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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

STUDENT¹,

Student,

Case No: 2016-0182

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 10-year-old, female who is currently in the 5th grade. She qualifies for special education services under the disability category of emotional disability (ED) and other health impairment (OHI) due to a diagnosis of ADHD. The Student currently attends MP, a private therapeutic day school for students aged 5 to 15 years who are eligible for special education and related services as students with eligibility categories of emotional disability, specific learning disorder, other health impairment and/or Autism. The Student began attending

¹ Personal identification information is provided in Appendix A.

MP as a 2nd grader following a hospitalization and increased needs within the school setting. (IHO Exhibit 1.)

The District filed the Due Process Complaint Notice (DPCN) on November 16, 2015 on an expedited basis seeking to remove the Student from MP and place her in a residential facility due to a history of significant impulsive, inappropriate and attention-seeking behaviors which include verbal aggression, physical aggression, spitting, sexualized behaviors, elopement and self-injurious behaviors. (IHO Exhibit 1.) The Parties participated in mediation on December 3, 2015 but were unable to resolve the outstanding issue. Based upon this, the 20 school day timeline for this Hearing Officer to conduct the hearing began to run on November 16, 2015 with December 18, 2015 being the 20th school day. The 10 School- Day deadline for this Hearing Officer to render a decision is January 15, 2016. (IHO Exhibit 4.)

A prehearing conference was held on December 4, 2015. At that time, the Parent requested a continuance in order to obtain legal representation. This Hearing Officer advised that pursuant to IDEA, she was unable to grant any continuances of expedited matters. The Parent was further advised to have legal counsel contact this Hearing Officer and District counsel as soon as he or she was retained. The Parties agreed to the following hearing dates: December 10, 17, and 18, 2015. (IHO Exhibit 14.)

The Student's Grandmother emailed two (2) Motions to Continue these proceedings on December 8, 2015. Due to the expedited nature of this matter, this Hearing Officer denied both requests. (IHO Exhibit 15.)

The Parent opted for a closed hearing. The Due Process Hearing was held on December 10, 17, and 18, 2015. [REDACTED] and [REDACTED] of [REDACTED] [REDACTED] Ltd. represented the District. Ms. [REDACTED] was the District

Representative. The Parent was unrepresented by counsel. The District presented the following witnesses: Dr. [REDACTED], Clinical Director, [REDACTED]; [REDACTED] – Counselor, [REDACTED]; [REDACTED]; Dr. [REDACTED] Psychiatrist; [REDACTED] – Classroom Special Education Teacher, [REDACTED]; [REDACTED]; [REDACTED] – TDS Coordinator, [REDACTED]; [REDACTED] – Director of Special Education for [REDACTED] SD [REDACTED]. The Parent presented the following witnesses: the Student, Mother, and Grandmother. The District presented the following Exhibits: District Exhibits #1, 3-13, 15-53, 55-79, 88, 90-93, 95, 100-101, 106-137, which were introduced into evidence. The Parent presented the following Exhibits: Parent Exhibits A through G, which were introduced into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-17. At the commencement of the hearing on December 10, 2015, Parent presented this Hearing Officer with a written request for a continuance in order to obtain legal representation and for a substitution of hearing officer. This Hearing Officer ruled, on the record, that pursuant to the requirements of IDEA and the Illinois School Code, she was unable to grant any continuances and that there was no right to a substitution of hearing officer due to the expedited nature of this matter. Therefore, Parent's Motions were both denied. 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 District for determination by this Hearing Officer are:

(a) Is a change of placement to an interim alternative educational setting necessary because it is dangerous to maintain the Student in her current educational placement pursuant to 105 ILCS 5/14-8.02(b), 23 Ill. Admin. Code §226.655, and 20 U.S.C. §615(k)(2) and (3), 34 C.F.R. §300.532, §300.507, §300.508?

(b) And, if the answer to issue (a) above is "yes", is placement in a residential program necessary to provide special education and related services to the Student pursuant to

105 ILCS 5/14-8.02(b), 23 Ill. Admin. Code §226.655, 20 U.S.C. §615(k)(2) and 34 C.F.R. §300.104?

The District requests that this Hearing Officer determine that the Student is substantially likely to injure herself or others if her current educational placement is maintained. The District further requests that this Hearing Officer order a change of placement to an alternative residential facility and order Parent to comply with the interim alternative educational setting placement process, including signing necessary releases, touring the facility, making the Student available and facilitating the Student's initial placement in the interim alternative educational setting.

The Parent maintains that the Student is not substantially likely to injure herself or others in her current educational placement and requests that this Hearing Officer determine that the current educational placement be maintained.

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 Parent, this Hearing Officer's Findings of Fact are as follows:

1. The Student is an outgoing, smart, creative, imaginative, kind, polite 5th grader who is currently enrolled in a private therapeutic day school. (Testimony of Dr. T², KL³, Mother.)
2. The Student struggles with impulse control and elopement behaviors. She seeks attention from staff in inappropriate ways by touching them inappropriately or without asking, lying to staff about her behavior, not following directions, asking for help that is not needed, making rude

² Dr. T is the Clinical Psychology Director at MP and has been for 22 years. He was also in private practice for 22 years at the [REDACTED]. He holds a Bachelor of Arts Degree from [REDACTED] a Master's Degree in Public Health, and a Master's Degree and PhD in clinical psychology from [REDACTED].

³ KL was employed at MP as a school counselor. She has a Master's Degree in Mental Health Training. She was also a program therapist at [REDACTED] Hospital for three (3) years where she conducted individual, group, and family therapy. She provided individual and group therapy to the Student while she was at MP.

facial expressions, and commenting on staff's appearances. (Testimony of Dr. T, KL, SD⁴; District Exhibit 3, p. 87.)

3. MP, the Student's current therapeutic day school, serves students who require a highly structured environment with self-contained classrooms, individual and group therapy for social skills, and academic support. Incident reports are created when students engage in unsafe behaviors, violence, abusive language or any behaviors where there is a risk of harm. In the period from October 29, 2013 to February 18, 2015, the Student received thirty-four (34) incident reports for unsafe behaviors including elopement inside and outside of the school buildings; unsafe behaviors during transport to and from school, such as kicking seats, hitting staff and attempting to exit a moving vehicle; throwing items; and pushing past staff. (Testimony of Dr. T, KL, SD; District Exhibits 4-13, 15-27, 30-32, 34-37, 39-49, 51-53, 55-56, 58-61, 63-68, 70-75.)

4. At MP, the Student has a Behavior Intervention Plan (BIP) which contains individual and group counseling services and goals. The school also utilizes a level incentive system to reinforce positive student behaviors. When a student reached a certain level, he or she would earn certain incentives such as prizes, time on an Ipad, money for the school store, and time in gym. Level 1 is the lowest level of the behavior system. After two years at MP, the Student is still on level 1 of the level incentive system. She had reached of higher level, at one time, but was unable to maintain it. (Testimony of KL.)

5. On October 29, 2013, the Student was given a timeout and sent out to the hallway to serve it. When she exited the room, she ran down the hallway and refused to go to the quiet room. She continued to run through the building from staff toward a back door. This is the type

⁴ SD is the Student's current 5th grade teacher at MP. She is a certified special education teacher licensed by the Illinois State Board of Education. She has been an employee of MP for 14 years.

of elopement behavior that is very typical for the Student. The concerns with this type of elopement behavior are the school is situated on a busy street, the Student may injure herself or others because she is not always aware of how fast she is going and is not in control of her body. The elopement is unsafe due to impulsivity as it puts staff, other students, and anyone else present at risk for injury. (Testimony of Dr. T; District Exhibit 4, pp. 114-115.)

6. On another occasion, at the conclusion of a sensory break requested by the Student, the Student exited the quiet room and ran down the hallway, past staff. She continued running, bouncing, and making animal noises after being given a “strike one” warning to discontinue the behavior. She ran into a classroom, hid under a desk, began running around the room and crawling under tables. She was given a “strike two” and requested by staff to go to the quiet room. The Student responded “Escort me!” Staff stated that they did not want to escort the Student, as she could go on her own. The Student again attempted to run past staff and was given a “strike three” to go to the quiet room. During this incident, the Student ran past and bumped into staff multiple times. (Testimony of Dr. T; District Exhibit 11, pp. 136-139.)

7. On another occasion, when asked by staff to line up with her class, the Student began yelling, running and knocking over chairs. When directed to stop running and go to the quiet room, the Student continued running. She had to be escorted by staff to the quiet room. (Testimony of Dr. T; District Exhibit 13, pp. 141-144.)

8. When being escorted to the quiet room by staff, the Student wrapped her leg around that of a staff member, causing the staff member and Student to fall to the ground. (Testimony of KL; District Exhibit 56.)

9. The Student engages in unsafe behaviors including throwing items, knocking over chairs, shoving desks, attempting to hide underneath desks, using abusive language toward staff, kicking

doors, running around the classrooms and through the hallways, running away from staff, pushing past staff, turning over tables, throwing items from shelves. (Testimony of Dr. T, KL, SD; District Exhibits 16-22, 24-27.)

10. The Student is transported to and from school via cab. She is transported alone with an aide and the cab driver. The cab is a small SUV. (Testimony of Dr. T, KL, KH.)

11. On March 18, 2014, the Student was preparing for dismissal from school. She began grunting and scowling at staff and attempted to push past staff and run down the hall. The Student was directed to begin walking to her cab for dismissal. She lunged at staff in an attempt to re-enter the group room. She then began pushing past staff in an attempt to re-enter the group room. When she was unable to do this, she began running down the hall. Due to this continued behavior, staff escorted her to the cab. As she was being escorted by staff to the cab, the Student yelled, grunted, swung her body, and attempted to kick the back of staff's knees. While in the parking lot, the Student pushed her feet up against the cab so that the cab door could not be opened safely. The Student was then escorted to the opposite side of the cab. The cab driver got out to open the door and assist. Once the Student was in the cab, she climbed over the seat and into the driver's seat – the cab was running at this time. The driver opened the door and pulled the key out of the ignition. Staff escorted the Student back to the back seat of the cab and buckled her seat belt. As staff were returning to the building, the Student opened the cab door and attempted to exit the cab. Due to these unsafe behaviors, the Student was taken from the cab, back into the school building for a timeout in the quiet room. (Testimony of Dr. T, KL; District Exhibit 23, pp. 184-187.)

12. Bus incident reports document unsafe behaviors of students during transport to and from school. These reports are provided to parents. During the period August 2014 through

September 2015, the Student received twenty-one (21) bus incident reports. The Student engaged in the following behaviors which resulted in bus incident reports: laying hands on the driver and aide, running away from transport, kicking seats in the vehicle, using foul language, not staying seated, hitting the driver and aide, kicking the driver, spitting, throwing chewed up food at the driver, not obeying driver directions for safety, tripping, coming out of seat belt, threatening to exit transport and walk home, throwing paper and other objects, stating to driver and aide that she felt suicidal. On at least one occasion, the police were called to assist the driver and aide due to the Student's failure to remain seated, rude and discourteous conduct, throwing of objects, noise, destruction of property and statement that the Student felt suicidal. (Testimony of KL, KH⁵; District Exhibits 12, 30-32, 34-35, 44-45, 47-49, 51-53, 58-60, 64-67, 71.)

13. On September 17, 2015, the Student threatened to kill the bus transport driver and wrote a note to that effect. (Testimony of KL; District Exhibit 66.)

14. The Student was psychiatrically hospitalized from June 3 – 19, 2014 for on-going violent behavior. (Testimony of Mother, Dr. K; District Exhibit 57.) She was diagnosed with bipolar affective disorder, manic, severe, with psychotic behavior; intermittent explosive disorder; and asthma. (Testimony of Dr. T; District Exhibit 28-29.)

15. The Student's attendance at school is inconsistent and irregular. In the Fall 2014, the Student had attended 52% of school days. Over the previous summer, she attended 35% of the time. In the Fall of 2015, the Student has attended 50% of school days. Aggressive behavior at home was the main reason for the Student's lack of attendance at school. The Student refuses to go to bed on time, to wake up in the morning, to get ready, and to board her transportation. The school supplied the Student with an alarm clock in order to assist with waking in the morning.

⁵ KH is employed by ██████████ District for Special Education. She has been employed at ██████████ for 33 years. She is a TDS coordinator and play-based assessment coordinator for the township. She holds an undergraduate degree from the ██████████ in early childhood education.

Often, the Student's absences are not report to the school. The school then attempts to contact an adult at home. When this is unsuccessful, the local police department is called to conduct well-being checks. The police were contacted by the school seven times from November 2013 to September 2014. (Testimony of Dr. T, SD; District Exhibit 33, p. 233; District Exhibit 101.)

16. The school has received concerning voicemails from the Student and Mother. When the Student's safety is questioned, the Department of Children and Family Services (DCFS) has been contacted. DCFS was contacted four times from September 2013 - November 2014. (Testimony of Dr. T; District Exhibit 33.)

17. Due to the Student's aggressive and elopement behaviors, the District sought Parental consent to re-evaluate the Student in January 2015. This was one year before the Student's scheduled triennial re-evaluation. At that time a psychiatric evaluation was recommended due to the Student's behaviors, hospitalizations, and the school's concern that the Student's prescribed medications did not appear to meet her needs and match with the diagnoses that the Student had received. Mother's report that the Student ran away from home in October 2014 and possibly killed five family pet birds were also bases for the recommendation of a psychological evaluation, as instances of children harming animals is an indicator of severe psychopathic pathology. Mother consented to the evaluation. (Testimony of Dr. T; District Exhibit 38.)

18. The Student was referred to Dr. K⁶ for a psychiatric diagnostic evaluation and was evaluated by him on March 18, 2015. Dr. K diagnosed the Student with Attention Deficit Hyperactivity Disorder (ADHD), combined type, and with likely Bipolar Disorder, hypomanic to manic. Dr. K noted that the Student had an odd presentation when discussing her sexualized behavior, appearing to be playful about it despite the fact that she was with a male doctor with

⁶ Dr. K is a Board Certified Forensic Psychiatrist. He is the [REDACTED] Professor of Child and Adolescent Psychiatry and Chief, [REDACTED] (Testimony of Dr. K; District Exhibit 137.)

whom she was unfamiliar. He also noted that the Student's judgment was poor and she had very little insight into her difficulties. She had very minimal understanding of the expansiveness of her behavior. The Student also had a particularly odd presentation when she and Dr. K discussed the death of five pet birds she is suspected to have killed. During this discussion, the Student stated that she did not like the birds and that was the extent of the discussion. Dr. K characterized the Student's mental illness as "severe" and found that it was "having a severe impact on her basic educational needs to the point that even a highly structured day school, such as the one the Student currently attends, has been unable to meet her basic educational needs." Dr. K stated that "because of the significant history of school refusal, ongoing hypersexual and behavioral difficulties, general level of unresponsiveness to treatment interventions and a continued struggle to meet the Student's basic educational needs, it would be my recommendation that she be placed in a therapeutic residential facility that can meet her basic educational needs." Dr. K did not believe that any private therapeutic day school, similar to the one she currently attends, would be able to meet her educational and behavioral needs as the Student requires more intense, consistent, round the clock interventions that cannot be provided in a day program. Dr. K does not generally recommend placement in residential facilities and only made this recommendation after careful consideration due to the severity of the Student's mental illness. He noted that there was a lack of follow up for the Student after several prior hospitalizations. In this case, there is a substantial risk of harm to the Student due to the lack of follow up. Untreated mental health issues such as the Student's effect social development and educational performance and there is a possibility of brain damage if severe mental health issues remain untreated. Dr. K noted that students with bipolar disorder present with a general lack of concern for others and aggressiveness. He also noted that they have higher risk of suicide, are at

risk for interaction with the criminal justice system, and have an increased risk for accidents.

(Testimony of Dr. K; District Exhibit 57.)

19. Based upon the testimony and opinion of Dr. K, as set forth above, the Student is found to have disturbingly severe mental health issues which have a severe impact on her basic educational needs to the point that even a highly structured day school, such as the one the Student currently attends, has been unable to meet her basic educational needs. The Student is found to have poor judgment and very little insight into her difficulties. She has very minimal understanding of the expansiveness of her behavior. (FF #18.)

20. The District held three IEP meetings from April 2015- Sept 2015. The increased number of meetings was due to concerns with the Student's limited availability for learning and limited academic progress, low attendance, continued aggressive and elopement behaviors which have resulted in injury to herself and others. (Testimony of Dr. T, KL; District Exhibit 38.)

21. An annual reevaluation IEP meeting was held in April 2015. At that time, the Student was receiving 90 minutes of individual counseling and 225 minutes of group counseling per week during the school year. During the summer, she was receiving 45 minutes of individual counseling and 225 minutes of group counseling per week. Concerns were raised due to the Student's continued difficulties in the classroom due to her impulsivity and low attendance due to school refusal. She struggled to move up in the level system due to her consistently disruptive behaviors resulting in a loss of points on a daily basis. She struggled with hyperactivity and impulsivity as evidenced by difficulty remaining in her seat, running from staff, making faces which distracted peers, making noises that disrupted the class in general (i.e. growling, laughing at inappropriate times, mimicking her peers, bizarre sounds/vocalizations). In individual counseling sessions, the Student hesitated to discuss any personal issues. Parent reported that the

Student was hitting her and her aging grandmother at home. (Testimony of KL, Mother, Grandmother; District Exhibit 57.)

22. A Behavior Intervention Plan (BIP) was developed to support the Student and target the Student's inappropriate, impulsive, unsafe behaviors in the classroom including provoking or mimicking peers, sexualized behaviors/comments, displaying poor physical boundaries, disrespectful or oppositional behavior, challenging or refusing to comply with staff directives, dishonesty with staff and asking the same question of multiple staff members in order to obtain the desired response (splitting). These behaviors resulted in the Student losing an average of 60 points per week on the level system. Attempted interventions utilized daily in the classroom included token incentives, rewards, privileges, free time, classroom and group rewards, verbal praise. Time-outs were also used but would not necessarily be in the timeout room. The Student would be asked to go into the hallway or timeout room to quiet down and de-escalate. Sensory options such as noise blocking headphones were available at all times. The Student could also choose to use the "chill zone," a place in the classroom where students could just relax. Accommodations for the Student included preferential seating; limited restroom time supervised by staff; breaks for the Student to walk, get a drink, read or draw; clear expectations; staff supervision to and from cab transport; consistent daily schedule to assist the Student to feel safe and to reduce any possible behavioral incidents. Curriculum supports included individual and small group instruction, student to staff ratio of 8:2, student to teacher ratio of 8:1, clear written and verbal reminders/instructions, teacher checks for understanding and offers for individualized direct instruction, consistent daily schedule and counseling, academic materials that meet her capabilities, verbal and non-verbal prompts throughout the day to help the Student make good choices and follow rules and directions. Positive supports included continued 90 minutes per

week of individual counseling and 225 minutes per week of group counseling per week, additional support in the classroom as needed, verbal and non-verbal prompts throughout the day, use of breaks, use of the Quite Room to de-escalate and process with staff using Life Space intervention techniques, noise-blocking headphones, sensory tools, positive feedback, classroom incentives, and reminders of rewards and consequences. Disciplinary measures included loss of points on daily point sheets, removal from proximity when conflict arises, timeout or Quite Room if non-compliant behavior escalates to verbal or physical aggression, constant supervision throughout the day, limited restroom time supervised by staff walking to and from the restroom. Goals were to decrease incidents of unsafe physical behavior from five per week to one per week over the course of one year's time and to reduce the average number of points lost for inappropriate and disrespectful behaviors from an average of 60 points per week to 20 points per week in one year's time. (Testimony of KL, Dr. T; District Exhibit 57.)

23. Based upon the testimony and documentary evidence presented at hearing this Hearing Officer finds that the District has made reasonable efforts to minimize the risk of harm to the Student and others in her current private therapeutic day school placement. (FF #10, 21-22.)

24. Dr. K was present at the April 2015 IEP meeting and presented his report, findings, and recommendation for placement. (Testimony of Dr. K, District Exhibit 57.)

25. At the conclusion of the April 22, 2015 IEP meeting, the IEP team recommended the Student be placed at a private residential facility. A residential placement would provide consistency for the Student across all settings and environments. The Student's behavior plan and supports would be carried with her throughout the day and she would benefit from the intensive supports available. Mother was hesitant to discuss this placement. Mother signed

consent for release of information to one residential placement facility, RPR 1. (Testimony of Mother, Dr. T, Dr. K, KL, SD; District Exhibit 57.)

26. An IEP meeting was held on May 27, 2015 to discuss proposed residential placement for the Student and to seek permission to share the Student's IEP and evaluation with additional residential schools. The Parent did not attend that meeting, after the District made multiple attempts to reach her with no response. It was noted that since the April 22, 2015 reevaluation meeting, the Student had five (5) additional dangerous behavioral incidents either at school or during transport. The IEP team noted that it remained extremely concerned for the Student's mental health and well-being. (Testimony of KL, KH, KM; District Exhibit 62.)

27. The Student was psychiatrically hospitalized from July 24 to August 5, 2015 due to her behaviors and actions at home. As a result of that hospitalization, she was prescribed Methylphenidate. She returned to school at the end of August 2015 and did very well academically and behaviorally for the first three (3) weeks of the school year moving up to level 2 on the behavior level system. However, in September, Mother advised that the Student had run out of the prescribed medication. The school counselor intervened to assist Mother in scheduling medical aftercare for the Student. (Testimony of KL, SD; District Exhibit 69.)

28. At the IEP meeting held on September 21, 2015, the IEP team recommended the Student's placement at a private residential facility due to her aggressive and unsafe behaviors both at home and at school. (FF # 2-9, 11-17.) A residential placement would provide consistency for the Student across all settings and environments. The Student's behavior plan and supports would be carried with her throughout the day and she would benefit from the intensive supports available. The Student's aggressive behaviors at home have led to multiple

hospitalizations, lack of attendance, and the Student's unavailability for learning when she is present at school. (Testimony of Dr. T; District Exhibit 69, pp. 428-430.)

29. At MP, the Student is in a 5th grade special education class. The classroom is equipped with a study carol for each student, a chill out zone in the class with bean bags, head phones are provided to minimize distractions, fidgets are provided, and the students are allowed sensory breaks when needed. There are six (6) students, including the Student, in the class with one (1) lead teacher and two (2) assistant teachers. The ratio of students to staff is 2:1. (Testimony of SD.)

30. Since September 2015, the Student has continued to exhibit difficult, unsafe behaviors. She has received incident and bus incident reports for aggressive, out-of-control behavior; elopement; pushing past staff; aggressively kicking staff; kicking and putting her hands on the face of the aide during transport, necessitating police intervention; running away from staff while outside the school buildings. On one occasion, the Student was transitioning with her class from Building A, where the lunchroom and gym are housed, to building D, where the Student's classroom is located, when the Student ran away, purposefully ran in front of and was almost hit by car. She then ran into the building and hid in alcove. After the Student was no longer allowed to transition to Building A for lunch, she became aggressive and repeatedly stated that she wanted to punch someone in the face. (Testimony of SD; District Exhibits 70 – 75.)

31. The week of September 14 – 18, 2015, the Student stated that she felt mad, did not feel happy, and felt like hurting someone. She attended school three (3) days that week but had five (5) incidents of unsafe behavior. The following week, the Student attended school four (4) days and had nine (9) incidents of unsafe behavior. She was out of school the following week for a family vacation. The week of October 5 – 9, 2015, the Student attended school two (2) days and

had three (3) incidents of unsafe behavior. The week of October 12 – 16, the Student attended school three (3) days and had seven (7) incidents of unsafe behavior. The week of October 19 - 23, the Student attended school four (4) days and had five (5) incidents of unsafe behavior. The Student was psychiatrically hospitalized on November 8th as a result of incidents which occurred at home. (Testimony of SD; District Exhibit 79.)

32. Since, September 2015, the Student's attendance at school has declined from being present at school 73% of the time to 50% of the time. The Student's reading performance on the STAR reading assessment is average for a 5th grader in the sixth month of school. Her writing score was 75% as of the end of the school year in May 2015. In math, the Student's performance on the STAR math assessment is comparable to an average 3rd grader in ninth month of school year. The Student's report card for Q1 2015 reflects grades of an "F" in all core subjects due to lack of work completion. (Testimony of SD; District Exhibit 69, 101.)

33. The Student has failed to make educational progress in her current placement due to low attendance, school refusal, and behavioral difficulties which cause her to be unavailable for learning when she is present at school. (Testimony of Dr. T, Dr. K, KL, SD.)

34. Despite the extensive behavioral interventions, accommodations, and supports that MP has provided to the Student in its highly structured environment, the Student's behaviors have continued to deteriorate and have increased in severity. (Testimony of Dr. T, KL, SD.)

35. Factors outside of the educational environment have contributed to the Student's failure to make educational progress while at MP. These factors include lack of medication management, aggressive behaviors seen at home, numerous hospitalizations initiated by Mother, lack of consistent communication from Mother, and the fact that the Student does not receive consistency across all settings. (Testimony of KM.)

36. District and Parent agree that the Student's current therapeutic day school is inappropriate and unable to meet the Student's needs. The Student's elopement behaviors present safety concerns. (Testimony of Dr. T, KL, KM, KH, SD, Mother, Grandmother.)

37. The Student has, at times, presented a danger to others due to her aggressive behaviors related to her bipolar disorder and ADHD. (Testimony of Grandmother.)

38. Based upon the testimony presented and documentary evidence introduced at hearing, this Hearing Officer finds that continued placement of the Student in a therapeutic day school setting would be inappropriate and is likely to result in injury to the student or to others per 34 C.F.R. §300.532. Further, it is found such continued placement would not meet the Student's needs given a residential program is necessary to provide her with special education and related services per 34 C.F.R. §300.104. A residential placement is necessary because of the significant history of school refusal, ongoing hypersexual and behavioral difficulties, general level of unresponsiveness to treatment interventions and a continued struggle to meet the Student's basic educational needs. The Student requires more intense, consistent, round the clock interventions that cannot be provided in a day program. (FF #18-19.)

39. The IEP team recommended that the Student be placed in a residential facility. A residential placement would provide consistency for the Student across all settings and environments. The Student's behavior plan and supports would be carried with her throughout the day and she would benefit from the intensive supports available. Several facilities were considered and discussed at the April 22, 2015 IEP meeting and Mother provided consent for the Student's IEP and records to be released to RPR 1. RPR 1 is a local facility affiliated with a large well-reputed hospital in the Student's home geographical area. It is an unlocked facility with a protected play area. Students receive consistent parenting time over weekends while at

the facility. RPR 1 provides considerable one to one attention, requires family support and involvement, addresses both school and home needs for students. RPR 1 has reviewed the Student's IEP and additional records provided and is able to implement the Student's IEP in its entirety, including recommended supports, services, accommodations and modifications. Mother and Grandmother toured RPR 1 but no further action was taken.⁷ RPR 2 has not received the Student's IEP or other records as Mother did not provide consent for release of said documents. However, this facility would also be able to implement the Student's IEP in its entirety. The IEP team recommends that the Student be placed at RPR 1 as this facility can meet both her educational and behavioral needs and implement her IEP in its entirety. It is also a local facility in which family support and involvement is required. (Testimony of Dr. T, Dr. K, KL, SD, KM⁸, KH; District Exhibits 69, 131-139.)

40. Based upon the testimony and documentary evidence introduced at hearing, this Hearing Officer finds that RPR 1 and RPR 2 will permit full implementation of the Student's IEP including services and modifications designed to prevent the Student's undesired behaviors from recurring. This Hearing Officer further finds that placement at a residential facility is the appropriate and necessary placement for this Student.⁹

⁷ KM, Director of Special Education for District [REDACTED] made 13 attempts to contact Mother after the tour of RPR 1. None of her messages were returned. (Testimony of KM.) KL and KH also made multiple attempts to contact Mother to facilitate placement at RPR 1 but were unsuccessful. (Testimony of KL, KH; District Exhibit 76).

⁸ KM is the Director of Special Education for District [REDACTED] and has been for the past three years. Prior to that she served as Director of Special Education for [REDACTED]. She holds a Master's Degree in Special Education and has 15 years of experience in the education field.

⁹ Mother did not present any evidence to contradict that of the District witnesses, including Dr. T and Dr. K. Prior to and during the course of the hearing, Mother advised that the Student's current treating psychiatrist would be appearing to testify along with a social worker who provided services to the Student. Mother attempted to introduce into evidence a letter from the Student's treating psychiatrist from her most recent psychiatric hospitalization which appeared to contradict the residential placement recommendation. This Hearing Officer was very interested in hearing testimony from the treating psychiatrist. However, on December 18th at the time scheduled for the treating psychiatrist to testify, he was unavailable and his office advised that he was out of town on vacation and had been since a date prior to the commencement of this hearing. The letter from the Student's treating psychiatrist was not admitted into evidence as it was only a letter with a recommendation. It was not an evaluation and did not include any findings or basis for the physician's recommendation. As the psychiatrist did not appear to testify, the

41. The Student was psychiatrically hospitalized from November 8, 2015 to December 9, 2015 immediately prior to this hearing. This hospitalization resulted from the Student's physical aggression and verbal threats toward Mother at home. (Testimony of Mother, Student and Grandmother.)

42. The Student appeared to testify at the hearing. She reported that since being released from the hospital, she was feeling better due to medication that she was taking. (Testimony of Student.)

CONCLUSIONS OF LAW

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

The IDEA and the Illinois Administrative Code provide as follows: Requests for expedited due process hearings shall be made in accordance with 34 C.F.R. §300.532 and §300.533 and Section 14-8.02(b) of the Illinois School Code. 105 ILCS 5/14-8.02(b).

- (a) The hearing officer shall determine:
 - 1.) whether the child shall be placed in the proposed alternative educational setting; or
 - 2.) whether the local school district has demonstrated that the child's behavior was not a manifestation of the child's disability.

- (b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:

information contained in the letter could not be explained, subjected to cross examination per 34 C.F.R. §300.512(a)(2), and put into context. On December 18th, Mother's social worker witness was also scheduled to testify. However, at the scheduled time, the social worker was unreachable by phone and messages left for him were unreturned.

- 1.) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
 - 2.) Whether the child's current placement is appropriate;
 - 3.) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - 4.) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.
- (c) If all conditions set forth in subsection (b) of this Section are met, the hearing officer shall order a change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days. If the district demonstrates that the student is substantially likely to injure himself or herself or others if returned to the placement that was used prior to the student's removal, the hearing officer may order that the student remain in the interim setting for subsequent periods of up to 45 school days each.

23 Illinois Administrative Code §226.655. *See also* 20 U.S.C. §1415(k)(3), 34 C.F.R. §300.532.

Factors of be considered:

In determining whether placement in an interim alternative educational setting is appropriate, the hearing officer shall consider the following factors:

- (1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the Student is substantially likely to result in injury to the Student or to others.

The testimony and documentary evidence presented at hearing reflects the following: MP, the Student's current educational placement uses incident reports to memorialize student conduct that it considers unsafe including violence, abusive language, or any behaviors where there is a risk of harm. (FF #3.) During the period October 29, 2013 through February 18, 2015, the Student received thirty-four (34) incident reports for unsafe behaviors. (FF #3.) The Student's behaviors included elopement inside and outside of the school buildings; tripping staff;

aggressively kicking staff; unsafe behaviors during transport to and from school, such as kicking seats, hitting staff and attempting to exit a moving vehicle; throwing items; knocking over chairs; shoving desks; attempting to hide underneath desks; pushing past staff; using abusive language toward staff; kicking doors. (FF #3, 5-9, 30.) On one occasion, the Student eloped while transitioning between buildings for lunch, ran in front of a car and was almost hit. (FF #30.) During transport to and from school, the Student has engaged in the following behaviors: laying hands on the driver and aide, running away from transport, kicking seats in the vehicle, using foul language, not staying seated, hitting the driver and aide, kicking the driver, spitting, throwing chewed up food at the driver, not obeying driver directions for safety, tripping, coming out of seat belt, threatening to exit transport and walk home, throwing paper and other objects, stating to driver and aide that she felt suicidal. The Student also threatened to kill the bus transport driver. (FF #13.) These behaviors resulted in twenty-one bus incident reports during the period August 2014 through September 2015. (FF #12.) Mother and Grandmother concede that, at times, the Student presents a danger to others and that the Student's elopement behaviors are a safety concern (FF # 36-37.)

The Student has been psychiatrically hospitalized on three separate occasions and, most recently, from November 8, 2015 to December 9, 2015. (FF # 14, 27, 41.) The hospitalizations have resulted from aggressive behaviors and verbal threats toward Mother and Grandmother in the home. Mother and Grandmother reported that the Student has seriously hit them. (FF # 21.) Mother also expressed concern that the Student may have killed five birds that were family pets. (FF #17.)

After being hospitalized from July 24 to August 5, 2015, the Student returned to school and performed very well both academically and behaviorally for the first three weeks of the

school year. However, after her prescribed medication ran out, her behaviors again began to deteriorate and increase in severity. (FF #27, 30, 31, 33, 34.) The Student's has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), combined type and with Bipolar Disorder, hypomanic to manic. Her mental illness is characterized as "severe" and the Student has very poor judgment and displays very little insight into her behavioral difficulties. (FF #18.)

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the District has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the Student is substantially likely to result in injury to the Student or to others. This Hearing Officer further finds that the District has met its burden with respect to this factor.

When determining whether an interim alternative placement is appropriate, the second factor to be considered is:

- (2) Whether the Student's current placement is appropriate.

The testimony and documentary evidence presented illustrate that the Student's current placement is not appropriate. The Student has failed to make educational progress both academically and behaviorally at MP. (FF #4, 15, 19, 20, 31-34.) Both Mother and District agree that the Student's current educational placement is unable to meet her needs. (FF #36.) As previously stated, this Hearing Officer finds that continued placement of the Student in her current, or any other, therapeutic day school setting would be inappropriate and would not meet the Student's needs. (FF #38.)

When determining whether an interim alternative placement is appropriate, the third factor to be considered is:

- (3) Whether the District has made reasonable efforts to minimize the risk of harm in the Student's current placement, including the use of supplementary aids and services.

The testimony and documentary evidence presented at hearing illustrate that the District provided the Student with a small classroom with a student to staff ratio of 2:1. (FF #29.) Interventions utilized daily in the classroom included token incentives, rewards, privileges, free time, classroom and group rewards, verbal praise. Time-outs were also used but would not necessarily be in the timeout room. The Student would be asked to go into the hallway or timeout room to quiet down and de-escalate. Sensory options such as noise blocking headphones were available at all times. The Student could also choose to use the "chill zone," a place in the classroom where students could just relax. A Behavioral Intervention Plan (BIP) was developed to support the Student. Accommodations for the Student included preferential seating; limited restroom time supervised by staff; breaks for the Student to walk, get a drink, read or draw; clear expectations; staff supervision to and from cab transport; consistent daily schedule to assist the Student to feel safe and to reduce any possible behavioral incidents. Curriculum supports included individual and small group instruction, student to staff ratio of no more than 8:2, student to teacher ratio of not more than 8:1, clear written and verbal reminders/instructions, teacher checks for understanding and offers for individualized direct instruction, consistent daily schedule and counseling, academic materials that meet her capabilities, verbal and non-verbal prompts throughout the day to help the Student make good choices and follow rules and directions. Positive supports included continued 90 minutes per week of individual counseling and 225 minutes per week of group counseling per week, additional support in the classroom as needed, verbal and non-verbal prompts throughout the day, use of breaks, use of the Quiet Room to de-escalate and process with staff using Life Space intervention techniques, noise-blocking headphones, sensory tools, positive feedback, classroom incentives, and reminders of rewards

and consequences. Disciplinary measures included loss of points on daily point sheets, removal from proximity when conflict arises, timeout or Quiet Room if non-compliant behavior escalates to verbal or physical aggression, constant supervision throughout the day, limited restroom time supervised by staff walking to and from the restroom. Goals were to decrease incidents of unsafe physical behavior from five per week to one per week over the course of one year's time and to reduce the average number of points lost for inappropriate and disrespectful behaviors from an average of 60 points per week to 20 points per week in one year's time. (FF #22.)

As previously stated, this Hearing Officer finds that the District has made reasonable efforts to minimize the risk of harm to the Student and others in her current private therapeutic day school placement. (FF #23.)

When determining whether an interim alternative placement is appropriate, the fourth factor to be considered is:

- (4) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.

The IEP Team recommends that the Student be placed in a residential facility. IDEA requires that placement in a residential facility be necessary to provide special education and related services to a child with a disability. 34 C.F.R. §300.532. As stated above, this Hearing Officer finds that a residential placement is necessary because of the significant history of school refusal, ongoing hypersexual and behavioral difficulties, general level of unresponsiveness to treatment interventions and a continued struggle to meet the Student's basic educational needs. The Student requires more intense, consistent, round the clock interventions that cannot be provided in a day program. Further, a residential placement would provide consistency for the Student across all settings and environments. The Student's behavior plan and supports would be carried with her throughout the day and she would benefit from the intensive supports available. (FF

#38-40.) Several facilities were considered and discussed and Mother provided consent for the Student's IEP and records to be released to RPR 1. RPR 1 is a local facility affiliated with a large well-reputed hospital in the Student's home geographical area. It is an unlocked facility with a protected play area. Students receive consistent parenting time over weekends while at the facility. RPR 1 provides considerable one to one attention, requires family support and involvement, addresses both school and home needs for students. RPR 1 has reviewed the Student's IEP and additional records provided and is able to implement the Student's IEP in its entirety, including recommended supports, services, accommodations and modifications. RPR 2 has not received the Student's IEP or other records as Mother did not provide consent for release of said documents. However, this facility would be able to implement the Student's IEP in its entirety. The IEP team recommends that the Student be placed at RPR 1 as this facility can meet both her educational and behavioral needs and implement her IEP in its entirety. It is also a local facility in which family support and involvement is required. (FF #39-40.) As stated previously, this Hearing Officer finds that RPR 1 and RPR 2 will permit full implementation of the Student's IEP including services and modifications designed to prevent the Student's undesired behaviors from recurring. This Hearing Officer further finds that placement at a residential facility is the appropriate placement for this Student.

This Hearing Officer finds that the District has met its burden with respect to all four factors required. As all four factors required by 23 Ill. Admin. Code §226.665 have been met, the hearing officer "shall order a change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days." While this Hearing Officer empathizes with Mother's position and understands that the prospect of such a placement is very upsetting to Parent and Student, based upon the evidence presented and pursuant to IDEA, the

Illinois School Code and its implementing regulations, this Hearing Officer finds that placement in a residential facility is necessary, warranted, and well supported by the evidence. The Student is clearly a very bright, creative, beautiful, fifth-grader, with a promising future. It is this Hearing Officer's hope that she will obtain the necessary educational and behavioral supports she needs to succeed. The Parent is strongly encouraged to work with the District to effectuate the Student's placement in the interim alternative educational setting, including touring the facility, signing the necessary releases, and facilitating the Student's placement there.¹⁰

Therefore, this Hearing Officer determines that:

The District has met its burden with respect to the four factors required for placement of the Student in an interim alternative educational setting pursuant to IDEA, the Illinois School Code and its implementing regulations pursuant to 20 U.S.C. §1415(k)(3), 34 C.F.R. §300.532 and §300.533, 105 ILCS 5/14-8.02(b), and 23 Ill. Admin Code §226.655 for not more than 45 school days.

Parent's request to the contrary is hereby denied.

ORDER

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

The District's requested relief to change the Student's placement to an appropriate interim alternative educational setting, specifically RPR 1¹¹, for not more than 45 school days is granted, including transportation to and from RPR 1 when Student as part of its program is allowed to go home.

¹⁰ The District is likewise strongly encouraged to provide any and all resources at its disposal to Mother to assist her in transitioning the Student.

¹¹ If for any reason RPR 1 should not be available, RPR 2 would be an appropriate alternative interim alternative education setting.

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: January 11, 2016

/s/ Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

APPENDIX A

Catherine Kiehn v. Skokie SD 73.5
Case No: 2016-0182

Child	[REDACTED] (Student)
Attending School	[REDACTED] (MP)
Child's Parent(s) (Mother)/Petitioner	[REDACTED] (Mother)
Witnesses:	
Clinical Director – Metro Prep	Dr. [REDACTED] (Dr. T)
Counselor – Metro Prep	[REDACTED] (KL)
Psychiatrist, MD	Dr. [REDACTED] (Dr. K)
Classroom Teacher – Metro Prep	[REDACTED] (SD)
TDS Coordinator, NTDSE	[REDACTED] (KH)
Direct of Special Education – Skokie SD 73.5	[REDACTED] (KM)
Child's Maternal Grandmother	[REDACTED] (Grandmother)
Residential Placement Recommendation 1 (RPR 1)	[REDACTED]
Residential Placement Recommendation 2 (RPR 2)	[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2016-0182

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on January 11, 2016, 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]
[REDACTED]
[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION
Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: January 11, 2016

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

[REDACTED]
[REDACTED]
Phone:

Fax:

Email: