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

STUDENT¹,

Student,

Case No: 2015-0068

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer


School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

BACKGROUND

Petitioner is the guardian ("Guardian" or "Grandmother") of a student ("Student") with a disability. The Student is a seventeen-year-old, male, high school senior who receives special education services under the primary disability category of Other Health Impairment (OHI) and the secondary category of Emotional Disability (ED). The Student was diagnosed with Attention Deficient Hyperactivity Disorder ("ADHD"). He currently attends a private therapeutic day school pursuant to a District placement. (D-6, IEP dated November 1, 2012).

¹ Personal identification information is provided in Appendix A.

On September 3, 2014, Petitioner filed a due process complaint (“Complaint”) against Respondent (“Respondent” or “School District” or “District”). In her Complaint, Petitioner requests that Student be allowed to participate in a non-academic, elective driver’s education course and extra-curricular activities such as the Homecoming Dance, Senior Prom, basketball and football games, and after school clubs at the mainstream high school, with his non-disabled peers. (IHO-1). The Illinois State Board of Education appointed the undersigned as hearing officer on September 9, 2014. (IHO-2). The School District, through its attorney, [REDACTED], submitted its response on September 12, 2014. (IHO-3). The parties attended a resolution conference on September 15, 2014. No issues were resolved. The undersigned issued a Preliminary Order and statement of the parties’ rights on September 16, 2014. (IHO-4).

On September 23, 2014, the undersigned held a telephonic status call, at which time the parties agreed to a telephonic prehearing conference in this matter set for October 14, 2014 and agreed to hearing dates of October 28, 2014 and November 5, 2014. The undersigned held a telephonic prehearing conference on October 14, 2014. The Petitioner terminated her participation in that conference after approximately 20 minutes even though the parties and this Hearing Officer had previously agreed to allocate two hours for the conference. Only the School District submitted its preliminary witness and document list. Hearing dates of October 28th and November 5th were confirmed along with the location of the hearing. (IHO-16). Petitioner submitted her witness and document list on October 17, 2014. Subsequently, the undersigned convened a second prehearing conference on October 24, 2014. The conference was scheduled to commence at 2:00 p.m. The Petitioner failed to attend the conference and was unreachable. She subsequently contacted this

Hearing Officer at 4:30 p.m., District counsel was reached, and the prehearing conference was held at that time.²

The hearing commenced on October 28, 2014 and continued for a second day of testimony of November 5, 2014. Petitioner terminated her participation in the due process hearing at 10:10 a.m. on the second day of testimony again after the parties and this Hearing Officer had previously agreed to allocate from 9:30 a.m. until 5:00 p.m. for the District to present its case. The Petitioner had completed the presentation of her case by that time. After the Petitioner departed, the District continued and completed the presentation of its case. The hearing was closed to the public and the School District provided a court reporter. The Petitioner represented herself and the School District was represented by [REDACTED] of [REDACTED]. Petitioner presented two witnesses: Petitioner and the Student. The School District presented two witnesses: Dr. [REDACTED] ("[REDACTED]"), Director of Transition Services and Private Placements and Ms. [REDACTED] ("[REDACTED]"), Principal, [REDACTED] School. Petitioner did not seek to enter any exhibits into the record. The District entered exhibits D-1 through 10, D- 21 through 23, D-24 page 617, D-26 was admitted as a joint exhibit. This Hearing Officer entered exhibits IHO-1 through 20. Petitioner did not present a closing argument. The District presented an oral closing argument. There were no extensions, therefore the decision deadline date is November 17, 2014.

ISSUES

The issues to be determined are as follows:

Whether the District's proposed placement for Student, as documented in the May 29, 2014 IEP, is the least restrictive setting ("LRE"), with respect to the Student being prohibited from participating in (a) drivers education, a mainstream elective class at [REDACTED]

² After the Guardian terminated her participation in the October 14th prehearing conference, this Hearing Officer notified the parties via e-mail of the second prehearing conference scheduled for October 24th at 2:00 p.m. The Guardian responded in the affirmative to this date and time (IHO-13). Thereafter, this Hearing Officer inadvertently issued subsequent correspondence with an October 23rd date. This may have caused some confusion. However, the Guardian did not contact this Hearing Officer for clarification.

School and (b) extra-curricular activities, such as attending football **and** basketball games, Homecoming Dance, Senior Prom and various after school clubs of **the** Student's choice.

The Guardian requested that the undersigned provide the following relief:

Find that placement of the Student in drivers education, a mainstream elective class at [REDACTED] School, and extra-curricular activities, such as football **and** basketball games, Homecoming Dance, Senior Prom and various after school clubs of the Student's choice at [REDACTED] School is the least restrictive setting ("LRE").

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a seventeen-year-old, male in the twelfth grade. He attends a private therapeutic day school ("MJS"). He was found eligible for special education services as a student with other health impairment ("OHI") and emotional disability ("ED"). The Student has ADHD. (D-10).

2. The Guardian filed her request for a Due Process Hearing requesting that the Student be allowed to participate in a driver's education course at the mainstream high school, with non-disabled peers prior to his graduation from high school. She also requested that the Student be allowed to participate in extra-curricular activities such as Homecoming, Senior Prom, basketball and football games, and after school clubs at the mainstream high school with his non-disabled peers. (Tr. 40-41; IHO-1).

3. The Guardian is a psychotherapist with a Master's Degree. She is currently working toward a Doctorate Degree in counseling and supervision. She works with the adolescent foster care program and specifically works with children and families that have a mental health diagnosis. (Tr. 52-53). She participates in IEP meetings on behalf of her clients as the behavioral specialist. (Tr. 158.)

4. The student has combined type ADHD, has difficulty focusing, and can be impulsive and hyperactive. (Tr. 54) At times, the Student refuses to do his work and disrupts the classroom. (Tr. 60).

5. The Guardian was present at the Student's IEP meetings on the following dates: February 11, 2011, September 1, 2011, March 22, 2012, September 6, 2012, November 1, 2012, January 24, 2013, May 16, 2013, January 15, 2014, May 29, 2014. (Tr. 67-68).³

6. The Guardian would like to Student to participate in a driver's education course to enhance his independence so he is able to transport himself to a job and/or school (Tr. 80).

7. A Driver's Education Course is a mainstream elective class and is not a graduation requirement in Illinois (Tr. 82).

8. The Student has been suspended for behavioral issues three times during the current school year, from late August through October 28th of 2014. He recalled being suspended for "hitting my teacher," "using verbal language toward staff," and being "off task in class." (Tr. 121-23). The Student stated that he "lashes out" when he perceives that others, teachers and counselors, are lying to his grandmother about his behavior (Tr. 127-128).

9. The Student does not want to participate in extracurricular activities, clubs, Senior Prom, football or basketball games at the mainstream high school because he is not comfortable

³ During cross examination, the Guardian testified that she was present at the Student's IEP meetings on February 11, 2011, September 1, 2011, March 22, 2012, September 6, 2012, November 1, 2012, January 24, 2013, May 16, 2013, January 15, 2014, May 29, 2014 but denied that she was allowed to meaningfully participate. She further denied any recollection of those meetings and denied agreement with the IEP team on those occasions. However, she did not file formal objections to any of the IEPs listed and did not file any due process complaints relative to those meetings. It is apparent that the Guardian cares deeply for the Student and is trying to advocate for what she believes is appropriate. However, the District's witness testimony and documentary evidence contradicts that of the Guardian. (D-1 through 10; Testimony of MR and KB). This Hearing Officer finds the District's witness testimony and documentary evidence to be credible and to be an accurate recollection of what occurred at the above listed IEP meetings.

in the mainstream high school building (Tr. 128-130). He expressed to [REDACTED] staff members that he does not want to participate in these activities (Tr. 410-411).

10. The Student sometimes feels that he would like to participate in a driver's education course. He does not want to participate in a driver's education course at the mainstream high school because he does not know anyone there and would not be comfortable with the teachers there. He would only be comfortable taking a driver's education course at his current school with teachers and counselors familiar to him (Tr. 129-131).

11. During 8th grade, the Student was in an instructional classroom in the general education setting. He experienced great difficulty working cooperatively with peers without adult supervision and intervention. The Student had difficulty with successful peer interactions in the instructional classroom as evidenced by negative and provocative comments to peers despite repeated prompts and reminders from adults. The student displayed a low frustration tolerance and shut down or became verbally aggressive when agitated. Most often with peers, the Student's provocative or inappropriate comments were the catalyst for behavioral problems. The Student had difficulty maintaining his composure, even when given an opportunity to calm down. He also had difficulty managing academic frustrations which resulted in shutting down or work refusal. The Student is unable, sometimes unwilling, to discuss his role in the problem or more appropriate coping strategies. During six of nine weeks in the first quarter, the Student was on level one, the most supportive and restrictive level. Without the support of level one, the Student had difficulty meeting behavioral expectations in the classroom, lunchroom and hallways (D - 2, p. 14; Tr. 144-147).

12. At the beginning of the Student's freshman year of high school, an IEP team meeting was held on September 1, 2011 at the Guardian's request. The purpose of the meeting

was to review the Student's IEP and discuss the Student's placement in a public therapeutic day school, ██████████ School ("██████"), affiliated with his home school district. The Guardian was concerned about ████████ not being the best place for the Student because she was concerned about other students having a negative influence on him. The IEP team discussed the benefits of this placement, including immediate feedback and support which would be provided and from which the Student would benefit. Emphasis was placed on the Student having an opportunity to be successful at ████████ and earning the opportunity to reintegrate back to the mainstream high school. The criteria for reintegration were reviewed. The Student reported that things were going well at ████████ and that he would like to remain there. The Student expressed concern that he would "mess up" if he returned to the mainstream high school at that time. The IEP team was in full agreement that ████████ was the most appropriate placement for the Student at that time. The Guardian did not object to the IEP or file a due process complaint at that time (D-2, pg. 43; Tr. 159). Pursuant to the IEP, the Student was able to participate in non-academic activities with nondisabled peers and had the same opportunity to participate in extracurricular activities as nondisabled peers at the mainstream high school (D-2, pg. 31).

13. By the end of the Student's freshman year of high school, the Student's behavior had changed significantly and he had been suspended multiple times (Tr. 164-165). On February 13, 2012, at a reentry from suspension meeting, the Student reported that he had not been making good decisions. He was observed off task and out of the classroom with increasing frequency. The Guardian expressed concern about the Student's drug use. She suspected that the Student was using marijuana on a daily basis. She also reported that dynamics at home had been difficult with respect to the Student's relationship with his sister (D-22, p. 456; Tr. 167-168).

14. On March 15, 2012, at a reentry from suspension meeting, school staff, the Guardian, and the Student completed a plan to assist the Student through the school day, “including a processing pass when he is frustrated, a gym pass during homeroom when he is having a good day, and immediate reinforcement including candy. The Student was comfortable with the plan in place” (D-22, p. 468). The Student asked how to earn a driving permit. School staff responded that the driver’s education course can be an option at some point if the Student continues to earn credits and make positive choices (D-22, p. 468). The Guardian expressed her concern and frustration with the Student’s current behaviors and recent behaviors observed in school and in the community. The Student continued to take risks with substance abuse and reported being banned from a local mall due to shoplifting. Past meeting and intervention efforts had targeted suspected drug use and involvement. The Student refused to access support for these concerns (Tr. 169-170).

15. On March 22, 2012, the Student was referred for a three-year re-evaluation to determine continued eligibility for special education services for an Other Health Impairment (OHI) due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and an Emotional Disability. During classroom observation the Student was observed distracting other students and disrupting class. The teaching assistant gave him several prompts. He ignored these requests and became disrespectful to staff. He was eventually asked to leave the class (D-4, p. 56). During the re-evaluation, the Guardian completed a social emotional assessment of the Student. She reported elevated concerns in the areas of executive function and defiance and aggression and very elevated concerns in the areas of inattention, hyperactivity/impulsivity, learning problems, and peer relations (D-4, p. 116). The IEP team ultimately decided that the Student should remain at the public therapeutic day school for his sophomore year of high school. He was able to participate

in nonacademic activities with nondisabled peers and have the same opportunity to participate in extracurricular activities as nondisabled peers (D-4, p. 93).

16. On September 6, 2012, an IEP team meeting was held at the Guardian's request to address concerns with the Student's current placement. IEP team members continued to recommend a therapeutic setting and that behavioral concerns currently observed were consistent with past concerns (D-5, p. 146). It was decided that the Student was no longer able to access extracurricular activities at the mainstream high school after school hours due to behavioral incidents which had occurred while the Student was on the mainstream high school campus. The Student had been asked to leave the mainstream campus on four separate occasions due to behavioral incidents. On two of the four occasions, the Student refused to leave when asked. On the fourth occasion, a football game, the Student refused to leave, became verbally aggressive to staff and other adults. The police were called and issued a disorderly conduct ticket at a later time (D-5, p.147).

17. On November 1, 2012, during the Student's sophomore year, an IEP meeting was held to address the issue of the Student's continued placement at the public therapeutic day school. The Student had missed significant instructional time due to behavior, was failing to make academic progress and earn credits toward graduation, and was not meeting his IEP goals. The Student was having difficulty following directions and regulating emotions (Tr. 183-186). The IEP team, including the Guardian, recommended a change of placement to a private therapeutic day school. The Guardian was provided with three private day school placement options and ultimately chose the school the Student currently attends (D-6, p. 182).

18. At an IEP meeting held on January 25, 2013, the Student asked about taking a driver's education course. The Guardian expressed concern about the Student's access to a vehicle

as it relates to his behavior as did other members of the IEP team (Tr. 213-214; D-7, p. 224; Tr. 370). At that time, on a daily basis, the Student engaged in provoking comments such as swearing, calling peers names, and oppositional comments in response to staff members' directives or when work became difficult, and shutting down (Tr. 367). There was a safety concern with respect to the Student participating in extracurricular activities at the mainstream high school building based upon his behaviors at his current therapeutic day placement (Tr. 370).

19. An IEP meeting was held on January 15, 2014, during the Student's junior year of high school (D-9). The school counselor reported the following: the Student "continues to struggle in maintaining positive interpersonal relationships. He has a strong need to make connections with peers and will use any means necessary to gain peer attention and acceptance. This often results in [the Student] becoming involved in negative situations that do not pertain to him. His behaviors can become hypervigilant in nature as he is not always able to accurately perceive other's intentions. They may lead [the Student] to feel he has been wronged, resulting in increased oppositionality towards peers and/or staff. Additionally, [the Student] continues to have difficulty when engaged in competitive activities as he feels a strong need to be the victor, thus establishing himself among his peers. His posturing has led to increased conflict among peers" (D-9, p. 251). The school counselor further reported that the Student continued to exhibit behavioral difficulties but had made some improvements over the prior school year. From January 2013 to July 2013, the Student received 22 misconduct reports for "verbal aggression, disruptive behaviors, unauthorized leave of building and property destruction." A decrease in misconduct reports had occurred since the beginning of the 2013-2014 school year. The Student had received 8 misconduct reports for "verbal aggression, disruptive behaviors and unauthorized leave of building" (D-9, p. 252). The Guardian adamantly expressed that she wanted the Student to attend

a school dance in the spring. [REDACTED] Director of Transition Services and Private Placements for District [REDACTED] expressed, as in the past, that if the Student does not have an incident in that semester than includes aggressive, provocative or harmful disruptive behavior, he may attend mainstream high school activities (D-9, p. 281).

20. An IEP meeting was held on May 29, 2014 to update the Student's progress and review recent behavioral incidents. The Student had been participating in the school's [REDACTED] program which is an after school extracurricular vocational training program. However, his participation in that program was terminated due to escalation of inappropriate behaviors on the worksite. The Student's behaviors had been so disruptive and challenging that it was interfering with the ability of other Student's to perform their jobs (D-10, p. 288-289). The Guardian raised the issue of the Student participating in driver's education as well as Homecoming and Prom. [REDACTED] reminded the Guardian that the Student had been given several opportunities to demonstrate appropriate behavior to demonstrate that he is ready and it is safe for him to participate in activities at the mainstream high school building and he had been unable to do so (Tr. 218-219).

21. The Student continued to attend the private therapeutic day school during the summer of 2014. On July 17, 2014, the Student arrived at school, stated "he wasn't feeling it" and began to be disruptive to the learning environment. He asked to go for a walk to help him calm down. He reported that he had not taken his psychotropic medications since summer school started. He also reported an increase of alcohol consumption and drug use. When he returned to school, he was not ready to return to the classroom and asked to use the chill spot. After the chill spot, he returned to the classroom. Within a few minutes the Student became disruptive again was unable to accept feedback, was unable to follow directions, and eventually stormed out of the classroom and went outside the school building where he remained for approximately 45 minutes

(D-23, p.586). Later that same day, the Student again left the building and began kicking rocks toward the building and throwing rocks toward the roof of the school building. He agreed to return to the building to the chill spot. However, instead of going to the chill spot, the Student reentered the classroom where he disrupted the classroom by shouting silly comments and then crawled underneath the classroom table. He refused to leave the classroom when asked to do so by staff and proceeded to flip chairs around the classroom and destroy art work completed by other students. When a staff member attempted to block his path, he flipped over a tray of water and paint that landed all over the classroom floor. His passage was blocked by a second staff member whom the Student tripped over, causing the staff member to lose her balance and ultimately break her foot (D-23, p. 587; Tr. 224-225). Classroom staff members called for assistance, at which time, the Student's behaviors further escalated. The Student picked up a fan and threw it at a staff member, continually pounded on the classroom door and window eventually shattering the classroom window. He proceeded to walk up and down the hallway verbally challenging students and staff near him. When addressed by staff he invaded personal space while shouting inappropriate comments. The police were contacted as a result of this incident (D-23, p. 587).

22. On September 29, 2014, the Student displayed disruptive behaviors during math class, was off task, not following directions, and being disrespectful to staff while encouraging classmates to join him in "flipping the room." The Student's behavior continued to escalate and he ultimately punched a teacher in the stomach (D-23, p. 590; Tr. 227). On October 27, 2014, the Student left the school grounds without authorization (Tr. 228).

23. [REDACTED] is the Director of Transition Services and Private Day Placements for District [REDACTED]. She has been Director of Transition Services for ten years and Director of Private Day Placements for five years. Prior to her employment with District [REDACTED], she was employed for

twenty-six years at [REDACTED] where she worked for eight years as a classroom teacher, fourteen years as a counselor/social worker, and five years as a transition person. She holds a Bachelor's Degree in Special Education from [REDACTED] and a Master's Degree in Guidance and Counseling from [REDACTED]. She holds a Ph.D. in Administration Supervision Policy Planning from [REDACTED]. She also holds type 10, 73, and 75 certificates from the Illinois State Board of Education (Tr. 265-266). In her current position, she is the direct supervisor for all of the life skill and low incidents programs to include teacher evaluations. She oversees all of the private day placements for District [REDACTED] and all the transition planning for all of the special education in terms of compliance and management (Tr. 267). The ultimate goal for students at private therapeutic day placements is to progress in their social emotional academic development with the goal of reintegrating back into the mainstream high school building (Tr. 269). District [REDACTED] follows up with students placed outside of their neighborhood schools on a regular basis through phone calls, regular progress reports, meetings, IEP meetings, annual reviews. There is continual follow up with the private placements with respect to student progress (Tr. 270; Tr. 356).

24. [REDACTED] knows the Student and as the private day placement manager, she took over his case as the case manager when he enrolled at his current private therapeutic day school. She has attended all but one of the Student's IEP meetings since he has been at his current private therapeutic day school.

25. [REDACTED] attended the Student's IEP meeting on January 24, 2013. At that meeting, the Student asked when he would be able to return to the mainstream high school building to watch or play basketball. [REDACTED] indicated that if there were no behavioral incidents between January 24, 2013 and the end of March 2013, the IEP team would reconvene to consider his request. The

Student was not able to meet these criteria, as there were several behavioral incident reports. She testified that she is contacted for all behavior incidents that are higher level, meaning more than a minor infraction (Tr. 274-275). The criteria for the Student's transition back to the mainstream high school building were discussed at all of the Student's IEP meeting she attended. The criteria have remained consistent over the past several years and are as follows: "if [the Student] can refrain from any aggressive, provocative type behavior or disruptive type of behavior over a certain period of time, the IEP team would reconvene to consider [the Student] coming back to the main building for certain activities." It is typically over a several month period that it is expected that the behavioral criteria be met (Tr. 276-277). The Student has not been able to meet these criteria. The Guardian has been informed at IEP meetings and has been provided with behavioral incident reports. The criteria were discussed at the IEP meeting in May 2014. The Student has not been able to meet the behavioral criteria to date (Tr. 278).

26. Since his initial placement at the private therapeutic day school, the Student has made progress academically, even earning an award in the spring of 2014. Behaviorally, the Student's progress has been "very up and down" (Tr. 282). An IEP meeting was held in May 2014 at the request of the Student's IEP team because the Student was having some significant incidents and difficulties in the [REDACTED] program, a vocational after school program, to the point that the IEP team felt it was no longer appropriate for the Student to participate (Tr. 283). The INVEST program is a less restrictive program than the Student's academic day at the [REDACTED] School. It requires a higher level of independence from Student's, is less structured, and has a lower ratio of staff to students (Tr. 400). The [REDACTED] program is still a highly structured, highly supervised program. Placement at a mainstream high school or public therapeutic day school would require a much higher level of independence (Tr. 401). The staff to student ratio of the [REDACTED] program

is one to one to three to one. The Student was having difficulty with self-regulation and overall performance. He was disruptive of other students, banging on windows, climbing in and out of windows. There was an incident in which he threatened the teacher over not receiving a paycheck (Tr. 284; D-10, p. 288-290). At the conclusion of the meeting, it was decided that the [REDACTED] program would be put on hold for the Student due to the significance of his behaviors (Tr. 287).

27. The Student continues to require the structures, supports, and interventions of a therapeutic day program. The Student has demonstrated that he is able to succeed academically with one to one supports in a small environment with less students and he continues to demonstrate that he requires intensive supports to help with self-regulation, managing his behaviors, and acting appropriately (Tr. 288). Based upon the Student's dysregulation, there are times during the day when he is not available for learning because there are times when it takes quite a while for him to self-regulate and calm down enough to provide him with academic or instructional interventions. In [REDACTED]'s opinion, the Student's current placement at a private therapeutic day school is the least restrictive environment for this Student because it provides him with the supports that he needs to make academic progress and with continuing work to help him develop coping strategies in order to self-regulate and anger manage. (Tr. 290-291).

28. It would not be appropriate for this Student to attend a dance or extracurricular activity at the main high school because "he is very volatile. I think that the lack of supervision and the intensity of activity in those types of activities could be very provoking, and it will be difficult for [the Student] to self-regulate and restrain from some of the external stimuli that could set him off" (Tr. 292). Due to some of his reactions to his peers it would be an unsafe environment for the Student and others (Tr. 317). She also testified that she did not believe that it would be appropriate for this Student to participate in a driver's education course at the mainstream high

school because of his need for a small structured environment with a small one to one, two to one, three to one instructional intervention and for the high level of behavioral monitoring that he needs even in a small structured environment (Tr. 292). The Student has demonstrated that at times he can use his coping skills but there are significant times when he chooses or is unable to access the coping skills that he has learned. He is able to articulate the coping skills that he needs (Tr. 298).

29. During 2014, the Student was on probation for an incident which occurred outside of the current private therapeutic day school placement. Since the Student has been released from probation, his behaviors have increased in the school setting (Tr. 331).

30. [REDACTED] is the Principal at the [REDACTED] School. She has been employed by the [REDACTED] School since 2007 where she has worked as a social worker, assistant principal for student services, and principal. She worked previously at [REDACTED] as a direct care worker, case manager, educational surrogate, and therapist.

31. [REDACTED] holds a bachelor's degree in psychology and social work with a minor in education. She holds a Master's Degree in social work and is a licensed clinical social worker. She also holds a Master's Degree in administration and supervision of education, a type 73 and type 75 certification (Tr. 346). She has worked with thousands of children with emotional disabilities, learning disabilities, other health impairments, cognitive impairments, autism, traumatic brain injuries (Tr. 346).

32. The philosophy of the [REDACTED] School is that of respectful reciprocity and the idea that learning process is never complete and is never over. The school does a push-in model for therapeutic services meaning that social workers and counselors are in classrooms to work on situations as they arise (Tr. 347). The school focuses on coercion-free, trauma-informed interventions where students learn and implement those skills on their own versus staff taking

control. Staff seek to find the meaning behind students' behaviors and try to target their interventions on the meaning, not just the behavior alone (Tr. 349).

33. [REDACTED] program stands for [REDACTED] program. Students need to be at least 15 years old, meet certain behavioral requirements in terms of safety, and are then assigned a job site where they work throughout the week. There is a classroom component where students work on vocational and transitional assessments, resume writing, interviewing skills, applying for colleges. Students receive high school credit as well as a small stipend (Tr. 353).

34. [REDACTED] has known the Student since December 2012 when he entered the school. She has been involved in his education since that time (Tr. 356). The Student has made academic progress since coming to the school. However, his behavior has been "up and down" (Tr. 357-358). Since spring 2014, the Student's behaviors have deteriorated. The behaviors include cursing, swearing, not being in the assigned area, property destruction, and physical and verbal aggression (Tr. 358-359). Significant behaviors are documented in misconduct reports which are sent to the Student's Guardian. The school has received verbal confirmation that the Guardian has received these reports (Tr. 361). The Student's major significant behavioral incidents include disruption of the educational environment, banging on doors and walls of other classrooms, elopement from school, verbal threats toward peers, verbal threats toward staff, provocation of peers, assault on staff, and attempted assault on peers (Tr. 361-362). Staff have been injured as a result of the Student's behavior. His classroom teacher broke her foot as a result of an entanglement during a behavioral incident with the Student during the summer of 2014 and in September 2014, the Student punched a teacher in the stomach (Tr. 363).

35. [REDACTED] described the Student as a very likeable kid who has a great smile, a wonderful personality, and a very warm sense about him. He is very inquisitive and likes to learn about things. He can have a really pleasant conversation with you about appropriate topics (Tr. 382). The staff at the [REDACTED] School believe that the Student is a very likeable kid who has a lot of strengths and the potential to do really good things with his life. He has good, strong academic skills that need to continue to be built upon and he is well liked. However, there are other safety concerns regarding the Student and his behaviors (Tr. 383).

36. The issues of mainstreaming for extracurricular activities and driver's education has been at issue at every IEP meeting attended by KB and MR. The behavioral criteria for the Student to participate in those activities has been addressed at each of the IEP meetings. The criteria have been consistent and the Guardian and the Student were notified of these behavioral criteria. [REDACTED] stated that she believes that the behavior criteria established for the Student to participate in extracurricular activities and driver's education at the mainstream high school are reasonable in the sense that the criteria, if met, would allow the Student to be successful when he participates in that environment, to be safe, and to ensure the safety of other students (Tr. 397).

37. At various IEP meetings and during the course of the due process hearing, the Guardian requested that the Student be allowed to participate in a driver's education, football and basketball games, and the Prom under her supervision or that of another family member. The IEP team rejected the request for the Guardian to accompany the Student to a mainstream high school dance because there were concerns about the social implications of the Guardian, as a family member doing this. The District reported that they do not allow parents to accompany students to high school social events due to the social implications with peers. (Tr. 414). The Student's impulsivity, the academic requirements of a driver's education class, and the high student to

teacher ratio would be very difficult for the Student and he would not be successful in that environment (Tr. 416). The Guardian would not be a suitable supervisor for the Student in that setting due to the Guardian's tendency to raise her voice and become agitated when she perceives that the Student is not being treated fairly (Tr. 417). It would not be appropriate for the Student to attend Homecoming, Prom, or high school dances at the mainstream high school because his impulsivity and unsafe behaviors would put the other students at risk (Tr. 410).

38. [REDACTED] does not typically suspend students because they feel that if a student is not in their building, they are not providing them with any services. The Student was suspended twice after the behavioral incident on July 18, 2014 when the incident resulted in the Student's classroom teacher breaking her foot and after the behavioral incident on September 30, 2014, after the Student punched a teacher in the stomach (Tr. 405-406). The behaviors which led to the Student's suspensions include physical aggression, mob action, and property destruction. It is not common for staff members at [REDACTED] to be injured by students to this degree (Tr. 407). It is uncommon for the school to call the police with regard to student behavior. However, the police were called by the school on these occasions because property damage occurred and one of the incidents involved multiple students. (Tr. 407).

39. The Student continues to require a private therapeutic day school placement because he is "highly impulsive and can be very disruptive, destructive, and aggressive" (Tr. 409).

40. At the conclusion of the first day of the due process hearing, the Guardian became upset, angry, and verbally aggressive. On the second day of testimony, the Guardian again became upset, angry and verbally aggressive. She stormed out of the hearing and terminated her participation at 10:10 a.m. on November 5, 2014.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

With respect to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast*, 546 U.S. 49 (2005). However, the Illinois School Code has placed a heightened burden on school districts. 105 ILCS 5/14-8.02a (g-55). In a due process proceeding, the school district has the initial burden of production to show that the special education needs of the student are identified and that the special education program and related services are adequate, appropriate and available. *Id.* After the District meets its initial burden of production, the ultimate burden of persuasion then, shifts to the parent as the filing party to prove her case. The parent must prove her case by a preponderance of the evidence. *Id.*

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided at FAPE requires the determination of whether the school district: (1) complied with the procedural requirement(s) of IDEA, and (2) developed an Individualized Education Program ("IEP") that is "reasonably calculated to enable the child to received educational benefits." *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982).

An affirmative determination in favor of the school district with respect to both prongs of the *Rowley* test leads to an additional inquiry regarding the child's educational placement.

In the instant matter, the due process complaint filed by the Guardian does not allege procedural or substantive violations of the Student's IEP, only that the IEP does not provide the Student with educational opportunities in the least restrictive environment. Evidence submitted by the District and the Guardian's own testimony indicates that the Guardian was present at the Student's IEP meetings on the following dates: February 11, 2011, September 1, 2011, March 22, 2012, September 6, 2012, November 1, 2012, January 24, 2013, May 16, 2013, January 15, 2014, May 29, 2014 (Tr. 37-38). The Guardian and Student's requests, with respect to the Student participating in a driver's education class and extracurricular activities at the mainstream high school, were noted, discussed and considered at those times (Tr. 397). Therefore, the Guardian was afforded the procedural safeguard to participate in the IEP meetings and placement decisions. 34 C.F.R. 300.501(b) &(c). Further, the Guardian does not allege that the Student's IEP was not reasonably calculated to enable the Student to received educational benefits. This Hearing Officer's inquiry thus focuses on the following:

Least Restrictive Environment (LRE)

Under IDEA, the School District has an obligation to educate a student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002). The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when

education in the regular classroom cannot be achieved with the use of supplementary aids and services. 20 U.S.C.A 1412(a)(5)(A); 34 C.F.R. 300.114(a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross, supra*. See also *Beth B., supra*. “The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so. *Id.* The disruptive impact a student has on other students is a relevant consideration when determining if the education was “satisfactory.” *Alex R. v. Forrestville Community Unit School District*, 375 F.3d 603 (7th Cir. 2004). “A school district’s IEP team is required to assess whether the student’s disability-related behavior impedes his or her learning or that of others. *Id.* The District may change a student’s placement to a more restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement. *Ross* citing *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). Courts have consistently held that the progress must be more than minimal. *Polk v. Central Susquehanna Intermediate Unit 16*, IDERL 130 (3rd Cir. 1988). When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district’s recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Feb. 27, 2012).

“The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child.” *Rowley* at 207. In creating a student’s IEP, safety concerns are appropriately considered, as they could interfere with a disabled child’s right to receive a free appropriate public education.

Lillbask v. State of Connecticut Department of Education, 397 F.3d 77 (2nd Cir. 2005). Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012).

The Guardian alleges in her due process complaint that the Student is being denied an adequate high school experience because he is being prohibited by the District from participating in (a) a mainstream elective class, driver’s education and (b) extracurricular activities such as football and basketball games, Homecoming Dance, Senior Prom and various after school clubs of the Student’s choice. Based upon the testimony and documentary evidence presented, the Student’s current private therapeutic day school placement appropriately places him in the least restrictive environment including prohibiting him from participating in a mainstream elective class, driver’s education, and extracurricular activities such as football and basketball games, Homecoming Dance, Senior Prom and various after school clubs, for the following reasons.

Prior to entering high school, the Student was placed in an instructional classroom in the general education setting. During 8th grade the Student experienced great difficulty working cooperatively with peers without adult supervision and intervention. The Student had difficulty with successful peer interactions in the instructional classroom as evidenced by negative and provocative comments to peers despite repeated prompts and reminders from adults. The student displayed a low frustration tolerance and shut down or became verbally aggressive when agitated. Most often with peers, the Student’s provocative or inappropriate comments were the catalyst for behavioral problems. The Student had difficulty maintaining his composure, even when given an opportunity to calm down. He also had difficulty managing academic frustrations which resulted in shutting down or work refusal. The Student is unable, sometimes unwilling, to discuss his role

in the problem or more appropriate coping strategies. During six of nine weeks in the first quarter, the Student was on level one, the most supportive and restrictive level. Without the support of level one, the Student had difficulty meeting behavioral expectations in the classroom, lunchroom and hallways (D-2, p. 14; Tr. 144-147). At that time, the IEP team recommended placement at [REDACTED], the public therapeutic day school. Although the Guardian testified that her concerns about this placement were not addressed, the District's witness testimony and documentary evidence illustrate otherwise. The Guardian's concerns about a therapeutic day placement were addressed, as were criteria necessary for reintegration to the mainstream high school, [REDACTED] School ("[REDACTED]") (D-2, p. 43). District witness testimony and documentary evidence, as noted above, provide persuasive evidence that continued placement of the Student in the general education setting was not "satisfactory" pursuant to the *Ross* and *Beth B.* holdings. Only at the public therapeutic day school was the Student able to receive the appropriate support necessary to provide him a FAPE in the LRE, i.e. to obtain educational benefit by making progress on some of his academic and behavioral goals. The District's consideration of the Student's disruptive impact on other students was appropriate in making this determination. *See Alex R.*

The Student was placed at the public therapeutic day school, [REDACTED], for his freshman year. From the beginning of the Student's freshman year until the beginning of his sophomore year, the Student was able to participate in nonacademic activities and had the same opportunity to participate in extracurricular activities as nondisabled peers at the mainstream high school (D-2, p. 31). The Guardian's testimony reflects that the Student in fact tried out for the basketball team at the mainstream high school. However, behavioral difficulties with peers prevented his further participation on the team. (Tr. 231-232). The District's documentary evidence and the Guardian's testimony corroborate the fact that the Student was able to access a less restrictive setting.

On November 1, 2012, during the Student's sophomore year, an IEP meeting was held to address the issue of the Student's continued placement at the public therapeutic day school. The Student had missed significant instructional time due to behavior, was failing to make academic progress and earn credits toward graduation, and was not meeting his IEP goals. The Student was having difficulty following directions and regulating emotions (Tr. 183-186). Thus, the Student's placement at the public therapeutic day school was no longer "satisfactory" and as such was no longer the least restrictive environment for the Student. *See Ross and Beth B.* The IEP team, including the Guardian, made a change in the Student's placement to a private therapeutic day school. The Guardian was provided with three private day school placement options and ultimately chose [REDACTED] the school the Student currently attends (D-6, p. 182). The credible testimony of the District's witnesses, MR and KB, and documentary evidence provides persuasive evidence that the District fulfilled its obligation to provide the Student with a FAPE in the LRE when his placement was changed to a private therapeutic day school, [REDACTED].

The Student has made academic progress and earned credits toward graduation at his current placement, [REDACTED], but has continued to experience behavioral difficulties. At an IEP meeting on January 25, 2013, the Student asked about taking a driver's education course. The Guardian expressed her concern about the Student's access to a vehicle as it relates to his behavior, as did other members of the IEP team (Tr. 213-214; D-7, p. 224; Tr. 370). At that time, on a daily basis, the Student engaged in provoking comments such as swearing, calling peers names, and oppositional comments in response to staff members' directives or when work became difficult, and shutting down (Tr. 367). The credible testimony of the District's witness, [REDACTED], reflected a safety concern with respect to the Student participating in extracurricular activities at the

mainstream high school building based upon his behaviors at his current therapeutic day placement (Tr. 370).

Although the Student's current private therapeutic day placement provides a classroom ratio of two students per each teacher, the Student often requires one-to-one academic and behavioral support (Tr. 412). In the Spring of 2014, the Student's functional behavior and academic performance began to deteriorate. This coincided with the Student's removal from juvenile probation. The Student had been participating in the school's [REDACTED] program which is an after school extracurricular vocational training program. This program is highly structured but not as highly structured as the [REDACTED] academic environment. However, the Student's participation in that program was terminated due to escalation of inappropriate behaviors on the worksite. The Student's behaviors had been so disruptive and challenging that it was interfering with the ability of other Student's to perform their jobs (D-10, p. 288-289). The Guardian again raised the issue of the Student participating in driver's education as well as Homecoming and Prom. [REDACTED] reminded the Guardian that the Student had been given several opportunities to demonstrate appropriate behavior and that he is ready and it is safe for him to participate in activities at the mainstream high school building but he had been unable to do so (Tr. 218-219).

The Student continued to attend the private therapeutic day school during the summer of 2014. During that time, the Student continued to be disruptive to the learning environment. He reported that he had not taken his psychotropic medications since summer school started. He also reported an increase of alcohol consumption and drug use. The Student was unable to accept feedback, was unable to follow directions, and eloped from the classroom (D-23, p.586). On one occasion, he disrupted the classroom by shouting silly comments and crawling underneath the classroom table. He refused to leave the classroom when asked to do so by staff and proceeded to

flip chairs around the classroom and destroy art work completed by other students. When a staff member attempted to block his path, he flipped over a tray of water and paint that landed all over the classroom floor. His passage was blocked by a second staff member whom the Student tripped over, causing the staff member to lose her balance and ultimately break her foot (D-23, p. 587; Tr. 224-225). The police were contacted as a result of this incident (D-23, p. 587).

On September 29, 2014, the Student displayed disruptive behaviors during math class, was off task, not following directions, and being disrespectful to staff while encouraging classmates to join him in “flipping the room.” The Student’s behavior continued to escalate and he ultimately punched a teacher in the stomach (D-23, p. 590; Tr. 227). On October 27, 2014, the Student left the school grounds without authorization (Tr. 228).

As the record clearly reflects, the Student’s behavioral difficulties at his private therapeutic day school placement, from Spring 2014 to the date of this hearing, have resulted in property damage, physical and verbal aggression toward staff and peers, and ultimately to physical injury to several staff members.

District Director of Transition Services and Private Placements, [REDACTED]’s credible testimony reflects her opinion that it would not be appropriate for this Student to attend a dance or extracurricular activity at the main high school because “he is very volatile. I think that the lack of supervision and the intensity of activity in those types of situations could be very provoking, and it will be difficult for [the Student] to self-regulate and restrain from some of the external stimuli that could set him off” (Tr. 292). Due to some of his reactions to his peers it would be an unsafe environment for the Student and others (Tr. 317). She also testified that she did not believe that it would be appropriate for this Student to participate in a driver’s education course at the mainstream high school because of his need for a small structured environment with a small one

to one, two to one, three to one instructional intervention and for the high level of behavioral monitoring that he needs even in a small structured environment (Tr. 292). The Student has demonstrated that at times he can use his coping skills but there are significant times when he chooses or is unable to access the coping skills that he has learned, even though he is able to articulate the coping skills that he needs (Tr. 298).

Principal, provided credible corroborating testimony that she believed that the Student's impulsivity, the academic requirements of a driver's education class, and the mainstream high school teacher to student ratio would be very difficult for the Student and that he would not be successful in that environment (Tr. 416). Further, she opined, it would not be appropriate for the Student to attend Homecoming, Prom, or high school dances at the mainstream high school because his impulsivity and unsafe behaviors would put the other students at risk (Tr. 410).

In addition, the Student testified that he does not want to take a driver's education course or attend extracurricular activities at the mainstream high school because he does not know anyone there and is unfamiliar with the teachers and counselor's there (Tr. 129-130). District witness corroborated this testimony (Tr. at 416). District witnesses and both credibly testified that the Student continues to require the structures, supports, and interventions of a therapeutic day program. The Student has demonstrated that he is able to succeed academically with one to one supports in a small environment with less students and he continues to demonstrate that he requires intensive supports to help with self-regulation, managing his behaviors, and acting appropriately (Tr. 288). Based upon the Student's dysregulation, there are times during the day when he is not available for learning because there are times when it takes quite a while for him to self-regulate and calm down enough to provide him with academic or instructional interventions. The Student's current placement at a private therapeutic day school is the least restrictive environment for this

Student because it provides him with the supports that he needs to make academic progress and with continuing work to help him develop coping strategies in order to self-regulate and anger manage (Tr. 290-291).

This Hearing Officer finds the District's witness testimony of [REDACTED] and [REDACTED] to be credible and well supported by the District's documentary evidence. The record is clear. The Student's impulsivity, need for one-to-one teacher to student support, and need for intensive supports to help with self-regulation and behavior management, along with safety concerns for the Student and others, make participation in driver's education and other activities at a mainstream high school inappropriate. Based upon this persuasive evidence, the IEP team correctly determined that it is not appropriate for the Student to participate in a nonacademic, elective driver's education course at the mainstream high school or for the Student to attend extracurricular activities, football and basketball games, school dances, and after school clubs at the mainstream high school. In addition, this Hearing Officer finds that the Guardian's concerns were repeatedly documented and addressed, along with a well thought out discussion of the criteria necessary for reintegration to the mainstream high school at each and every IEP meeting referenced during this due process hearing. The Guardian was present at all of the IEP meetings and was able to meaningfully participate (D-1 through 10).

While the Guardian has adamantly maintained that she believes that the Student can appropriately participate in a nonacademic, elective driver's education course and can appropriately engage in extracurricular activities, school dances, football and basketball games, and after school clubs at the mainstream high school, she has failed to present any evidence to support her position. She testified that the Student's behavior would be different if he were able to participate in these activities (Tr. 257). However, she failed to provide any testimony or

documentary evidence to explain how or why she feels that would be the case. In addition, the District's documentary evidence reflects the Guardian's concerns about the Student's access to a vehicle as it related to his behaviors in November 2012 - behaviors which have escalated since that time and which have further escalated since the Spring of 2014. The Guardian's testimony to the contrary at the due process hearing was neither credible nor persuasive. While the Guardian's apparent hope that the Student's behavior will improve is understandable, without some credible evidentiary basis to support this, her hope alone cannot serve as a basis to grant her request.

The Guardian has argued that she or another family member would be available to accompany the Student to a driver's education course and to extracurricular activities at the mainstream high school, such as football and basketball games and school dances. However, this would be inappropriate. This would present social difficulties for the Student and, as a general matter, parents are not allowed to accompany students to extracurricular activities at the mainstream high school. (Tr. 414). In addition, during the course of the due process hearing, the Guardian, on multiple occasions, became verbally escalated, raised her voice, and ultimately stormed out of the hearing and terminated her participation. [REDACTED] the [REDACTED] Principal, and this Hearing Officer are concerned that this behavior would be duplicated if she were a supervisor of the Student in a mainstream setting (Tr. 417).

This Hearing Officer determines that:

Based upon a preponderance of the evidence, it would be inappropriate for the Student to attend a nonacademic elective course, such as a driver's education course, or extracurricular activities in a mainstream high school environment.

The Guardian's request to allow the Student to do so is denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that all of the Petitioner's requested relief is denied and her complaint is dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request 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.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: November 17, 2014

/s/: Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett, Hearing Officer
[REDACTED]
[REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2015-0068

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on November 17, 2014, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

Sent via Certified U.S. Mail & Electronically via Email:

[REDACTED]

[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
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Wanda Schoneweis
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Dated: November 17, 2014

/s/ Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett, Hearing Officer

[REDACTED]