



decision is issued within ten school days after the conclusion of the expedited hearing. 105 ILCS 5/14-8.02b(k).

### ISSUES AND REQUESTED REMEDIES

The district requested an expedited hearing to move the student to an interim alternative educational setting (IAES) for 45 days. The following issues are raised in the district's complaint: whether maintaining the student in his current educational placement is substantially likely to result in injury to the student or to others; whether the student requires placement in a residential program as an IAES; and, whether the [REDACTED] (JRC) is an available, appropriate IAES residential program for the student. The district requests an Order finding that the student is substantially likely to injure himself or others if he stays in his current high school placement and ordering the district to change the student's placement to the JRC for 45 school days as the student's IAES. The parents request placement at the [REDACTED] School, [REDACTED] ([REDACTED] School).

The parties entered the following stipulations at the start of the hearing: 1) the student is eligible for special education services as a student with autism and an intellectual disability; 2) maintaining the student's current placement is substantially likely to result in injury to the student or to others; 3) the student's current placement at [REDACTED] High School is not appropriate; 4) the [REDACTED] School has officially accepted the student and is willing to allow him to attend the [REDACTED] School; 5) the parents are not contesting the appropriateness of the student's related services, 6) the parties have agreed not to call the related service providers as witnesses in the expedited hearing; 7) Dr. [REDACTED] qualifies as an expert witness as a doctorate level Board Certified Behavior Analyst; and, 8) the JRC and the [REDACTED] School are ISBE approved facilities. (IHO Record).

### FINDINGS OF FACT

1. The student, who is 18 years old, is eligible for special education and related services as a student with autism and an intellectual disability. (Stipulation 1). He resides within the district with his parents and three younger siblings. The student attended the [REDACTED] (CAA) for six years, until July 2012 when the CAA issued a change of placement request. (JD 1, 668). The mother reported that he "generally did well" at CAA until the school changed location, quickly increased its student population, underwent significant staff turnover, and no longer had a full-time Board Certified Behavior Analyst (BCBA). He had been in at least three other therapeutic day schools prior to attending CAA. (SD 3). The district held an IEP meeting on March 14, 2013 to develop the student's IEP for the high school program. (JD 1).

2. The student is non-verbal and communicates through gestures, vocalizations, a few signs, visual supports, and an augmentative communication device (ACD). (JD 5). His current ACD at school is an iPod with Proloquo2Go. (JD 330). At home, he uses an iPad for communication. (JD 327). In terms of functional development, the student is not toilet-trained and has difficulty with self-care skills. (JD 214, 215, 225). He has sensory integration problems, which result in difficulties in washing and bathing, sensitivity to textures in clothing, inability to tolerate messy foods, and sensitivity to over-stimulating visual and auditory environments. (JD 330). He also has difficulty tolerating changes in schedules, preferred staff, preferred items and activities, and interruptions in the classroom. (*Id.*). He receives speech/ language therapy and occupational therapy as part of his educational program. (JD 25, 139, 276, 357). His IEP includes supplementary aids and services: pacing and timing, environment/setting, self-management, materials, social interaction support, motivation-reinforcement, and presentation. (JD 25, 138, 355). Additionally, all staff who work with the student are trained in Safety Care, and the classroom teacher provides training on academic programming and data collection to the 1:1 staff who work with him. (JD 34).

3. In addition to autism and an intellectual disability, the student also has a seizure disorder. He has complex partial seizures and takes three medications for the seizures. During a seizure, he appears as staring and non-responsive. After a seizure, he is confused or agitated. The seizures, which are caused by a brain disease, do not cause his difficult behaviors. His behavioral problems are related to his non-verbal status and low cognitive functioning, which prevent him from verbally communicating his upset states. He expresses himself through his behaviors. He is a complex patient, and continuity of care is important. (Testimony, Dr. ██████████)

4. In addition to seizures, the student has on-going medical needs. He had dental surgery in December 2014 for a broken cusp on a back molar and a severe infection in his front tooth. The infection went into his jaw, and he had eight teeth extracted. He missed a week of school due to the dental surgery. He also had a fractured scapula that was not immediately noticed or diagnosed because he did not show any signs of pain. He missed a week of school related for this injury. In March 2015, he was seen by his pediatrician for severe constipation, which started after his dental surgery. He has a bowel movement every two to three weeks with the assistance of medical intervention. All of these medical problems have caused him significant pain, but he does not have the ability to communicate when he is in pain. (Testimony, mother).

5. When the student began at ██████████ High School, the district created a special classroom for him for the first eight weeks of school. (JD 31). This room is known as the blue room because of the blue pads on the walls and floor. Three staff were assigned to the classroom: a certified teacher, an aide, and a Board

Certified Behavior Analyst (BCBA). (*Id.*). Staff working with the student received training in Safety Care, which is a crisis management system. The BCBA developed the student's initial functional behavioral analysis and Behavior Intervention Plan (BIP) during this initial period. (*Id.*). The BCBA was gradually faded out of the room; however, the 2:1 staff ratio remained in place. (JD 31, 40).

6. The April 26, 2013 BIP identifies the following target behaviors: 1) physical aggression, which includes actual or attempted biting, hitting, head-butting, hair pulling, kicking, and scratching, pinching, or throwing an object at someone with enough force to leave a mark, break the skin, or cause internal injury; 2) posturing, which includes threatening and intimidating body language, e.g., holding up a fist, charging at someone, holding an item as if to throw it at someone; 3) elopement, actual or attempted; 4) property destruction, actual or attempted; 5) self-injurious behaviors (SIB) such as slapping, biting, hitting body parts off structures to cause marks, bruises, break the skin, or internal injuries; and, climbing on furniture that is not meant to be climbed or stood upon. (JD 44). An episode of target behavior is any combination of two or more target behaviors or one target behavior that lasts more than 5 seconds. (*Id.*). Signal behaviors, which occur before a challenging behavior, include whining, moaning, fist clenching, and eye rubbing. (JD 46). The student's challenging behaviors are triggered by being asked to wait or being told that something he wants is unavailable, unexpected changes in routine, unclear expectations, or termination of a preferred activity. (*Id.*). These behaviors also occur when he is given a non-preferred demand such as toileting or grooming or when he sees the bus at the door before he has completed his departure routine. (*Id.*).

7. Strategies to prevent these target behaviors include: preferred types of attention provided at least once every five minutes on a non-contingent basis throughout the day; access to preferred items and activities at least once/minute during transition and unstructured times on a non-contingent basis throughout the day; a flexible visual schedule that includes preferred activities following non-preferred activities; access to preferred items and activities throughout the day upon request and/or in accordance with the daily schedule; and, at least two preference checks per day to ensure effective re-enforcers are given contingent on desired behavior. (*Id.*). The classroom provides a safe environment: no large, heavy, or otherwise dangerous items in the room or outside of the staff's immediate control; no hot beverages at any time, only flexible plastic bottles; only necessary furniture and, clutter free and organized. (*Id.*, at 47). The student's chair has arms, and staff chairs have no arms. (JD 47).

8. District staff are trained to provide no attention - including eye contact, verbal reprimands, and gestures - to all target behaviors and must not provide any preferred items or activities during or immediately after a challenging behavior. (JD 48). The BIP describes specific procedures staff are to implement in

response to the student's behaviors, depending on whether the behaviors are signal behaviors, combinations of signal behaviors, or low intensity physical aggression or property destruction. (*Id.*).

9. Behavioral data was collected during the initial eight-week period and used to develop a baseline of the frequency of the student's target behaviors. The April 2013 baseline shows the following frequencies: physical aggression 0-175 instances/school day (mean 76); posturing 0-43 instances/school day (mean 12); elopement 0-16 instances/school day (mean 4); property destruction 0-162 instances/school day (mean 51); SIB 0-15 instances/ school day (mean 3); climbing furniture 0-16 instances/school day (mean 2); and, episodes 0-14/school day (mean 6.9); and 1-38 minutes/episode (mean 4). (JD 44). The BIP objective is to decrease the frequency of target behaviors to 0/day for 30 consecutive days by May 2014. (JD 51).

10. The student was moved to the life skills classroom in August 2013. The students in the life skills classroom use a functional curriculum. The classroom provided the student with social contact with peers in the classroom and the larger school environment. (JD 106). He also had contact with typically developing peers and school staff. (*Id.*). Required supplementary aids and services include pacing and timing, scheduling, self-management, social interaction support, motivation/reinforcement, presentation, and environment/ setting, sensory training, functional communication training. (JD 138; 252, 253). By March 26, 2014, he had made "more than sufficient progress towards mastering his goals and benchmarks" despite his challenging behaviors. (JD 97). His expressive communication and receptive language skills increased through using his AC device and basic sign language. (JD 148).

11. Between April 2013 and February/March 2014, the student's target behaviors decreased for four of the six behaviors: physical aggression decreased from 0-175 instances/school day (mean 76) to 0-80 instances/school day (mean 26); posturing decreased from 0-43 instances/school day (mean 12) to 0-16 instances/school day (mean 8); elopement decreased from 0-16 instances/school day (mean 4) to 0-4 instances/school day (mean .7); and, climbing furniture decreased from 0-16 instances/school day to 0-6 instances/school day (mean .9). (JD 150). However, property destruction increased from 0-162 instances/school day to 0-255 instances/school day (mean 52), and SIB increased from 0-15 instances/school day (mean 3) to 0-86 instances/school day (mean 17). (*Id.*). Although the number of episodes per school day decreased from 0-14 to 0-7, the minutes/episode increased from 1-38 minutes/episode to 1-40 minutes/episode. (*Id.*). No change was made to the intervention plan to address the increases in SIB and property destruction. (JD 49,154).

12. The teacher's daily notes home to the parents provide details about events that trigger the student's behaviors and his functioning throughout the day. Several instances of head-banging and/or episodes were triggered when something he wanted or expected did not happen. (JD 435-437, 445). He usually was able to recover and go on to have a successful day. (JD 435, 436). In one instance, he was able to accept the teacher's restriction the following day and had no episodes. (JD 437). There were two fire drills and one false fire alarm on August 26<sup>th</sup>, and the teacher reported that the student did "great" and showed "only a tiny bit of physical aggression." (JD 440). Target behaviors and/or an episode also occurred in relation to external events such as a new student joining the class, his teacher being absent, his AC device being broken, classroom equipment not working properly, and not being able to do the activity he wanted. (JD 442, 443, 446, 447, 449, 452, 455, 460, 462, 469-471, 474, 478, 486). On days that he did have an episode or challenging behaviors, he frequently was able to recover. (JD 463, 464, 468, 473). Several days were reported as "amazing" or "another great day." (JD 477, 480, 481, 484).

13. The student was suspended from school for ten days on November 6, 2014 for physical assault of a staff member, destruction of school property, and to ensure the safety of the classroom. (PD 60; JD 249, 250). The incident, which occurred in the classroom during a choice time, began with the student posturing at a staff member. (PD 61). The student then sat down for a brief interval and then got up and stood on a dresser in the room. (*Id.*) The staff used planned ignoring and stood nearby. (*Id.*) The student hung by his hands from the pipes in the ceiling and pulled an electrical wire from the ceiling, which he then wrapped around his body. (*Id.*) Next, he stood on one leg and hung from the pipes. (*Id.*) The three staff in the room used planned ignoring throughout these behaviors. (*Id.*) When one staff left the room, another unwrapped the wire from the student's leg. (*Id.*) The student then wrapped the cord around his neck, and the staff member removed the wire and told the student to sit down. (*Id.*) The other students were removed from the classroom. (*Id.*) The student got up from his seat and grabbed the wire, and the staff continued planned ignoring. (*Id.*) The student wrapped the wire around his neck, and two staff approached him and one tried to remove the wire from his neck. (*Id.*) When the student grabbed the staff person's jacket, she removed her jacket. (*Id.*) The student then grabbed her hair and tried to bite and head-butt her. (*Id.*) The other staff person put the student in a one-person hold. (*Id.*) The student again tried to head-butt and bite the staff person whose hair he was holding. (*Id.*) The student then head-butted the staff person, and another staff held the student while a third staff unwrapped the wire from the student's neck. (*Id.*) The student sat down briefly and then got up, stood on a table, and punched the lights. (PD 62). Staff were able to get the student down from the table, de-escalate him, and take him to the bathroom. (*Id.*) The student worked with his aide for the rest of the afternoon. (*Id.*)

14. The IEP team met on November 18, 2014. (JD 246). The IEP reports the student's strengths as motivation to participate in social activities with peers in the classroom and to assist in the building with maintenance tasks such as painting walls, delivering boxes to the office, and loading carts with materials. (JD 248). He continued to master IEP benchmarks and was more motivated to participate in personal care tasks without engaging in challenging behavior. (*Id.*). The BIP reports an increase in all target behaviors from July to October 2014: physical aggression increased to 0-144 instances/school day (mean 32); posturing increased to 0-30 instances/school day (mean 7); elopement increased to 0-17 instances/school day (mean 2.8); property destruction increased to 0-321/school day (mean 89); SIB increased to 0-146 instances/school day (mean 35); and, climbing furniture increased to 0-9 instances/school day (mean 2). (JD 284). Also, the frequency and length of episodes increased to 0-10/ school day (mean 7.8) and time of episodes increased to 1-43 minutes/episode (mean 6.14 min/episode). (*Id.*). Although none of these increases raised the number of behaviors or episodes to the April 2013 baseline, the length of episodes was higher than in the April baseline. (*Id.*).

15. The student's behaviors have many functions, and the function changes within a behavioral incident. (JD 309; PD 1, 2). Staff have difficulty providing a controlled environment in the life skills classroom in a general education school. (JD 309). Students move in and out of the classroom, and those that are more verbal provide attention to the student during his behavioral episodes, which could be reinforcing. (*Id.*). Staff changes also impact the student's behavior, and there is turnover in his aides because of the difficulty of the job. (JD 310). The student tends to target the newest staff member. (*Id.*). Data is gathered on a daily basis and reviewed by the BCBA and discussed with staff on a weekly basis. (JD 311). The district recommended that the student be placed back in the "blue room" when he returned from his suspension. (JD 309).

16. The district's behavioral program uses a work/break schedule, which requires the student to work on an activity for a required time and then have a break time, during which he does a leisure activity. (PD 2). If he completes the activity without engaging in challenging behavior, he is provided a choice of preferred activities. (*Id.*). However, if he engages in challenging behavior during work time, one of the reinforcement options is removed. (*Id.*).

17. Shortly after the student returned to school in late November, the teacher who had been with him since April 2013 left the district. (JD 488). The student's challenging behaviors and episodes increased significantly after the teacher's departure. On December 5<sup>th</sup>, the student had one three-minute episode and exhibited SIB and property destruction. (JD 490). Over the next three school days, he had between five and 10 episodes/day. (JD 491-493). Challenging behaviors, but no recorded episodes, occurred over the following week and

included property destruction, SIB, and physical aggression. (JD 494-499). Beginning on January 16, 2015, daily episodes occurred until February 6<sup>th</sup>, which is noted as a "perfect day." (JD 500-513). The number of episodes/day ranged from three to 10. (*Id.*). On one day, he was able to recover from three episodes and have an "awesome" day. (JD 505). Beginning on February 10<sup>th</sup>, almost daily episodes occurred again, although the number/day decreased. (JD 514-538). The student had no episodes on February 19, 20, 26, and March 11, 12, 17, and 19. (JD 520-538). The notes do not report what triggered the behaviors or episodes.

18. The student had multiple seizures/day on most days from December 5<sup>th</sup> through March 19<sup>th</sup>. (JD 490-538). The seizures ranged in length from five seconds to 25 minutes. (*Id.*). On January 13<sup>th</sup>, he had a 90 second seizure during which his head was shaking, his eyes were rolling, and he was not blinking. (JD 497). Two days later, on January 15<sup>th</sup>, he "laid on mat for 25 minutes while seizures were occurring." (JD 499). The February 16<sup>th</sup> note reports that during a seizure, the student was unresponsive and not blinking. (JD 518).

19. Property destruction has included pulling down ceiling tiles, damaging drywall, breaking a thermostat, (SD 60, 67, 71, 73, 75, 88, 91, 94, 99, 103, 106, 109, 112).

20. The district, with parents' consent, sent referral packets to several residential schools and also inquired about in-state day school placements. (SD 117, 282-290; PD 515, 516). The [REDACTED] (JRC), located in [REDACTED] is the only residential school that had an opening and would accept the student. The JRC is an educational and treatment program for students who have severe behavior disorders, including students with autism and intellectual disabilities. (SD 153, 154). It does not decline admission or expel a student because the student's behaviors are too difficult to manage. (SD 153). The residential and school components are highly integrated to provide a consistent behavioral education and treatment program. (*Id.*). The behavior modification program includes 24-hour collection of data, which is available to staff in daily, weekly, monthly, and yearly charts. (SD 158). Its behavioral management system is based on a system of individual behavior contracts and rewards. (SD 157-161). The education program is also based on behavior management techniques. (SD 162-164).

21. All JRC staff receive 30 hours of in-service training each year, which includes Safety Care training, and training in first aid and emergency restraint. The clinical staff includes five BCBAs, three of whom have doctoral degrees. The staff meet weekly to review charts and look at "real time data" to determine if students are responding to treatment. The JRC also has 18 to 20 nurses available around the clock for students' medical needs. Two physicians are available two days/week

on a regular basis, and specialists are available through Boston Children's Hospital. (Testimony, Mr. [REDACTED]).

22. The JRC has both educational and residential programs. Students who reside at JRC usually have been expelled or rejected from other residential schools, have had failed placements in therapeutic schools or psychiatric hospitals, or come from correctional facilities. A student coming from a public school is very rare. (Testimony, Mr. [REDACTED]).

23. When a student enters the JRC, the student has a "welcome week," during which the student adjusts to the program and the reward system. During the week, the student may choose any reward and spend as much time as he wants with the rewards. The behavior recording system is put in place upon a student's arrival at JRC. (Testimony, Mr. [REDACTED]).

24. The JRC educational classrooms are limited to ten students/class, and the age range within a classroom is no more than three years. Students with developmental disabilities and emotional disorders are educated in separate classrooms. If a child needs to be removed from the classroom because of difficult behavior, the child is removed to an alternative learning room in which access to educational material is provided so that the child can continue working. Students receive related services as required by their IEPs. The JRC does have speech language pathologists and occupational therapists. The program also has an intensive toilet training program, in which a student is placed on a toileting schedule that has a set time on/off the toilet. Currently the JRC has about 140 school age students, half of whom are non-verbal. About 8 to 10 students require the 2:1 staffing ration that is required in this student's IEP. On average, it takes up to 90 days for a student to adjust to the JRC setting. (Testimony, Mr. [REDACTED]).

25. The JRC has 40 residential homes. The ISBE has approved six specific residential homes for Illinois' students, three of which are for students with developmental disabilities. The homes have over-night staffing. Each residence has awake overnight staff who do bed checks and monitor the video and alarm systems. The extensive video system allows monitoring supervisors to have immediate data so they can provide specific instruction to staff in real time. The JRC also has a crisis intervention staff and trains all staff in crisis prevention skills. Protective gear is available if staff need it, based on a student's treatment plan. (Testimony, Mr. [REDACTED]).

26. In some cases where a student demonstrates difficult and dangerous behavior, the JRC uses a graduated electronic decelerator (GED), which is an aversive conditioning device. The GED, which is attached to a student's torso, arm, or leg by an elastic band, delivers a two second shock when the student

displays a targeted dangerous behavior. (Testimony, Mr. [REDACTED]). The JRC is the only entity in the U.S. that currently uses the GED for aversive conditioning. (U.S. Dept. of Health and Human Services, FDA, Neurological Devices Panel, April 24, 2014 PD 97). The ISBE does not permit the GED to be used on Illinois students. (Testimony, Mr. [REDACTED]).

27. Students are transported to the JRC in a variety of ways, including a transport van. The decision on how to transport a child is based on the individual child's needs. The program has never used general anesthesia to transport a student. The program has an open-door policy, and visitation is not restricted. Parents and students may communicate by SKYPE, and communication is not restricted. Parents also have access to behavioral data through a secure website. A student's treatment team maintains regular contact with parents through weekly telephone conferences. (Testimony, Mr. [REDACTED]).

28. The average length of stay at JRC is 23 months, although some of the residents in the respite program stay for a shorter time period. The JRC is willing to accept this student for a 45-day placement, although it has never transitioned a student in a 45-day IAES placement. (Testimony, Mr. [REDACTED]).

29. Students at JRC are assigned to classrooms based on age and intensity of behavior. The JRC educational program uses Precision Teaching, which is a methodology that targets behavior and includes academic and functional goals. Instruction is computer-based, and each student has a computer. Behavioral plans and contracts are utilized across all settings and are continuously updated. Behavioral contracts vary in length, from less than a day to multi-day. (SD 295, 296).

30. The [REDACTED] School is a day treatment school located in [REDACTED] [REDACTED] (PD 68). The school's BCBA has a master's degree in special education, a teaching certificate with an endorsement in special education, and taught at the school for five and one-half years. She received her BCBA in 2013. She conducts all the FBAs and creates all the BIPS for the school's students. She also provides in-home support to parents on how to respond to behaviors and create clear expectations and consequences, so that there is carry-over between school and home. She observed the student in his high school classroom for two and one-half hours and met with the district's BCBA to discuss the student. (Testimony, Ms. [REDACTED]).

31. The [REDACTED] School utilizes a behavioral approach that includes applied behavioral analysis, discrete trial training, FBAs and BIPs, and social communication instruction. The school has prevocational and transitional programs for students between 14 and 21 years of age. (PD 66 - 72).

32. The majority of students at the ██████ School have a diagnosis of autism, and some students have intellectual disabilities. The school can meet the 2:1 staffing requirement in the student's IEP. The classroom in which this student would be placed has six to seven centers, which are located in the middle of the classroom. The centers use an on-line curriculum, Unique Learning. The students rotate between the centers, and there is an aide at each center. Each center time lasts for 20 to 30 minutes and is followed by a five-minute break time, during which students engage in different reinforcing activities or a movement break. Each student has an individual schedule to meet his/her needs. There are seven students in the class, and each student has a 1:1 aide. Students are grouped by age and ability. The classroom teacher has a substitute certificate and is working on her BCBA. (Testimony, Ms. ██████).

33. In addition to classrooms, there is a sensory room, a transition room, a gym, and a de-escalation room. The sensory room has sensory equipment - balls, a trampoline, a punching bag, sensory toys - and can be used as center time or during breaks. The school has a full-time social worker and an occupational therapist and a speech-language pathologist, each of whom work 30 hours/week. The speech/language pathologist is trained in the AC device that the student uses. Related services are provided on a push-in model. (Testimony, Ms. ██████).

34. Behavioral data is collected throughout the day, and each student has a data book to track the frequency, location, and intensity of the student's behaviors. The BCBA reviews the books daily and weekly and, for a new student, analyzes the data on a daily basis so that the BIP can be modified as necessary. Videos of student/staff interactions are also taken several times a week and reviewed with staff for training purposes. The BCBA would develop a program of non-contingent reinforcement for the student, which would start off with highly preferred reinforcers provided every minute. Demands would be built in slowly as the data supports increasing expectations. (Testimony, Ms. ██████).

35. All ██████ School staff are trained in Crisis Prevention Intervention (CPI) upon hire and attend an annual CPI refresher course. The school has an eight member crisis team that provides assistance when severe aggressive behavior occurs. Response blocking may be used if a student displays challenging behavior. Physical holds are used if a student is causing imminent danger to himself or others. Students can be physically transported to the de-escalation room if necessary. (Testimony, Ms. Moore).

36. Dr. ██████ conducted an independent educational evaluation of the student that included: observing the student in his high school program and at home; reviewing the student's IEPs and behavioral data from the district; interviewing the student's mother and district staff who work with the student;

visiting the ██████ School classroom that is available for placement and meeting with the school's principal and BCBA; and, speaking with a representative of JRC. (PD 1,10,14). Dr. ██████, who is a BCBA-D, is an assistant professor and research fellow in the Autism and Developmental Disabilities Program at the University of Texas at Austin. (PD 14, 15). The parties have stipulated that his credentials qualify him as an expert witness. (PD 14-34).

37. Based on Dr. ██████'s review of the student's IEP and conversations with district staff, staff are not clear about the specific antecedents of the student's challenging behavior or the consequences that maintain the behavior. (PD 1, 2). The district's behavioral program uses a work/break schedule, which requires the student to work on an activity for a required time and then have a break time, during which he does a leisure activity. (PD 2). If he completes the activity without engaging in challenging behavior, he is provided a choice of preferred activities. (*Id.*). However, if he engages in challenging behavior during work time, one of the reinforcement options is removed. (*Id.*). The student had two episodes during Dr. ██████'s observation. In the morning, the student had a 35-minute episode of challenging behavior, which included 43 instances of SIB and 22 instances of aggression/attempts at aggression. (PD 3). He had a 30-minute episode in the afternoon, which included 124 instances of SIB. (*Id.*). Other than these two instances, the student was able to succeed in the work/break schedule and showed "excellent communication skills" with his ACD. (*Id.*).

38. At home, the student is provided unrestricted access to preferred leisure activities at home as well as "regular, high quality attention." (PD 3.). He did not exhibit any challenging behaviors during Dr. ██████'s home observation. (*Id.*). When the student does exhibit destructive or self-injuring behavior at home, the parents manage it through de-escalation techniques. (PD 51, 52).

39. The mother is available to help out at the school when necessary, and the school has called her to help settle the student when he is very upset. (PD 38, 39).

40. The current work/break schedule does not address the student's behavioral needs because the intervals between reinforcement are too long for this student. Additionally, the current behavioral strategy of planned ignoring reinforces the student's challenging behaviors because he escapes work through his behaviors. (Testimony, Dr. ██████, PD 5).

41. Because the current behavioral management strategy is not effectively addressing the student's challenging behaviors, a new behavioral strategy is necessary. Non-contingent response/enriched environment (NCR) is a short-term, empirically based transitional strategy that decreases as much as possible any motivation for challenging behaviors. In the NCR approach, a student is

provided continuous unrestricted access to high-preferred activities and to high-quality attention. This free access to preferred activities breaks the connection between challenging behaviors and preferred outcomes. (Testimony, Dr. [REDACTED], PD 4-7).

42. When the student's challenging behaviors are near zero, work and delays in reinforcement are re-introduced. (PD 5-7).

43. If the student does exhibit challenging behavior, neutral blocking should be used and attention withheld until the behavior ceases for about 10 seconds. (*Id.*). The student's aggressive and destructive behaviors must be blocked to ensure safety, and response blocking must be delivered in a neutral manner so that it does not function as attention. (PD 7). When the student exhibits dangerous behaviors such as occurred recently, it is important to intervene early to avoid potential reinforcement. (PD 8). Staff involved in the response blocking should use protective equipment such as padded gloves and arm pads. (*Id.*). (Testimony Dr. [REDACTED], PD 7, 8).

44. Planned ignoring, which is based on not reinforcing a student's behavior, is not an effective behavioral technique for this student because of the potential risk in allowing the behaviors to continue. (Testimony Dr. [REDACTED], PD 7).

45. There are potential negative effects of removing the student from his home to JRC for a 45-day IAES placement. The student is successful at home and positively motivated by his family. Family relationships are especially important to students with severe disabilities because of the difficulty they have maintaining relationships. Currently, the home setting is the "only environment" in which the student experiences "sustained success." (PD 9).

46. The student has never been separated from his family for a significant amount of time. He is very attached to his parents and siblings. He does not have the intellectual and verbal abilities to use and understand communication via SKYPE, and SKYPE would not help him maintain a connection with his family. (Testimony, mother).

47. Additionally, research shows that medical/biological issues that cause discomfort, such as the student's dental surgery and constipation, "can have highly significant effects of the occurrences of challenging behavior." (PD 8). Successful treatment of the student's physical problems that are causing him pain should have a positive effect on his behavior. (PD 9). The student's special needs require continuity of medical care, and he has on-going appointments related to his recent dental surgery and his constipation. (Testimony, mother).

48. The mother is concerned that the JRC uses the GED on some students and believes that the student would be upset if he witnessed a student receiving a shock. She also is concerned that people who would use an aversive device would be caretakers for her son. (Testimony, mother; see also PD 74-510).

### CONCLUSIONS OF LAW

A district that believes that maintaining a student's current placement is substantially likely to result in injury to the student or others may request a hearing to remove the student to an IAES for not more than 45 school days. 20 U.S.C. §1415(k)(3)(A). Illinois law requires the hearing officer to consider the following factors in determining whether the proposed IAES is appropriate: whether the district produced substantial evidence that maintaining the student's current placement is substantially likely to result in injury to the student or others; whether the student's current placement is appropriate; whether the district made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and, whether the proposed IAES will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring. 23 Ill. Adm. Code §226.655(b).

I. Whether maintaining the student in his current placement at ██████████ High School is substantially likely to result in injury to the student or others:

The parties have stipulated that maintaining the student in his current placement at ██████████ High School is substantially likely to result in injury to the student or to others. They have also stipulated that the current placement is not appropriate. Therefore, this issue is resolved by stipulation. (Stipulations 1, 2).

II. Whether the student requires placement in a residential program as an interim alternative educational setting (IAES):

The district asserts that the student's current placement in the blue room is, on the continuum of placements, a more restrictive placement than a therapeutic day school because the student currently has no contact in school with peers, either with or without disabilities. The district also argues that it has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services and cites *Light v. Parkway C-2 School District*, 41 F. 3d 1223 (8<sup>th</sup> Cir. 1995) (*Light*) in support of its position. In *Light*, the court found that the school had made reasonable accommodations by providing special training to staff and 2:1 staffing, hiring a consultant to assist in transitioning the student to the program, providing staff support for after-school activities, and music therapy.

The evidence shows that the district has worked hard to provide a special program to meet this student's needs. Initially the district provided an individual classroom for eight weeks within the high school so that staff could get to know the student and assess his behavioral needs. (¶ 5). The classroom had 2:1 support for the student, and the BCBA was also in the classroom fulltime. (*Id.*). After behavioral data was collected and a BIP developed, the student was transitioned to the life skills classroom. (¶ 10). The 2:1 staffing was maintained, and the BCBA was faded out, though still available and in the classroom less often. The district also trained the staff in crisis management techniques. (¶ 5). The student's IEPs include supplementary aids and services to address to the student's educational and behavioral needs. (¶ 10). And, district staff worked to repair physical damage the student caused to the classroom. (¶ 19).

However, unlike the parents in *Light*, who did not propose alternative measures that the district should have attempted, the parents in this case argue that the district should have revised the student's BIP and behavioral strategies when it was clear that he was not making behavioral progress. There is merit to this argument in light of the IDEA's requirement that an IEP must be revised to address lack of expected progress. 20 U.S.C. §1414(d)(4)(A)(ii)(I). When the baseline for targeted behaviors was revised on March 25, 2014, the district knew that the instances of property destruction and SIB had increased and that both the number and length of episodes/day had increased since April 2013. (¶ 11). The same is true for the November 11, 2014 baseline, which showed increases in all target behaviors - and, though the episodes/day decreased, the length of episodes exceeded that in the April 2013 BIP. (¶ 14). In the most recent incident for which the student was suspended, the student's behavior escalated as the district implemented the planned ignoring strategy. These increases in serious behaviors coupled with the recent ineffectiveness of the planned ignoring strategy should have alerted the district to the necessity of revising the behavioral management strategies in the BIP to address the student's lack of progress. (¶¶ 41-44).

The evidence also shows that the current work/break schedule is not sufficiently reinforcing for this student's behaviors. (¶¶ 40, 41). The parents propose an alternative behavioral strategy, NCR, to address the student's behavioral needs. (¶¶ 41-43). Based on evidence, the hearing officer finds that the district did not make reasonable efforts to minimize the risk of harm in the student's current placement.

The evidence also shows that the student experiences success in his home setting, with parents and siblings. (¶¶ 38, 39, 45, 46). For this seriously disabled student, these family relationships are extremely important. (¶¶ 37, 44, 45.) The student's limited ability to communicate, coupled with his intellectual disability, would make it extremely difficult for him to maintain meaningful

communication with his family during a 45 day placement at the JRC and to understand why he was not living with them. (¶¶ 3, 46). Additionally, his family would be available to support him in the on-going medical care he needs for his dental surgeries, bowel distress, and on-going neurological problems, the resolution of which might have a positive impact on the student's behavior. (¶¶ 4, 47).

The evidence also shows that a less restrictive placement, the ██████████ School, has accepted the student for an interim 45-day placement. The ██████████ School can implement the student's IEP, including the 2:1 staffing and the behavior management strategy recommended by Dr. ██████████. Based on this evidence, the undersigned finds that the student does not require placement in a residential school for a 45-day IAES placement.

III. Whether the ██████████ (JRC) ██████████ is an available IAES residential program at which the student can be placed for 45 school days:

Although the JRC has accepted the student for a 45 day IAES placement, the evidence shows that it usually takes a student at least 90 days to transition into the JRC program. (¶ 28). The JRC is a long-term residential setting and has not ever provided a 45-day placement for a student from Illinois. (*Id.*). Given the severity of this student's disabilities and the impact of being totally separated from his family for the first time in his life, it is highly unlikely that he could successfully transition to the JRC within 45 days.

Moreover, the evidence shows that a less restrictive placement, the ██████████ School, has accepted the student for an interim 45-day placement. (Stipulation 4). The ██████████ School can implement the student's IEP, including the 2:1 staffing and the behavior management strategy recommended by Dr. ██████████. (¶¶ 31-38). Based on this evidence, the undersigned finds that the student does not require placement in a residential school for a 45-day IAES placement and instead shall be placed at the ██████████ School in a 45-day IAES placement.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby ordered that the district shall place the student at the ██████████ School of ██████████ in a 45-day interim alternative educational setting. The district shall convene an IEP meeting within five school days of receipt of this Order to amend the student's IEP to reflect this 45-day placement and coordinate a starting date for the placement at the ██████████ School.

In accordance with 105 ILCS §5/14-8.02a(h), within 30 school days of receipt of this Order, the district shall submit proof of compliance with this Order to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street  
Springfield, Illinois 62777-0001

**REQUEST FOR CLARIFICATION**

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned-hearing officer within five (5) 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(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such 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 APPEAL**

This is the final administrative decision in this matter. 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 105 ILCS 5/14-8.02a(i), that civil action shall be brought in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within 120 days from the date that this decision is mailed to the parties.

ISSUED: April 18, 2015

  
Mary Schwartz  
Impartial Hearing Officer  


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Final Decision and Order was sent by certified mail prepaid and directed the individuals listed below:

[REDACTED]

Mr. Andrew Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 6277-0001

before 6:00 p.m. on , April 18, 2015.

[REDACTED]