [REDACTED] in support. [REDACTED] who is [REDACTED] aunt, testified that [REDACTED] often comes to her house on weekends. She described him as a loving person who is not overly bitter. Initially, [REDACTED] claimed that [REDACTED] anger is no different from any other child. She then noted, however, that the family is trying to train [REDACTED] how to handle his anger, and that he has been doing better for the last few months. When asked to explain these seemingly inconsistent statements, [REDACTED] conceded that [REDACTED] has had an anger problem, but maintained that she has never seen him engage in physical violence.

[REDACTED] is [REDACTED] cousin and pastor. She described [REDACTED] as a good child with a good heart, who loves to be praised and encouraged. In addition, [REDACTED] is creative and loves music. [REDACTED] does not see [REDACTED] as an angry or bitter child. While he has moments like any other child, [REDACTED] has not seen him act in a way that is out of the ordinary. When shown an anecdotal report describing [REDACTED] threats to "stick" another student, and that he threw a book at a student, [REDACTED] responded that this is not the child she knows. When asked, [REDACTED] conceded that she has never spoken with [REDACTED] teachers or any other school staff. Nor has she attended any [REDACTED] IEP meetings.

#### CONCLUSIONS OF LAW

Congress created the Individuals With Disabilities Education Act (IDEA) to ensure that all children with disabilities have access to a free appropriate public education (FAPE). 20 U.S.C. §1412(1). A free appropriate public education must be "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) A key component of FAPE is the requirement that children be educated in the least restrictive environment. 34 C.F.R. § 300.114(a). In other words, school districts must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. *Id.* This does not mean, however, that every child has a right to be educated in a regular classroom. To the contrary, as the Seventh Circuit held in *Lachman v. Illinois State Board of Education*, 852 F.2d 290 (7th Cir.1988):

Courts have determined that the Act's mainstreaming preference is to be given effect only when it's clear that the education of the particular handicapped child can be achieved satisfactorily in the type of mainstream environment sought by the [parents].

*See also, Wilson v. Marana Unified Sch. Dist. Of Pima County*, 735 F.2d 1178, 1182 (9<sup>th</sup> Cir. 1984) ( when education in the regular classroom cannot be achieved satisfactorily due to the nature and extent of a child's handicap, the child may be removed from the regular educational environment).

Deciding what constitutes LRE is the responsibility of the IEP team. (23 Ill. Admin. Code §226.240(a) and (b)) 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). Finally, because [REDACTED] is the moving party in this case, she shoulders the burden of proof in demonstrating that the IEP team's recommendation was inappropriate. *Schaffer v. Weast*, 126 S. Ct. 528 (2005) In applying the law to the facts of this case, the evidence supports the IEP team's decision to change [REDACTED] placement to a more restrictive therapeutic day school placement.

First, the evidence confirmed that [REDACTED] has failed to make academic and behavioral progress in his current self-contained placement at [REDACTED] [REDACTED] 4th grade teacher, testified, for example, that [REDACTED]

had stopped making progress by the spring of last year (2008-09). Indeed, though the team provided [REDACTED] with IEP goals and a behavior intervention plan, which [REDACTED] implemented, [REDACTED] target behaviors steadily increased in number and severity as the year progressed. Likewise, while [REDACTED] started out well academically, according to [REDACTED], he was receiving D's and F's by the end of the school year. In addition to her concerns over his lack of progress, [REDACTED] belief that he had become a threat to other students, caused her to conclude that [REDACTED] requires a more restrictive setting than a self-contained classroom.

[REDACTED] current teacher, also testified that he believes a therapeutic classroom is the appropriate placement for [REDACTED]. In support, [REDACTED] stressed that [REDACTED] has failed to make any meaningful progress in meeting his academic and behavioral IEP goals this school year. (2009-10) This is despite the fact that the self-contained class offers a structured setting and a small class size. In addition, [REDACTED] made clear that he has attempted to implement [REDACTED] behavior intervention plan using strategies that are meaningful to [REDACTED]. The evidence showed, however, that the behavior plan has been ineffective in reducing [REDACTED] negative behaviors. Indeed, [REDACTED] testimony and anecdotal records provide a troubling picture [REDACTED] increasing violence toward other students, and lack of compliance with authority. [REDACTED] testimony also showed that [REDACTED] has failed to make progress academically. Though [REDACTED] believes [REDACTED] has the potential to work at grade level in reading and math, he is not passing because he refuses to do class work.

The evidence also showed that [REDACTED] has appropriately attempted to address [REDACTED] needs by providing him with school social work services. Unfortunately, those related services have also proved to be ineffective. As [REDACTED] made clear, [REDACTED] refuses to participate in her weekly group sessions. He also refuses to talk with her when she meets with him one-to-one. From her [REDACTED] of [REDACTED] [REDACTED] believes that [REDACTED] has become a danger to himself and others. She agreed that a more restrictive, therapeutic day school placement is necessary for [REDACTED] to make progress.

School psychologist [REDACTED] conceded that his personal knowledge [REDACTED] was limited -- in part because [REDACTED] refused to be tested. Nevertheless, [REDACTED] testified that, based on the information shared by staff in the September 18th IEP meeting, as well as the information he was able to gather for his report, he agrees that [REDACTED] requires a therapeutic day school to appropriately address his needs.

In contrast to the District's evidence supporting a therapeutic day school placement for [REDACTED] the Parent has failed to demonstrate (or meet her burden of proof) that such a placement would violate [REDACTED] right to be educated in the least restrictive environment. To the contrary, [REDACTED] did not seriously dispute [REDACTED] numerous accounts of [REDACTED] worsening behavior and lack of academic progress at [REDACTED]. Instead, just as her son has blamed others for his outbursts, [REDACTED] blamed [REDACTED] teachers for failing to recognize that other students antagonize her son, and for failing to stop [REDACTED] before he becomes violent. [REDACTED]s reliance on her son's denials and excuses for his behavior is puzzling since [REDACTED] clearly knows -- and has said she is concerned -- that [REDACTED] refuses to take responsibility for his actions. In any event, the evidence showed that [REDACTED] teachers agree with [REDACTED] that [REDACTED] is not always the instigator when there is a confrontation. Of greater concern to [REDACTED] teachers and support personnel, however, is the intensity of [REDACTED] responses, and his inability to control his anger when he is only slightly provoked.

Nor did evidence of [REDACTED] outside counseling and psychiatric care demonstrate that placement in a separate day school is inappropriate for [REDACTED]. While a report from his psychiatrist indicated medication appears to have helped somewhat, [REDACTED] also made clear that [REDACTED] condition still fluctuates, that he is angry and he won't take no for an answer. Likewise, while [REDACTED] recommended that [REDACTED] placement not be changed, he has never spoken with any [REDACTED] teachers, nor reviewed any [REDACTED] school records. Since [REDACTED] has no firsthand knowledge of [REDACTED] behavior at school, his opinion that [REDACTED] is improving is of limited value when considering [REDACTED] school placement. Similarly, while the

testimony [REDACTED] family members provided insight into his behavior at home and at church, neither [REDACTED] nor [REDACTED] has [REDACTED] in the classroom, or spoken with [REDACTED] teachers.

In short, evidence presented by [REDACTED] fails to overcome the weight of the evidence, which demonstrates that [REDACTED] has failed to make progress -- either academically or behaviorally -- in his current self-contained placement. Moreover, the evidence demonstrated that [REDACTED] behaviors have seriously deteriorated to the point where he has become a danger to himself and others.

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

- 1) The Parent's request for an order finding that [REDACTED] self-contained placement at [REDACTED] is the least restrictive environment is denied.
- 2) The District's request for a finding that a therapeutic day school is [REDACTED] least restrictive environment is granted. The IEP team's recommendation that [REDACTED] be placed in a therapeutic day school is to be implemented. Consistent with District counsel's assurances that the District is willing to work with the Parent to find a placement that is acceptable to her, the District is instructed to provide the Parent with a list of potential therapeutic day school placements for [REDACTED]. The District must also assist the Parent in making arrangements for her to [REDACTED] these schools, and by ensuring appropriate staff is available to answer the Parent's questions.
- 3) My instructions to the District assume that [REDACTED] will cooperate. The District shall provide proof of compliance with the aforesaid orders to the Illinois State Board of Education, Compliance Division, 100 No. First St., Springfield, Il. 62777-001, on or before March 1, 2010.

**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 U.S. Mail on February 8, 2010.

DATED: February 8, 2010.



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

<sup>111</sup> [redacted] testified that there were two IEP's in effect during [redacted] 4th grade year. The first was written on February 4, 2008, when [redacted] was in third grade. (See 2/4/08 IEP, SD 69, 86, Ex. 12) That IEP was in effect at the beginning of the 2008-09 school year until February 4, 2009, when the team wrote a new IEP for [redacted] (See 2/4/09 IEP, SD 48-68, Ex. 5) Both IEP's addressed [redacted] inappropriate behaviors through goals and behavior intervention plans.

<sup>112</sup> Significantly, [redacted]' anecdotal [redacted] were not limited to [redacted] negative behaviors. She also recorded instances [redacted] positive behaviors. [redacted] attempt to record and reward [redacted] good behaviors is at odds with the Parent's assertion that school staff unfairly singled [redacted] out for punishment, and always found him to be at fault.

<sup>113</sup> [redacted] also testified that [redacted] has missed a number of the classroom sessions because he is frequently [redacted]. Her testimony is supported by other evidence in the record, which shows that [redacted] averages about 16 [redacted] per year. (See, e.g., Ex. 8 at SD 40)

<sup>114</sup> [redacted] testimony about her son's misbehavior was somewhat inconsistent. At times, she stressed that she disapproved of [redacted] outbursts, and was taking steps at home to help [redacted] get his anger under control. At other times, however, she seemed to question the accuracy and/or truthfulness of District reports concerning her son's outbursts. Indeed, [redacted] refused to believe [redacted] testimony that [redacted] had threatened a student with a pole simply because [redacted] denied it.

<sup>115</sup> [redacted] noted that [redacted] behavior had been slightly less violent recently. Any positive inference from that testimony was negated, however, by [redacted]'s recounting of an incident that had happened earlier that day, in which [redacted] got into a fight with a student and threatened the student with a pole. The Parent suggested that [redacted] was untruthful because [redacted] denied using a pole. I found [redacted] testimony to be credible, however.

<sup>116</sup> By instructing the District to work with the Parent to select a separate day school for [redacted] I am nevertheless mindful of [redacted]'s assertion that she would refuse to send [redacted] to such a school. I hope [redacted] will reconsider her position. The evidence concerning [redacted] defiance and inability to control his anger was very troubling, and I fear that his future is at risk if he is not provided with the appropriate services.