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SPECIAL EDUCATION
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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

STUDENT¹,

Student,

Case No: 2015-0495

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

The Student is a 7-year-old, male who would be in the 1st grade but is currently home schooled. He qualifies for special education services under the disability category of emotional disability (ED) pursuant to an eligibility and IEP meeting on March 3, 2015. The Student was found to have educational needs in the areas of: coping strategies, social interaction, and attention. The IEP team recommended that special education services be delivered in a separate public school and that a Functional Behavior Analysis be completed in that placement. Parents disagreed with the placement recommendation but agreed with the March 3rd IEP in all other

¹ Personal identification information is provided in Appendix A.

respects. Prior to being home schooled, the Student attended a District school where he was in the general education classroom.

The Parents filed the Due Process Complaint Notice (DPCN) on June 5, 2015. The Parties participated in mediation prior to the Parents' filing of the DPCN. As part of the agreement to mediate, the Parties had agreed that, should the Parents file a DPCN after mediation, the resolution session would be waived. A document reflecting this agreement, signed by both Parties, was provided to this Hearing Officer. Based upon this, the 45-Day timeline for this Hearing Officer to render a decision began to run on June 5, 2015 and the initial 45-Day deadline was July 21, 2015. The Parties jointly requested a continuances of the 45-day deadline on July 1st in order to accommodate scheduling constraints of the Parties and to allow the Due Process Hearing to be scheduled for September 9-11th. This Hearing Officer granted the continuance request pursuant to Order entered on July 3rd.

A prehearing conference was held on August 13, 2015. At the conclusion of the prehearing conference, Parents requested time to file an Amended Due Process Complaint Notice. On August 19, 2015, this Hearing Officer received the Parents Amended Due Process Complaint Notice. The District was allowed an opportunity to respond and timely filed its response on August 24th. A status conference call was held on August 26th to discuss the Amended DPCN, the District's response, and the implications for this Hearing Officer's 45-Day timeline. After that conference, the Amended DPCN was accepted as of August 19, 2015. The 45-Day timeline for this Hearing Officer to render a decision commenced on September 19, 2015 and the new decision due date was reset to November 2, 2015. At the time of the August 26th status conference, the Parties agreed to the following hearing dates: December 7, 8, 11, and 14,

2015. While the hearing dates set are outside of the 45-day timeline, the Parties requested the opportunity to participate in resolution or mediation and, if not successful, seek a continuance.

A status conference was held on September 21, 2015, to discuss the status of the resolution meeting. The Parties advised that they had been unable to resolve any of the outstanding issues. At that time, the Parties jointly requested a continuance of the 45-Day deadline due to scheduling constraints of the Parties and to accommodate the hearing dates previously set. This Hearing Officer granted the continuance request for good cause shown and the 45-Day decision due date was extended to December 24, 2015 pursuant to Order entered September 25, 2015.

The Parents opted for a closed hearing. The Due Process Hearing was held on December 7, 8, 11, and 14, 2015. [REDACTED] of [REDACTED] represented the District. [REDACTED] was the District Representative. The Parents were unrepresented by counsel. The parties presented the following Joint Witnesses: [REDACTED] - [REDACTED] Preschool Teacher; [REDACTED] - [REDACTED] Kindergarten Classroom Teacher; [REDACTED] - [REDACTED] Principal; [REDACTED] - [REDACTED] Social Worker; [REDACTED] - [REDACTED] Paraprofessional; [REDACTED] - [REDACTED] Assistant Principal; [REDACTED] - [REDACTED] Dr. [REDACTED] - [REDACTED] School District Superintendent; [REDACTED] - [REDACTED] School Psychologist; [REDACTED] - [REDACTED] Special Education Teacher; [REDACTED] - [REDACTED] Director of Special Education District; [REDACTED] Student's Mother; Student's Father. The Parents' presented the following witness: [REDACTED] - [REDACTED] Sunday School Principal. The parties presented the following Joint Exhibits: JE A - J, which were introduced into evidence. The District presented the following Exhibits: District 1 - 5, which were introduced into evidence. The Parents presented the following Exhibits: PE 1, 2 & 4, which were

introduced into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-36. The parties presented an Agreed Statement of Facts and Timeline of Events entered as Joint Exhibit J. Motions for Continuance were granted on the following dates: July 3, 2015 and September 25, 2015. Both parties submitted oral, closing statements followed by a written outline of same and any case law relied upon.

ISSUES

The issues raised by the Parents, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

(a) Whether the general education classroom is the least restrictive environment in which to implement the agreed upon IEP dated March 3, 2015 and to provide the Student with FAPE.

The Parents request that this Hearing Officer determine that a general education classroom at [REDACTED] in [REDACTED] SD [REDACTED] is the least restrictive environment in which to implement the March 3, 2015 IEP and provide the Student with FAPE. District maintains that a separate public school is the least restrictive environment in which to implement the March 3, 2015 IEP and provide the Student with FAPE.

The Parents request the following relief from this Hearing Officer:

- (1) Order the District to place the Student in a general education classroom at [REDACTED] in [REDACTED] SD [REDACTED], in order to implement the March 3, 2015 IEP;
- (2) Order the District to perform an FBA while the Student is enrolled in a general education classroom at [REDACTED] in [REDACTED] SD [REDACTED].

The Parents request that an FBA be completed. District has agreed to perform and implement an FBA in the Student's placement to be determined by this Hearing Officer.

(b) Whether the District complied with its child find obligation pursuant to 34 C.F.R. §300.111 and 23 Ill. Admin. Code §226.100.

The Parents request that this Hearing Officer determine that the District failed to comply with its child find obligation. The District maintains that it complied with its child find obligation at all times relevant to these proceedings.

The Parents request that this Hearing Officer award compensatory education in the form of tutoring for 30 to 60 minutes per day for a period sufficient to compensate the Student for the time he was denied FAPE.

(c) Whether the Student's kindergarten classroom teacher, M.G., school social worker, N.N., [REDACTED] Principal E.S., and District [REDACTED] Superintendent, J.B. are qualified personnel pursuant to 34 C.F.R. §300.156 and 23 Ill. Admin Code §226.800.

The Parents request that this Hearing Officer determine that the Student's kindergarten teacher, M.G., school social worker, N.N., [REDACTED] Principal E.S., and District [REDACTED] Superintendent, J.B. are not qualified personnel pursuant to 34 C.F.R. §300.156 and 23 Ill. Admin Code §226.800. The District maintains that the above listed personnel are qualified personnel as required under IDEA.

The Parents request that this Hearing Officer award compensatory education in the form of tutoring for 30 to 60 minutes per day for a period sufficient to compensate the Student for the time he was denied FAPE.

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and the Parents, this Hearing Officer's Findings of Fact are as follows:

1. The Agreed Statement of Facts and Timeline of Events represents the events in order of occurrence in this matter. (Joint Exhibit J).
2. The Student's parents are requesting that the Student be placed in the general education classroom with a dedicated one-to-one aide. They believe that this is the appropriate educational placement for the Student. (Testimony of Mother and Father).

3. The Student was evaluated by the District on November 18, 2011, as a three year-old and was found eligible for special education services under the disability category of developmental delay. An IEP was developed and dated December 14, 2011. Educational needs were found in the following areas: communication, behavioral regulation; direction following/compliance; social emotional/play skills; attention; and fine motor. Parents initially consented to the provision of services but revoked that consent in writing on February 29, 2012 requesting that services be terminated as of March 16, 2012. (Joint Exhibit C pp. 35-82).

4. JR, the Director of Special Education for the District was aware that the Student had been evaluated and determined eligible for special education services as a three (3) year old. However, two years had passed since that time and the Student had been in a private preschool/day care environment not affiliated with the school district. JR is always notified if a Parent requests an evaluation for special education services. (Testimony of JR.) Parents did not notify the Student's kindergarten teacher, school principal or school social worker that the Student had been previously evaluated and found eligible for special education services. (Testimony of JR, MG, NN, ES, Mother.)

5. The Student was enrolled in the pre-kindergarten class at TH for the 2013-2014 school year. The preschool program is housed at the elementary school. However, it is not a District program. The pre-K program was play-based and designed to prepare students socially and emotionally for school. It placed less demands on students than kindergarten. The Student attended from 12:10 p.m. to 2:55 p.m. five days per week. The Student struggled with social readiness. He had difficulty following rules, working independently, and making productive use of free choice time. He had difficulties with friends and classmates and would squeeze, pinch, hit, and say, "You are bad." Some of the other students were fearful of the Student's physical

antics. The Student acted out on occasion and would have to be removed by TF or her co-teacher. TF would address the Student, try to redirect him, and then would have to remove him from the group. The Student would be removed without issue but would become animated in his isolated position. The Student tried to kick TF on multiple occasions but she was able to avoid physical contact. He was a challenge but she and her co-teacher were able to manage the Student within the shortened day. At times, TF would have to take the Student to the principal for discipline. This was effective for a short time but then had to be repeated. Based upon her experience, it was not normal to take a child to the principal for behavioral difficulties at that age. She did not believe that the Student's behaviors were instigated by other children and he was not picked on by other students. When the Student was asked to participate in a non-preferred activity, he would exhibit difficult behaviors. TF had concerns regarding the Student's behavior going into kindergarten. She identified the Student as "developing" in the areas of follows rules, works independently and makes productive use of free time. She reported that the Student can "act overly silly, become domineering or hurtful." (Testimony of TF; Joint Exhibit D pp. 108-109).

6. Dr. B is the District Superintendent. He holds a PhD from the [REDACTED] in Education Administration, and a Master's Degree in Education Administration and Bachelor's Degree in Elementary Education from [REDACTED]. He is a licensed educator with the following Illinois State Board of Education licenses: Superintendent - kindergarten through grade 12; Elementary Education – kindergarten through grade 9; Elementary Education (Self-Contained General Education) – kindergarten through grade 9; General Administration – kindergarten through grade 12. He is also a licensed Principal Evaluator. An important role as Superintendent is to provide a safe, secure learning environment. He is always involved when a

safe, secure learning environment is being disrupted or threatened. (Testimony of Dr. B; Joint Exhibit H p.221).

7. Dr. B evaluates ES, the TH principal, annually. In her role as principal, Dr. B would put ES in the top 5% of all principals he has worked with in his thirty-three (33) year career. ES possesses a wonderful mix of love for children and families, tremendous work ethic, honesty, and excellent technical knowledge. (Testimony of Dr. B).

8. The Student came to Dr. B's attention in August or September of 2014 from the classroom teacher, MG, the school principal, ES, and the District Director of Special Education, JR, due to his challenging behaviors. Parents and staff members were concerned and felt unsafe in the Student's presence. Dr. B supported school staff in their efforts to put additional adults and supports in the general education classroom to assist the Student. Dr. B became more aware of the Student's behaviors when the behaviors did not change and began to escalate after additional supports were put into place. (Testimony of Dr. B).

9. Dr. B was made aware of an incident in September 2014 in which the Student attacked a fireman on a class trip to the fire department. The fireman attempted to direct the Student, the Student refused, the fireman attempted to redirect the Student and the Student punched the fireman. He was also aware of an incident in which the Student punched a staff member in the stomach, the staff member had recently learned that she was pregnant. Dr. B also learned of an incident in which the Student injured himself with a pencil. He was also aware of an instance in which learning stopped and MG's students had to be removed from the classroom due to the Student's unsafe behaviors. (Testimony of Dr. B).

10. ES is the principal of TH elementary school. She has been employed in that role for seven (7) years. Prior to that, she was a kindergarten teacher at TH elementary for twelve (12)

years. She was also an Assistant Director of a local preschool. She holds a Bachelor of Science Degree from [REDACTED] in early childhood education, a Master's Degree from [REDACTED] in general administration and a Master's Degree from [REDACTED] in curriculum instruction. She holds the following Illinois State Board of Education licenses: Type 75 license in General Administration; Early Childhood Education – birth through grade 3; Early Childhood Education (Self Contained General Education) – birth through grade 3. Her education license is current and in good standing. She has never been placed on a remediation plan or a professional development plan as a result of unsatisfactory or needs improvement evaluations or performance. All of her professional evaluations have met or exceeded the professional standards required by her position. It is her responsibility to provide the most appropriate learning environment for students, manage staff, ensure the safety of students and staff, and evaluate teachers. She is also a qualified teacher evaluator by the Illinois State Board of Education. She evaluates all classroom teachers, paraprofessional aides, and the school nurse. (Testimony of ES, Dr. B; Joint Exhibit H pp. 227-228.)

11. Mother requested that ES reassign the Student to a different kindergarten classroom at TH in the Fall of 2014. ES declined to transfer the Student because she did not believe that a transfer would benefit the Student or the other kindergarten students. The behaviors that the Student was demonstrating did not lead her to believe that he would be more successful in another classroom. She considered the request carefully before responding to the Parents and consulted with Dr. B before making her decision. (Testimony of ES, Dr. B, JR.)

12. MG was the Student's kindergarten classroom teacher during August – November 2014. The 2014-2015 school year was her first year as a kindergarten teacher. However, she taught third grade for nine (9) years prior to that and physical education for one (1) year. MG holds a

Bachelor of Science Degree in Early Education and a Master's degrees from [REDACTED]. She holds the following Illinois State Board of Education licenses: Early Childhood Education – birth through grade 3; Early Childhood Education (Self Contained General Education) – birth through grade 3; Elementary Education – kindergarten through grade 9; Physical Education – middle school – grades 5 through 8; Elementary Education (Self Contained General Education) – kindergarten through grade 9; Social Science – middle school grades 5 through 8. Her education license is current and in good standing. She has never been placed on a remediation plan or a professional development plan as a result of unsatisfactory or needs improvement evaluations or performance. All of her professional evaluations have met or exceeded the professional standards required by her position. She has completed coursework in the following additional areas: working with exceptional children, psychology and interpersonal relationships, child behavior management, abnormal psychology, psychological problems in contemporary families, and how to work with parents of special needs children. (Testimony of MG; Joint Exhibit H pp. 223; District Exhibit 3 – pp. 356-366).

13. MG began taking personal notes and recording the Student's behavior on August 21, 2014, the first day of school, because she found the Student's behaviors to be unusual for a kindergartener. On that day, the Student slammed his hand hard against a glass display outside her classroom, disrupted the class during instruction time by calling out, "I am going to call the police," and using inappropriate language. He also squirted a bottle in the art room and ran away, and hit another student. When the Student was enjoying what he was doing, his behavior was acceptable. When he had to be told to complete a task, it was difficult for him. Some days he would comply with a task while other days he would not comply with the same task. During free choice time, if something was unavailable to the Student or it was time to clean up, he would

get very upset. MG would request that he make a different choice and he would have difficulty with that. The Student would run away, hide in a corner, kick things, flip lights off/on constantly. When MG asked him to put down a block, he would throw it down. The Student screamed often and this scared other students. The Student would scream at MG that she was stupid. He would push other students. If the Student had to be removed from the classroom, other students would be upset by and comment on his behavior. The Student exhibited these disruptive, unsafe behaviors daily and MG would sometimes spend twenty (20) minutes out of a thirty (30) minute period dealing with the Student. The Student lost significant instructional time due to his behaviors. MG reported her concerns to the school principal, ES, in the first week of school. During the period August – November 2014, MG called the Student's parents frequently to discuss his behaviors. (Testimony of MG, ES; District Exhibit 5 pp. 371-378.) BM, the special education teacher whose classroom was across the hall, reported that she and her students were able to hear the Student's behavioral outbursts on many occasions. The Student's outbursts would distract her students from instructional time and it would usually take approximately ten (10) to fifteen (15) minutes to get them back on task. (Testimony of BM.)

14. A classroom paraprofessional aide, CP, was assigned to MG's classroom. CP is licensed by the Illinois State Board of Education as a paraprofessional aide. She also has an undergraduate college degree. She has experience and training working with Students with special needs but she is not a certified teacher. CP was initially assigned to the classroom as an aide for the entire class and was there to assist students with academics. She would assist the Student and was there to assist him when he needed help with reading, writing, and controlling behaviors. The Student had trouble focusing on the task at hand, more trouble focusing than the average student. He would choose to do other things rather than the task at hand. He would get

up, do something else, play with toys, go in a different direction. He would sometimes respond to teacher requests to come back to work. Sometimes he would be more defiant. When he was defiant, the Student would try to leave the classroom and the building, would lock himself in the bathroom and it was hard to get him out. In the bathroom, the Student would repeatedly open the bathroom door and then slam it shut, which was unsafe. While in the bathroom, he would rip down posters, kick the garbage can, kick the door, move posters on the walls, and repeatedly slam doors distracting other students. This would also cause the Student to miss instructional time. Sometimes he would throw toys. He would run away and try to run out of the building and the classroom. The Student would engage in these behaviors almost daily. CP and MG would provide assistance by talking to the Student, providing positive reinforcements, or removing the other students from the classroom when necessary for the safety of the Student or the other students in the class. On October 28, 2014, the Student punched two other children on the playground. When asked why he did this, his response was, "She was disturbing me." When asked to walk into the building with MG, the Student ran away and hid on the playground. CP remained on the playground with the Student. ES, the principal was called to assist and they waited on the playground until the Student was ready to come into the building. Mother was called by the school to assist with the Student in order to get him off the playground. (Testimony of CP, ES, MG; Joint Exhibit G, p. 207.)

15. CP's time in MG's classroom was increased from sixty-five minutes on October 20, 2014 to two (2) hours and fifty (50) minutes as of October 28th in response to the Student's continued difficult behaviors. (Testimony of CP and ES; District Exhibit 2, pp. 335-336.) MG, CP, NN, and ES would discuss the Student's behaviors four to five times per day in an attempt to try various strategies to assist him, make him happy, and to make things better for him in the

classroom. They would talk about his specific behaviors, possible interventions, and, after a behavior incident occurred, what to do differently next time. They tried different strategies to assist the Student with regulating his behaviors and emotions and always used positive reinforcements when he was able to comply. However, a paraprofessional aide in the classroom to assist the Student did not help him to learn to change his behaviors. (Testimony of CP, MG, ES, and NN.)

16. In response to the Student's difficult behaviors, a classroom management plan was put into place in mid-September 2014 called MAC – Movement, Activity, Conversation. The classroom management plan was used for the entire class but it was implemented in response to the Student's difficult behaviors. The purpose of the MAC plan was to establish the teacher's instructional control, to increase the structure within the classroom setting, to set clear behavior expectations, and to provide direct feedback on positive behavioral accomplishments and to collect data. The students would earn smiley faces and tickets as positive reinforcement for appropriate behaviors. The school social worker, NN, trained MG on the MAC plan and MG and NN introduced the MAC plan to the entire class. MG also spoke with the Student individually and explained that he could earn up to nine smiley faces for appropriate behaviors between the time he entered school through 9:45 a.m. He had the opportunity to earn another nine smiley faces between 9:45 a.m. and 11:15 a.m., another nine from 12:15 p.m. to 1:45 p.m. and another nine from 1:45 p.m. to school dismissal. MG would record his smiley faces on a sheet attached to his desk. MG sat with the Student and talked about the plan. Throughout the school day MG would explain to the Student every thirty (30) minutes why he did or did not receive smiley faces. (Testimony of MG, NN, KM, and ES; Joint Exhibit E pp. 159-187; Joint Exhibit F pp. 188-190; District Exhibit 5 p. 373.)

17. Other attempted interventions included teacher redirection, preferential seating, sensory breaks, quiet work space, visual and auditory modes of instruction, RtI interventions, additional paraprofessional and school staff support in the classroom, and frequent communication with the Parents. The Student also received thirty (30) minutes per week of individual social work services. He was also scheduled to receive group social skills interventions from the social worker, NN, but was removed from the school prior to the implementation of those services. These interventions were attempted in order to try to keep the Student in the general education classroom and to see if the TH staff could provide the Student with sufficient support in that environment prior to recommending that the Student be evaluated for special education services. The interventions were not successful and the Student was unable to learn to change his behaviors as a result of the interventions attempted. (Testimony of MG, CP, NN, ES, Dr. B.)

18. NN is the school social worker assigned to TH elementary school. She holds an Illinois Type 73 license, which was issued in 2013 and expires in 2020. She is qualified to work as a school social worker with students from pre-kindergarten to age 21 in both the general and special education environments. She holds a Crisis Prevention Institute (CPI) blue card, which means that she has received training in de-escalating behavioral interventions and restraints. NN is also a licensed clinical social worker (LCSW). She holds a Master's Degree in Social Work from [REDACTED]. She has been working with children since 2003 in the educational and clinical settings. She completed the following continuing education courses related to behavioral interventions at [REDACTED]: Dealing with Discipline Problems, Teaching Responsible Behavior, and Responsibility and Respectability. She completed the following continuing education courses related to behavioral interventions in 2013 at [REDACTED]: [REDACTED]: Educating Oppositional and Defiant Students and Discipline with Dignity. Her

licenses are all current and in good standing. She has never been placed on a remediation plan or a professional development plan as a result of unsatisfactory or needs improvement evaluations or performance. She has no disciplinary history. All of her professional evaluations have met or exceeded the professional standards required by her position. (Testimony of NN, JR; Joint Exhibit H p. 225-226, p. 241; District Exhibit 3 pp. 343-355.)

19. NN worked with the Student individually for thirty (30) minutes per week providing social work services. In the period from September 8, 2014 – November 5, 2014, NN was called to assist with the Student in MG's classroom twenty-six (26) times in a forty-one (41) day period due to behavioral incidents. ES, the school principal, was also called to the classroom twenty-six (26) times. NN worked with the Student on calming down strategies and skills. If the Student's behaviors escalated and he needed to be removed from the classroom, she would stay with him, would talk to him and try to calm him down. She would attempt to calm the Student by getting him to walk with her. Sometimes he would eventually listen and walk with her. She also used positive reinforcements and praised the Student when he was able to calm down and show compliant behavior. The principal, school social worker, and school psychologist spent free periods in their schedule assisting in MG's classroom and worked on diffusing minor events to prevent the Student needing to be removed from the classroom. They provided the Student with movement breaks, redirection in the classroom, acknowledgement of positive behaviors with tickets, a class wide behavior plan using red, yellow, and green lights was also used. Between the classroom aide and additional school staff, two staff members were in the Student's classroom for most of the school day. Parents were aware of the Student's behaviors because NN or ES would have frequent conversations with them by phone, and disciplinary referrals

were sent home on a frequent basis. (Testimony of NN, MG, ES; Joint Exhibit D; Joint Exhibit G pp. 191-211.)

20. KM is the school psychologist assigned to TH elementary school. She is a licensed by the Illinois State Board of Education as a school psychologist to work with students from pre-kindergarten to twenty-one (21) years of age. She is a board certified behavior analyst. She has been employed at TH for three (3) years and has worked as a school psychologist for fourteen (14) years. She has also been employed at clinics that service students with behavioral difficulties. (Testimony of KM; Joint Exhibit H pp. 233-234.)

21. On October 14, 2014, the Student's behavior escalated after choice time when he was asked to clean up blocks. The Student threw a block at MG, refused to continue cleaning up in the classroom, ran from MG in a game of chase, began throwing papers to the ground. The Student became very upset and his behavior escalated. He began throwing markers at the other students and picked up a dry erase board and threw it at another student. The other students were cleared from the classroom for their safety. NN and KM were called to assist. When they arrived at MG's classroom, the room looked "like a tornado had gone through the room." (Testimony of KM.) They spent approximately one (1) hour attempting to assist the Student in de-escalating in the classroom. They attempted to assist the Student in de-escalating by ignoring his attention seeking behavior; speaking in normal conversational tone to him; trying to prevent him from accessing classroom areas that could be dangerous, like the teacher's desk; keeping polite conversation to ensure that the Student would not feel that he was being punished. When he was demonstrating appropriate behavior, they would praise him and try to provide positive reinforcement. No one touched or physically restrained the Student at any time during the incident. The Student was eventually removed to NN's office. NN removed the chairs from her

office for the Student's safety as he would pick up chairs and toss or knock them over when escalated. Mother was called but was unable to pick up the Student from school immediately as she was on the south side of Chicago. The Student was provided lunch and school work in NN's office. However, he was unable to calm down enough to return to class. NN and KM, the school psychologist, remained with the Student and supervised him during this period. The incident lasted approximately four (4) hours before Mother arrived at the school to pick up the Student. After this incident, the school team in collaboration with the Parents shortened the Student's school day. (Testimony of NN, ES, MG, KM; Joint Exhibit G pp. 203-204.)

22. During the time period in question, District personnel never staged a situation in which the Student had to be removed from the classroom in order to make the situation appear worse than it was. (Testimony of MG, NN, ES, CP, KM.)

23. The school team, MG, NN, ES, KM, characterized the Student's behavior as "unusual" and "extreme" for a kindergartener. The Student received fourteen (14) major disciplinary referrals during the period September 12, 2014 through November 4, 2014. The disciplinary referrals were from seven (7) different school staff members. Most kindergarteners do not receive any disciplinary referrals. The disciplinary referrals were given out for abusive/inappropriate language, fighting/physical aggression, defiance, harassment, disruption, threats, inappropriate location, and property damage. (Testimony of MG, NN, KM, ES; Joint Exhibit D p. 110; Joint Exhibit G pp. 191-220.)

24. When the Student is put on the spot or asked to do a non-preferred task, he sometimes responds verbally or physically and will kick, hit and bite. (Testimony of Father.)

25. KM documented the behavior intervention strategies and supports and tracked the Student's progress. She charted the results of her findings over the period September 29, 2014

through October 22, 2014. The data and chart reflected that the classroom behavioral interventions were not working. The Student was unable to be successful in the classroom controlling his behaviors as there was no significant change from the beginning of the observation period to the end. The Student's behavior was inconsistent and the school team was unable to determine a pattern to the behaviors. There was a slight difference in the Student's positive behaviors with a paraprofessional assigned to assist him. However, the increase in positive behaviors was not significant enough for the team to believe that the Student would be successful in the general education classroom. (Testimony of KM, NN, ES, MG; Joint Exhibit E, pp. 159-187.)

26. The Student was not teased or bullied by other Students and his behaviors were not in response to those of other students. (Testimony of MG, CP, NN, KM, ES.)

27. Mother requested to volunteer in the Student's classroom and did so on four (4) to five (5) occasions during the Fall 2014. Mother did not request to observe the Student's classroom. (Testimony of MG, ES.)

28. The Student attends Sunday school on a weekly basis, which is three (3) hours in duration. His class has approximately twelve (12) students. The Student exhibits challenging behaviors in this setting. He is very competitive and if he does not win, he gets angry and uses his hands to hit others. He would push, hit, and take things from other students. Mother would remain in the Sunday school classroom with the Student and that appeared to assist the Student with focusing and behaving appropriately. In Sunday school, instructional time lasts for ten (10) to fifteen (15) minutes before another activity is introduced. (Testimony of LK.)

29. The District initiated a special education evaluation in October 2014. On October 16, 2014, a domain meeting was held with Student's Mother in attendance. The District sought to

evaluate the Student in the areas of Academic Achievement, Functional Performance, and Social/Emotional Status. Mother agreed with the areas of evaluation. However, the Student's Mother refused consent for the District to evaluate. (Testimony of MG, KM, ES, JR, NN, Mother, Father; Joint Exhibit C pp. 83-88).

30. On October 16, 2014, Mother was provided the Explanation of Procedural Safeguards and acknowledged receipt of same. (Joint Exhibit C, p. 83.)

31. Parents did not request that the Student be evaluated for special education services prior to the October 16, 2014 domain meeting. (Testimony of ES, MG, NN, KM.)

32. After the domain meeting, the District put additional supports in the classroom for the Student including extending the paraprofessional aide's time in the classroom. The Student's school day was also shortened. (Testimony of ES, NN, MG, KM; Joint Exhibit D, p. 110.)

33. On October 22, 2014, the Student was suspended from school for three (3) days for physically aggressive behavior toward staff and unsafe actions while on a field trip. On November 5, 2014, the Student was suspended for ten (10) days and recommended for expulsion. (Joint Exhibit D, p. 110.)

34. Parents' consented to the Student's evaluation for special education services on November 14, 2014. (Joint Exhibit C, p. 89.)

35. The Student was evaluated in the areas of Academic Achievement, Functional Performance, and Social/Emotional Status. Mother agreed that these were the relevant areas of need and signed the consent for evaluation. (Testimony of Mother; Joint Exhibit C, pp. 89-92.)

36. Parents requested that an outside psychological evaluation be performed. The District granted the request and an outside psychological evaluator was chosen by the Parents from

 Medical Center, Pediatric Development Center, Dr. F. Dr. F did not

appear as a witness at the due process hearing and was withdrawn from the witness list by the Parents. However, her report was incorporated into the Student's March 3, 2015 IEP. There were no objections from either party regarding the content of Dr. F's report. (Testimony of Mother, Father, JR, ES; Joint Exhibit D, pp. 120-129.)

37. The Student was administered a cognitive evaluation by Dr. F, the Wechsler Preschool and Primary Scale of Intelligence, 4th Edition (WPPSI-IV). His full-scale IQ score placed him within the average range of functioning. The Student performed in the high average range for Visual Spatial; within the average range in Verbal Comprehension, Fluid Reasoning, and Working Memory; and within the borderline range in Processing Speed. The examiner reported that the Student's Processing Speed index score was negatively impacted by non-compliance and may not be a true estimate of his abilities in this area. The Student's MAP and AIMS web scores were also considered. (Testimony of KM; Joint Exhibit D, pp. 114-115, 120-129.)

38. The Woodcock Johnson III Tests of Achievement were also administered by Dr. F. The Student performed in the Average range on the Academic Skills cluster (Word Identification, Calculation, and Spelling) and Low Average on the Academic Fluency cluster (Reading Fluency, Math Fluency, and Writing Fluency) suggesting that his overall academic and basic achievement skills are as expected of his same-age peers. (Testimony of KM; Joint Exhibit D, pp. 126-127.)

39. Dr. F also evaluated the Student using the Behavior Assessment System for Children, 2nd Edition (BASC-II). Ratings of the Student's behavior by Mother did not confirm the presence in either the at-risk or clinical range in the home environment in any of the areas. The classroom teacher, MG's rating of the Student's behavior confirmed the presence of behavioral difficulties in the clinical range in the school environment for the areas of Hyperactivity, Aggression, Depression and Atypicality. MG reported that the Student has trouble staying seated, bothers

other children when they are working, and is overly active. The Student almost always defies teachers, argues when denied his own way, threatens to hurt others, and loses his temper easily. The Student states, "I hate myself," "I want to die," or "I wish I were dead," and is easily upset. MG also indicated the presence of behavioral difficulties within the at-risk range for the areas of: Conduct Problems, Attention Problems, and Withdrawal. The Student breaks the rules, sometimes sneaks around, uses others' belongings without permission, lies, and deceives others. With respect to attention problems, the Student is often easily distracted from schoolwork, displays a short attention span in the classroom, and has difficulty listening and following directions. The Student also displays withdrawal behaviors such as avoiding other children, refusing to join group activities, and preferring to play alone. MG's ratings of the Student's behavior confirmed the presence of difficulties in the Student's adaptive functioning, which fall within the clinical range for Adaptability and the at-risk range for Social Skills and Functional Communication. While Mother and MG did not share similar concerns regarding the Student's externalizing problems, internalizing problems, behavioral symptoms, and adaptive functioning, the elevated scores "implicate a disordered pattern primarily at school, thus, indicating that the Student would benefit from a special, individualized education plan at school to address these social-emotional and behavioral concerns." (Testimony of KM; Joint Exhibit D, pp. 120-129.)

40. The Conners, 3rd Edition, Parent and Teacher Rating Scale was also provided to Mother and the Student's classroom teacher, MG, in order to assess his behaviors in the home and classroom. Mother and MG reports had some agreement on the scales in the elevated/very elevated range (e.g. Oppositional Defiant Disorder) but the report indicated that the Student struggles with certain areas at school, but may not struggle with them at home. Mother and MG both reported concerns in the area of Defiance/Aggression, which examines physical/verbal

aggression, argumentativeness, defiance, and control of anger, although Mother's report was within normal limits. Again, the Student seemed to exhibit the behaviors more at school than at home. Dr. F concluded that in the area of Defiance/Aggression, the Student often gets into trouble with his teachers or principal, actively refuses to do what adults ask, argues with adults, and lies to avoid having to do something or to get things. This seemed to significantly impact the Student's school functioning. In addition, these items were supported by Mother's elevated scores in the DSM-IV Oppositional Defiant Disorder. (Testimony of KM; Joint Exhibit D, pp. 123-124.)

41. Dr. F's clinical opinion was that the Student meets criteria for a diagnosis of Oppositional Defiant Disorder (ODD). The Student had a frequent and persistent pattern of angry/irritable mood, argumentative/defiant behavior, and vindictiveness. The Student seemed to exhibit the symptoms of ODD across multiple settings and relationships – at school, home, and during the evaluation, which would be considered a severe case. (Testimony of KM; Joint Exhibit D, p. 128.)

42. Dr. F's report contained the following recommendations: evaluate eligibility for an IEP to address social-emotional and behavioral difficulties; conduct an FBA and create a BIP; school should implement an RtI approach and should closely monitor the Student's progress using scientifically-based data collection; provide a multi-sensory learning environment that integrates both visual and auditory modes of instruction; provide a quiet work space with reduced distractions; provide additional time for the Student to complete school work and tests; provide sensory breaks for the Student throughout the day; provide daily feedback regarding progress so Parents can reinforce the goals and increase consistency at home; formal time for the Student with the school social worker or school psychologist to work on social-emotional goals in both

one-to-one and group settings. (Testimony of KM; Joint Exhibit D, p. 128-129.) These recommendations were considered by the IEP team and were incorporated into the Student's IEP. (Testimony of KM, NN, Mother; Joint Exhibit D, p. 128-129.)

43. The District repeatedly requested that Parents provide consent for the District to obtain copies of the BASC-II protocols from the outside evaluator, Dr. F. Parents never provided the requested consent. (Testimony of Mother; District Exhibit 1.)

44. During the period January 14, 2015 through the commencement of the due process proceeding, the Parents provided inconsistent information to the District regarding whether or not they were represented by legal counsel. This served to delay the outside evaluation as the District counsel was forwarding frequent communication to the Parents' stated attorney and consent forms to evaluators who were not selected by Parents. The Parents' stated attorney would not respond to the District counsel's communications. Parents also provided inconsistent testimony regarding this issue during the due process hearing. This Hearing Officer finds that the Parents were not represented by legal counsel from January 2015 to the present and led the District to believe otherwise. (Testimony of JR; District Exhibit 1, pp. 246-328.)

45. Mother and Father were present at the March 3, 2015 Eligibility and IEP meeting and provided comments and input. (Joint Exhibit D, p. 95, pp. 96-106.)

46. At the March 3, 2015 Eligibility meeting, the Student was found eligible for special education services on the basis of Emotional Disability (ED). Parents were in agreement with this determination. Mother stated that she read the factors under the ED eligibility category and it is exactly what the Student needs. (Testimony of JR, NN, KM, Mother; Joint Exhibit D.)

47. At the March 3, 2015 IEP meeting, the Student was identified to have Educational Needs in the following Areas: Coping strategies, Social interactions, and Attention. IEP goals were

established to address the following areas: Coping strategies, Time on Task, and Following Directions. The IEP team considered and agreed that behavior impedes the Student's learning or that of others. Therefore, a Functional Behavioral Analysis (FBA) would be performed and a Behavior Intervention Plan (BIP) would be implemented in the Student's educational placement. Modifications and Accommodations included the recommendations of the outside psychological evaluation and were as follows: Movement/Sensory Breaks, Preferential Seating, Seating near teacher to increase focus, Reduce/minimize distractions in the environment, provide consistent structure, give advance notice of changes, provide specific and immediate feedback, multimodal instruction, use visual aids/physical clues, extend time for assessment, assessments can be administered in a separate location. The Student was also provided with ninety (90) minutes per week of social work services, transportation services, and extended school year (ESY) services. (Testimony of NN, JR, ES, KM; Joint Exhibit D.)

48. The District and Parents agree with the eligibility determination and all contents of the March 3, 2015 IEP, with the exception of the Student's educational placement. The District and Parents also established and agreed upon a timeline for review of the Student's progress in order to ensure that he would be transitioned back to the general education setting as soon as possible. (Testimony of NN, KM, ES, JR, Mother and Father; Joint Exhibit D, p. 105-106.)

49. Placement in the general education environment was considered and rejected by the IEP team because the TH elementary school team, ES, NN, KM, MG, JR had attempted to implement as many interventions and supports as was reasonable but were unable to provide enough support for the Student to assist him in learning to change his behavior. (Testimony of ES, NN, KM, MG, JR, BM.)

50. Placement in the self-contained special education classroom at TH elementary school was considered by the IEP team and was not an appropriate placement because the students disabilities result in academic deficiencies. The Student functions at a higher academic level than the other students in that classroom. In addition, the special education teacher in the self-contained classroom does not implement behavioral supports at the level required by the Student because the students in the classroom have academic, not behavioral, needs. (Testimony of BM, JR; Joint Exhibit D, p. 114.)

51. Placement in a separate public therapeutic day school at MEC was recommended by the IEP team because it would provide the Student with the appropriate level of support to address his individual behavioral needs. The Student would receive small group specialized instruction in a highly structured program but would not participate with general education peers. (Testimony of NN, KM, BM, AP, BM; Joint Exhibit D.)

52. The District was unable to implement the Student's March 3, 2015 IEP or conduct an FBA because the Student was removed from the District by the Parents. (Testimony of ES, NN, KM, JR, Mother.)

53. An FBA was not conducted in the Fall of 2014 and could not have been conducted while the Student was in the general education setting because it was unsafe, for both the Student and other students, to do so and the District did not have the required consent from the Parents. (Testimony of ES, MG, NN, KM.)

54. The IEP team's recommended educational placement is [REDACTED] at MEC, a separate public therapeutic day school, because there is a smaller staff to student ratio, smaller class size, and the staff are better able to assist in teaching the Student appropriate behaviors.

The goal would be to transition the Student back to the general education setting. (Testimony of MG, NN, ES, JB, KM, BM; Joint Exhibit D pp. 93-158c.)

55. The IEP team believes that the Parents' suggested placement of the Student in the general education classroom with a one to one dedicated aide is not appropriate and would not benefit the Student as he would rely or depend upon the aide and would not learn the necessary skills to control his behaviors. (Testimony of MG, NN, ES, JB, KM, BM; Joint Exhibit D pp. 93-158c.)

56. AP is the assistant principal at MEC and is the administrator of [REDACTED]. She has been in that position for one and one-half (1.5) years. She has eleven and one-half (11.5) years of experience with special education students. Prior to her role as assistant principal, she was an interventionist at MAC. In that role she assisted teachers and Students with behavior issues, conducted FBAs, implemented BIPs, assisted teachers with classroom management systems, coached teachers at MEC and teachers in the District's satellite program. She holds a Bachelor of Arts Degree in Elementary Education, and Master's Degrees in Special Education and Administration. She is licensed by the Illinois State Board of Education, and holds a type 73 license and is a learning behavior specialist. Her education license is current and in good standing. (Testimony of AP; Joint Exhibit H, pp. 236-238.)

57. [REDACTED] services students from kindergarten to 8th grade. The goal is to provide behavioral supports to students then transition them back to self-contained and then general education classrooms. The program focuses on the student's emotional needs throughout the school day while providing academic instruction at the individual student's level. Project ABLE has a small class environment with one licensed special education teacher and one to two paraprofessionals per classroom. There is also an assistant who is not assigned to any particular class and who goes where needed. The assistant is a paraprofessional who must meet highly

qualified standards. All four classrooms have an assigned interventionist. [REDACTED] has a dedicated school counselor who is certified in school counseling and a dedicated school social worker who is licensed to provide school social work. Teachers have to be licensed behavioral specialists. Academic instruction focuses on academics that meet Illinois standards. (Testimony of AP.)

58. AP received a request for MEC's [REDACTED] to provide services to the Student. She recalled that his behaviors consisted of elopement from class, destruction of an office, and other aggressive behaviors. This is type of student [REDACTED] services. The program is able to provide services to students with emotional disability (ED) and can provide academic instruction to students functioning in the average to high average range. [REDACTED] is able to work with students who have significant behavior issues and an ODD diagnosis. AP reviewed the Student's IEP and Project ABLE would be able to implement the stated goals, provide a small group environment, provide social work services, provide licensed, qualified special education teachers to monitor the Student's progress, provide supplementary aids and accommodations as listed in the Student's IEP, formulate an FBA and implement a BIP. [REDACTED] teachers and staff can administer the required state assessments and provide the required accommodations for assessments. The program can provide transportation services required by the Student's IEP, and summer school services. (Testimony of AP; Joint Exhibit D, pp. 114, pp. 137-155.)

59. It is uncommon for a kindergarten student to be diagnosed with severe ODD. (Testimony of KM, NN, AP, JR, ES.)

60. MEC has two timeout rooms that are used as calming rooms, places where students can go to calm down and de-escalate. One room is three (3) feet by nine (9) feet. The other room is eight (8) feet by nine (9) feet. [REDACTED] puts strategies in place to assist children in trying to

calm themselves down. For younger students this is usually blankets and bean bags and there is also a nerf ball that students can throw against the walls in the timeout room to assist in calming themselves. The timeout room is never locked and the door is only closed at student request. The room has two windows and staff must have eyes on a student at all times. [REDACTED] staff are all trained in crisis prevention and de-escalation methods and how to safely de-escalate students. They are also trained to look for behaviors that indicate that a student is or may become escalated and to assist the student to prevent further escalation. Staff are also trained in how to place holds on students and escort them to the timeout room safely, if needed.

(Testimony of AP.)

61. The timeout room is a last resort strategy and many proactive strategies would be used to assist a student before the timeout room was used. If the room is used, an administrator and two staff members must be present and parents must be notified within twenty-four (24) hours. However, MEC policy is that parents must be notified by the end of the day, before the teacher leaves. The timeout room is not a consequence. It is a safe place for students go to calm down and de-escalate. Use of the timeout room is not psychologically harmful to students as it is used at MEC, as a safe place to calm down. If it were to be used as a consequence where a student was placed for an extended period of time, that may be harmful to a student. However, MEC does not do that. (Testimony of AP.)

62. MEC students use the timeout rooms voluntarily as a safe place to calm down.

(Testimony of AP.)

63. At MEC, a five-year-old student would be provided with visual supports on the student's desk to help him or her recall what they can do to de-escalate and teachers and staff would

review the behavior plan with student as well. Students are never taken into the timeout room without first being given options to calm down. (Testimony of AP.)

64. No evidence was presented by Parents regarding compensatory education needs, services, or reimbursement costs. (Testimony of Mother and Father.)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of Parents and 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 a 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 Parents 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 Parents’ own testimony indicates that the Parents were present at the Student’s IEP meeting on the March 3, 2015. The Parents’ request, with respect to the Student remaining in the general education classroom at TH elementary was noted, discussed and considered at that time (FF # 45-46, 49). Further, the recommendations of the Parents’ chosen psychological evaluator were considered and incorporated into the Student’s IEP. (FF #42.) Therefore, the Parents’ were afforded the procedural safeguard to participate in the IEP meeting and placement decisions. 34 C.F.R. 300.501(b) &(c). Further, the Parents’ agree that the Student’s IEP was reasonably calculated to enable the Student to received educational benefits. (FF # 48.) 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 Parents allege in their Due Process Complaint notice that the least restrictive environment for the Student is the general education classroom with a one to one dedicated paraprofessional aide to support the Student. (FF #2.) The testimony and documentary evidence presented at hearing illustrate the following.

The Student was enrolled in kindergarten and placed in a general education classroom at TH elementary school in the Fall of 2014. On the first day of school, August 21, 2014, the Student began displaying unusual behaviors: The Student slammed his hand hard against a glass display outside the teacher’s classroom, disrupted the class during instruction time by calling out “I am going to call the police” and using inappropriate language. He squirted a bottle in the art room and ran away, and hit another student. (FF # 13.) During the first two and one-half months of school, his behaviors continued and escalated. When asked to perform a non-preferred activity, the Student would run away, hide in corner, kick things, flip lights off/on constantly. If MG asked him to put down a block, he would throw it down. The Student would scream often

and this would scare other students. The Student would scream at MG that she was stupid. He would push other students. (FF #13.)

During instructional time, the Student had trouble focusing on the task at hand. He would choose to do other things rather than the task at hand. He would get up, do something else, play with toys, go in a different direction. He would sometimes respond to teacher requests to come back to work. Sometimes he would be more defiant. When he was defiant, the Student would try to leave the classroom and the building, would lock himself in the bathroom and refuse to come out. In the bathroom, the Student would repeatedly open the bathroom door and then slam it shut. While in the bathroom, he would rip down posters, kick the garbage can, kick the door, move posters on the walls, and repeatedly slam doors distracting other students. This would cause the Student and others to miss instructional time. Sometimes he would throw toys. He would run away and try to run out of the building and the classroom. The Student would engage in these behaviors almost daily. (FF #14.) Multiple school personnel reported witnessing these behaviors – the classroom teacher, the paraprofessional aide, the principal, the school social worker, the school psychologist, the special education teacher (whose classroom was across the hall from the Student's). (FF # 13, 14, 18, 20, 21.)

As a result of these difficult behaviors, the Student had to be removed from the classroom in order to attempt to calm down. On at least two occasions the other students in the classroom had to be removed from the room for their safety and that of the Student because the Student was throwing blocks, running from the classroom teacher in a game of chase, throwing papers to the ground, throwing markers at the other students, and picked up a dry erase board and threw it at another student. (FF #21.) The Student received fourteen (14) major disciplinary referrals from seven (7) different school staff members. (FF # 23.)

In response to the Student's behaviors, classroom supports were implemented. Behavioral interventions were introduced and implemented in the entire classroom although they were targeted to assist the Student. The MAC classroom management plan was implemented and used to establish the teacher's instructional control, to increase the structure within the classroom setting, to set clear behavior expectations, and to provide direct feedback on positive behavioral accomplishments and to collect data. The students would earn smiley faces and tickets as positive reinforcement for appropriate behaviors. (FF #16.) Other behavioral supports were also implemented including increased paraprofessional aide time in the classroom, primarily to assist the Student. (FF #15.) Other attempted interventions included teacher redirection, preferential seating, sensory breaks, quiet work space, visual and auditory modes of instruction, RtI interventions, additional school staff support in the classroom, a shortened school day, and frequent communication with the Parents. The Student also received thirty (30) minutes per week of individual social work services. (FF #17.) Despite these efforts, the Student's behaviors showed little to no improvement. (FF #25.)

This testimony and the documentary evidence presented abundantly illustrates that the Student's placement in the general education classroom was unsatisfactory. Even with multiple interventions and supports in place, the Student missed significant instructional time. (FF #13.) In addition, his disability related behaviors distracted other students and resulted in lost instructional time for other students as well. (FF #13, 14, 21.) His behaviors further resulted in an unsafe situation for both the Student and others. (FF #14.)

On November 14, 2014 the Parents consented to the Student's evaluation for special education services. (FF #34.) The Student was evaluated in the areas of Academic Achievement, Functional Performance, and Social/Emotional Status. Mother agreed that these

were the relevant areas of need. (FF #35.) Parents and the District agreed that a psychological evaluation would be performed by an outside evaluator chosen by the Parents. (FF #36.) It is uncontroverted that on March 3, 2015, an Eligibility and IEP meeting was held at which time the Student was found eligible for special education services under the category of Emotional Disability (ED) and an appropriate IEP was developed based upon the Student's present levels of performance and areas of need.

Parents maintain that the most appropriate educational placement, in the least restrictive environment, for the Student is the general education classroom with a one to one dedicated paraprofessional aide. The testimony and documentary evidence reflects that this placement was discussed and rejected by the IEP team for the reasons stated above. In the general education setting at TH, the Student was receiving support from two (2) adults in the classroom, the classroom teacher and paraprofessional aide, along with additional staff who were consistently called to assist in the classroom i.e. the school social worker and the school principal. The IEP team related all of the behavioral supports which had been implemented and the data which reflected that those supports were unable to assist the Student in learning to change his behavior. Quite simply, TH was unable to provide the Student with the behavioral supports and interventions that he required to receive a FAPE. (FF #49.)

The IEP team also considered placement in TH's self-contained special education classroom. This placement was determined to be inappropriate because that classroom is more academically focused and the Student functions at a higher academic level than the other students in that classroom. In addition, the special education teacher in the self-contained classroom does not implement behavioral supports at the level required by the Student because the students in the classroom have academic, not behavioral, needs. (FF #50.) Thus, the Student

would be unable to receive a FAPE in that placement because the academic instruction would be inappropriate.

The IEP team's recommended educational placement was [REDACTED] at MEC, a separate public therapeutic day school, because there is a smaller staff to student ratio, smaller class size, and the staff are better able to assist in teaching the Student appropriate behaviors. The goal would be to transition the Student back to the general education setting. (FF #54.) The program is able to provide services to students with emotional disability (ED) and can provide academic instruction to students functioning in the average to high average range. [REDACTED] is able to work with students who have significant behavior issues and an ODD diagnosis. Testimony presented reflected that [REDACTED] would be able to implement the Student's IEP and its stated goals, provide a small group environment, provide social work services, provide licensed, qualified special education teachers to monitor the Student's progress, provide supplementary aids and accommodations as listed in the Student's IEP, formulate an FBA and implement a BIP. [REDACTED] teachers and staff can administer the required state assessments and provide the required accommodations for assessments. The program can provide transportation services and summer school services as required by the Student's IEP. (FF #58.)

Based upon the testimony and documentary evidence provided, this Hearing Officer finds that the general education setting, with a one to one paraprofessional aide, is not the least restrictive environment in which the Student can receive FAPE. "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. 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). In this matter, the educators unanimously agree that placement at MEC’s Project ABLE is the least restrictive environment in which the Student can receive a FAPE. Parents’ input was considered, other placement options were considered by the IEP team and rejected. The evidence presented illustrates that the Parents’ requested placement has been tried, with more than just one paraprofessional aide working with the classroom teacher, and simply did not work. Further, the Parents did not offer any explanation of how things would be different if the District agreed to a general education placement with a one to one dedicated paraprofessional aide. This Hearing Officer finds that MEC’s [REDACTED] is the placement, which can implement the Student’s IEP in its entirety, and provide the Student with all of the services, supports, accommodations, and modifications necessary. MEC’s [REDACTED] is the least restrictive environment in which this Student can receive FAPE.

Child Find

IDEA requires that each “state must have in effect policies and procedures to ensure that all children with disabilities . . . who are in need of special education and related services are identified, located, and evaluated . . .” 34 C.F.R. §300.111; 23 Ill. Admin. Code §226.100. The state regulations require an “ongoing review of each child’s performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the education setting, suggesting that they may be eligible for special education and related services.” *Krista P v. Manhattan Sch. Dist.*, 255 F. Supp. 2d 873, 886 (ND Ill., 2003) *citing* 23 Ill. Adm. Code §226.100(a)(2). In order to satisfy its child find obligations, a school district must evaluate a

student within sixty instructional days of receiving parental consent for an evaluation. *MB v. Hamilton Southeaster Schools et al*, 668 F.3d 851 (7th Cir. 2011.)

The Parents allege in their Amended Due Process Complaint notice that the District failed to comply with its child find obligations as required by IDEA and the Illinois School Code and its implementing regulations. The testimony and documentary evidence presented at hearing illustrate the following.

The Student was evaluated by the District on November 18, 2011, as a three year-old and was found eligible for special education services under the disability category of developmental delay. An IEP was developed and dated December 14, 2011. Educational needs were found in the following areas: communication, behavioral regulation; direction following/compliance; social emotional/play skills; attention; and fine motor. Parents initially consented to the provision of services but revoked that consent in writing on February 29, 2012 requesting that services be terminated as of March 16, 2012. (FF #3.) When the Student returned to the District for kindergarten, the District was aware that the Student had been evaluated and determined eligible for special education services as a three (3) year old. However, two years had passed since that time and the Student had been in a private preschool/day care environment not affiliated with the school district. (FF #4.) Therefore, the District had no reason to immediately evaluate the Student.

Beginning on the first day of school, August 21, 2014, MG began taking personal notes and recording the Student's behavior because she found the Student's behaviors to be unusual for a kindergartener. She reported her concerns to the school principal, ES, within the first week of school. (FF #13.) A paraprofessional, CP, was assigned to the Student's classroom to assist. (FF #14.) School social worker, NN, began providing assistance in the classroom on a regular

basis, twenty-six (26) times in forty-one (41) days, and providing social work services to the Student for thirty (30) minutes per week. (FF #19.) MG, CP, NN, and ES would discuss the Student's behaviors four to five times per day in an attempt to try various strategies to assist him, make him happy, and to make things better for him in the classroom. They would talk about his specific behaviors, possible interventions, and, after a behavior incident occurred, what to do differently next time. They tried different strategies to assist the Student with regulating his behaviors and emotions. (FF #15.)

Behavioral interventions were introduced and implemented in the entire classroom although they were targeted to assist the Student. The MAC classroom management plan was implemented and used to establish the teacher's instructional control, to increase the structure within the classroom setting, to set clear behavior expectations, and to provide direct feedback on positive behavioral accomplishments and to collect data. The students would earn smiley faces and tickets as positive reinforcement for appropriate behaviors. (FF #16.) Other behavioral supports were also implemented including increased paraprofessional aide time in the classroom, primarily to assist the Student. (FF #15.) Other attempted interventions included teacher redirection, preferential seating, sensory breaks, quiet work space, visual and auditory modes of instruction, RtI interventions, additional school staff support in the classroom, a shortened school day, and frequent communication with the Parents. The Student also received thirty (30) minutes per week of individual social work services. (FF #17.) Major disciplinary referrals recording the Student's behaviors were also documented and provided to the Parents. (FF#23.)

KM, the school psychologist, documented the behavior intervention strategies and supports and tracked the Student's progress. She charted the results of her findings over the period September 29, 2014 through October 22, 2014. The data and chart reflected that the

classroom behavioral interventions were not working. The Student was unable to be successful in the classroom controlling his behaviors as there was no significant change from the beginning of the observation period to the end. The Student's behavior was inconsistent and the school team was unable to determine a pattern to the behaviors. There was a slight difference in the Student's positive behaviors with a paraprofessional assigned to assist him. However, the increase in positive behaviors was not significant enough for the team to believe that the Student would be successful in the general education classroom. (FF #25.)

The District initiated a special education evaluation in October 2014 and a domain meeting was scheduled for October 16, 2014. The Student's Mother was in attendance. However, after agreeing with the District's areas of concern, Mother refused consent for the District to perform the evaluation. (FF #29.) Parents only provided the District with the requisite consent to evaluate on November 24, 2014, after a major disciplinary incident. (FF #34.) The Parents' chosen outside psychological evaluator evaluated the Student on December 22, 2014 and January 7, 2015. An Eligibility and IEP meeting was held on March 3, 2015. (FF #36.)

Based upon the testimony presented and the documentary evidence received, this Hearing Officer finds Parents' allegation that the District failed in its child find obligation to be disingenuous. While Mother repeatedly asserted during the due process hearing that she requested, on multiple occasions, that the District evaluate the Student for special education services, she was unable to provide approximate dates of those requests and conceded that none of the alleged requests had ever been in writing. Further, when the District requested to evaluate the Student for special education services, approximately two months into the school year, Mother refused to provide consent for said evaluation. (FF #29.)

Hearing testimony further illustrates that District personnel, MG, NN, ES, KM, documented and constantly monitored the Student's performance and progress during the period from August 21, 2014 through November 5, 2014, when the Student was voluntarily removed from the school by his Parents. (FF #1.) MG kept daily notes of the Student's classroom behaviors, the Student's "Good Choices Chart" was implemented in September 2014 and the Student's performance and progress was monitored, recorded, and charted by MG, NN, and KM. (FF # 13, 16, 25.) MG, NN, CP, and ES discussed the Student's progress four to five times per day to determine interventions that should be implemented, the Student's response to those interventions, and alternatives when interventions did not work. (FF # 15.) ES and NN were in frequent contact with the Student's Parent to discuss the on-going behavioral issues, interventions, and response to those interventions. (FF #19.) The Student's major disciplinary referrals were consistently documented and provided to the Parents. (FF # 23.) When the school team had implemented all reasonable interventions to assist the Student and determined that they were not working, a domain meeting was scheduled and the District requested the Parents' consent to evaluate the Student for special education services. (FF #25, 29.) When the District received the Parents' consent to evaluate the Student, the Parents' chosen outside psychological evaluator evaluated the Student on December 22, 2014 and January 7, 2015. An Eligibility and IEP meeting was held on March 3, 2015. (FF #36.) Based upon this evidence presented at hearing, this Hearing Officer finds that the District undertook an ongoing review of the Student's performance and progress as illustrated by the actions of the classroom teacher, principal, school social worker and school psychologist and timely referred the Student for determination of eligibility for special education services, but the mother initially refused to consent to the

evaluation. Further, once the District had received Parents' consent, it evaluated the student within sixty instructional days. Therefore, the District met its child find obligations.

Qualified Personnel

The Individuals with Disabilities Education Act vests state education agencies with the task of identifying who is qualified to provide special education services under the law. 20 U.S.C. §1412(a)(14); §34 C.F.R. 300.156. Illinois sets forth those requirements in the Illinois School Code and its implementing regulations. See 105 ILCS 5/14-1.09(a), 105 ILCS 5/14-1.09.2, 105 ILCS 5/14-9.01 and 23 Ill. Admin. Code §226.800 and §226.840. "States maintain standards for educational personnel to help maintain adequate educational experiences for all students. A FAPE, surely, is an education provided by qualified personnel." *Evanston Community Consolidated Sch. Dist. No. 65 v. Michael M*, 356 F.3d 798, 803 (7th Cir., 2004). Current, appropriate licensure is evidence of proper qualifications. *Id.* The District has discretion to choose whatever personnel is used to provide the required services to a disabled student as long as the personnel is qualified and adequate. *Freeport Sch. Dist. 145*, 34 IDELR 104 (SEA, IL 2000).

The Parents allege in their Amended Due Process Complaint notice that the Student's classroom teacher, MG, school social worker, NN, school principal, ES, and District superintendent, Dr. B, are not qualified personnel as required by IDEA and the Illinois School Code and its implementing regulations. The testimony and documentary evidence presented at hearing illustrate the following.

MG, the Student's kindergarten classroom teacher had ten (10) years of teaching experience prior to the 2014-2015 school year. She taught third grade for nine (9) years and physical education for one (1) year. Her educational qualifications are as follows: MG holds a

Bachelor of Science Degree in Early Education and a Master's degrees from [REDACTED]

She holds the following Illinois State Board of Education licenses: Early Childhood Education – birth through grade 3; Early Childhood Education (Self Contained General Education) – birth through grade 3; Elementary Education – kindergarten through grade 9; Physical Education – middle school – grades 5 through 8; Elementary Education (Self Contained General Education) – kindergarten through grade 9; Social Science – middle school grades 5 through 8. Her education license is current and in good standing. She has never been placed on a remediation plan or a professional development plan as a result of unsatisfactory or needs improvement evaluations or performance. All of her professional evaluations have met or exceeded the professional standards required by her position. She has completed coursework in the following additional areas: working with exceptional children, psychology and interpersonal relationships, child behavior management, abnormal psychology, psychological problems in contemporary families, and how to work with parents of special needs children. (FF #12.)

NN is the school social worker assigned to TH elementary school. She holds an Illinois Type 73 license which was issued in 2013 and expires in 2020. She is qualified to work as a school social worker with students from pre-kindergarten to age 21 in both the general and special education environments. She holds a Crisis Prevention Institute (CPI) blue card which means that she has received training in de-escalating behavioral interventions and restraints. NN is also a licensed clinical social worker (LCSW). She holds a Master's Degree in Social Work from [REDACTED]. She has been working with children since 2003 in the educational and clinical settings. She completed the following continuing education courses related to behavioral interventions at [REDACTED]: Dealing with Discipline Problems, Teaching Responsible Behavior, and Responsibility and Respectability. She completed the following

continuing education courses related to behavioral interventions in 2013 at [REDACTED]
[REDACTED]: Educating Oppositional and Defiant Students and Discipline with Dignity. Her licenses are all current and in good standing. She has never been placed on a remediation plan or a professional development plan as a result of unsatisfactory or needs improvement evaluations or performance. She has no disciplinary history. All of her professional evaluations have met or exceeded the professional standards required by her position. (FF # 18.)

ES is the principal of TH elementary school. She has been employed in that role for seven (7) years. Prior to that, she was a kindergarten teacher at TH elementary for twelve (12) years. She was also an Assistant Director of a local preschool. She holds a Bachelor of Science Degree from [REDACTED] in early childhood education, a Master's Degree from [REDACTED] in general administration and a Master's Degree from [REDACTED] in curriculum instruction. She holds the following Illinois State Board of Education licenses: Type 75 license in General Administration; Early Childhood Education – birth through grade 3; Early Childhood Education (Self Contained General Education) – birth through grade 3. Her education license is current and in good standing. She has never been placed on a remediation plan or a professional development plan as a result of unsatisfactory or needs improvement evaluations or performance. All of her professional evaluations have met or exceeded the professional standards required by her position. She is also a qualified teacher evaluator by the Illinois State Board of Education. She evaluates all classroom teachers, paraprofessional aides, and the school nurse. (FF #10.)

Dr. B evaluates ES annually. In her role as principal, Dr. B would put ES in the top 5% of all principals he has worked with in his thirty-three (33) year career. ES possesses a

wonderful mix of love for children and families, tremendous work ethic, honesty, and excellent technical knowledge. (FF #7.)

Dr. B is the District Superintendent. He holds a PhD from the [REDACTED] in Education Administration, and a Master's Degree in Education Administration and Bachelor's Degree in Elementary Education from [REDACTED]. He is a licensed educator with the following Illinois State Board of Education licenses: Superintendent - kindergarten through grade 12; Elementary Education – kindergarten through grade 9; Elementary Education (Self-Contained General Education) – kindergarten through grade 9; General Administration – kindergarten through grade 12. He is also a licensed Principal Evaluator. (FF #6.)

Based upon the testimony and documentary evidence admitted at hearing, this Hearing Officer finds that MG, the classroom teacher, NN, the school social worker, ES, the school principal, and Dr. B, the District superintendent are all qualified personnel pursuant to IDEA, the Illinois School Code, and its implementing regulations. All of these individuals are licensed educators with current Illinois State Board of Education licenses. All of their respective licenses are appropriate for the positions they maintain and are in good standing. MG is a highly qualified, experienced general education classroom teacher with a professional educator's license endorsed for pre-kindergarten through 3rd grade. (FF #12.) Although Parents requested that the Student be transferred to another kindergarten general education classroom and ES denied the request, the District had discretion to make that determination, as long as personnel were qualified, and MG was highly qualified. (FF #11.)

NN is a dually licensed professional educator endorsed for school social work in grades pre-kindergarten through 12th grade, and as a licensed clinical social worker. At all times relevant to this hearing, NN was certified in behavior de-escalation techniques and safe physical

restraint techniques associated with her CPI certification. NN has also taken a considerable number of continuing education courses addressing management of student behaviors and use of positive behavioral interventions. (FF #18.) ES and Dr. B are also well qualified for the positions they hold by virtue of their professional educator licenses and years of experience in the education field. (FF # 6-7, 10.)

None of these educators have ever been placed on remediation plans or professional development plans as a result of unsatisfactory or needs improvement evaluations or performance. The testimony further reflects that they all meet or exceed the professional standards relevant to their positions, at all times relevant to this matter. (FF # 6-7, 10, 12, 18.)

While Parents maintain that these individuals are not qualified as they were unable to intervene to assist the Student with conforming his conduct and behavior to acceptable norms within a kindergarten, general education classroom environment, it is not indicative of their lack of qualifications for their respective positions. It is reflective of the severity of the Student's education needs in the area of social-emotional instruction and positive behavior skill development.

This Hearing Officer determines that:

Based upon a preponderance of the evidence, the least restrictive environment is MEC's ██████████, a public therapeutic day school. The District met its Child Find obligations at all times relevant to this matter. The Student's classroom teacher, MG, school social worker, NN, school principal, ES, and District superintendent, Dr. B are all qualified for the respective positions they maintain pursuant to IDEA, the Illinois School Code, and its implementing regulations.

The Parents' requests to the contrary are hereby denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Parents' requested relief is denied and the complaint and amended complaint are dismissed with prejudice.

If the Parents elect to return the Student to the public school setting, the Student will be placed in [REDACTED] consistent with the March 3, 2015 IEP determination.

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: December 23, 2015

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

APPENDIX A

[REDACTED] v. [REDACTED] SD [REDACTED]
Case No: 2015-0495

Child	[REDACTED]
Attending School	[REDACTED] Elementary School (TH Elementary)
Child's Parent(s) (Mother)/Petitioner	[REDACTED] (Mother)
Child's Parent(s) (Father) Petitioner	[REDACTED] (Father)
Witnesses:	
Preschool Teacher	[REDACTED] (TF)
Classroom Teacher	[REDACTED] (MG)
Social Worker (SW)	[REDACTED] (NN)
[REDACTED] Principal	[REDACTED] (ES)
Asst. Principal Molloy Education Center	[REDACTED] (AP)
[REDACTED] SD Superintendent	Dr. [REDACTED] (Dr. B)
Paraprofessional	[REDACTED] (CP)
Psychologist	[REDACTED] (KM)
Special Education Teacher	[REDACTED] (BM)
District Director of Special Education	[REDACTED] (JR)
[REDACTED] Sunday School Principal	[REDACTED] (LK)
[REDACTED] Education Center	(MEC)

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2015-0495

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on December 23, 2015, 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]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

[REDACTED]
[REDACTED]

Dated: December 23, 2015

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

[REDACTED]
[REDACTED]
Phone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]