

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

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MAR 17 2017

SPECIAL EDUCATION  
SERVICES

█ a minor, by and through  
His/her Parent(s),  
Student

v.

Case No. 2017-0193

█ School District █

Mary Jo Strusz  
Impartial Hearing Officer

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 seven-year-old female, in the second grade, who is eligible for special education and related services as a student with autism. On December 12, 2016, Petitioner, through her attorney, █, filed a due process complaint ("Complaint") against the Respondent, the █ School District █ ("Respondent" or "District") seeking a determination that the District's proposed placement of the Student in a private therapeutic day school was not appropriate and did not provide the Student with FAPE in the least restrictive environment.

The Illinois State Board of Education ("ISBE") appointed the undersigned as the hearing officer ("IHO") on December 20, 2016. The District, through its attorneys, █ and █, submitted a response on December 22, 2016. The IHO issued an initial status call letter, preliminary order, rights of parties related to hearing, hearing process

guideline and standing order on December 27, 2016. The parties participated in mediation on December 1, 2016, which was prior to the filing of due process. On January 11, 2017, the parties waived resolution and requested to proceed directly to hearing.

On January 6, 2017 at 9:15 a.m., the IHO held a telephonic status conference during which the parties agreed to set a telephonic prehearing for January 24, 2017, and hearing dates for March 1- 3, and 6, 2017. The Parties submitted a joint request to continue the 45-day decision timeline to accommodate the hearing dates and the 45-day decision timeline was extended to March 17, 2017.

On January 24, 2017, the IHO conducted a telephonic prehearing conference, which was adjourned until February 3, 2017. On February 3, 2017, the Parent was given leave to amend the request for relief to provide specificity and clarification. The Parent filed an amended request for relief, which the IHO incorporated into the prehearing report and Order. The District filed a Motion to dismiss two of the proposed remedies. This request was denied verbally by the IHO on the record prior to the start of the hearing.

Prior to the hearing, the IHO was provided with copies of the Exhibits (including joint exhibits), proposed document lists, and proposed witness lists. The parties provided a Joint stipulation of facts ("JSF").

The hearing commenced on March 1, and continued March 2,3, and 6, 2017, at the School District administrative offices. An official court reporter was provided by the District for all hearing dates. The hearing was closed to the public. The Parent made a request to identify a witness outside of the five-day disclosure period. The District objected. The IHO ruled that the witness could testify on Monday, March 6, as the 5-day disclosure would be met on the final day of hearing. This witness was called by the Parent on March 3, 2017 with the agreement of the District.

At the conclusion of the hearing, documents offered into evidence by either Party, which were not objected to, were offered into evidence. IHO admitted the following exhibits<sup>1</sup>: P2 (1-24); R1, R2, R3 (1-3), R4, R5, R6, R7, R8, R9, R10, R11, R12 (1-2); R13, R14, R15, R16, R17, R18, R19, R20, R21, R22 (1-2), R23 (1-2), R24, R25, R26, R28, R29, R30 (1-2), R31, R32, R33, R34 (1-2), R35, R36, R37, R38, R39, R40; R42 (1-2), R44 (1-4), R45 (1-4), R46 (1-3), R47 (1-2), R48 (1-40, R99, R100 (1-2), R101, R102, R-103 (1-2), R106, R107, R108, R109 (1-2), R110, R111 (1-4), R112; JE1 (1-22), JE2 (1-8), JE3 (1-4), JE4 (1-9), JE5 (1-45), JE6 (1-7), JE7 (1-8), JE8 (1-10), JE9 (1-8), JE10 (1-43), JE11 (1-31), JE12 (1-32), JE13 (1-7), JE14 (1-33), JE15 (1-6), JE16 (1-51), JE17 (1-14, JE20 (1-28). Proposed exhibits submitted at the five-day disclosure deadline but not expressly enumerated above were not admitted into evidence and were not considered in the preparation of this final Determination and Order.

The Parent called six witnesses: 1. [REDACTED] ("Parent" or "Mother"); 2. [REDACTED] ("Grandmother"); 3. [REDACTED] ("Butler"), private behavior speech therapist and Board Certified Behavior Analyst ("BCBA"); 4. [REDACTED] ("[REDACTED]"), private behavior speech therapist; 5. [REDACTED] ("[REDACTED]"), occupation therapist for District; 6. [REDACTED] ("[REDACTED]"), District homebound tutor.

The District called nine witnesses: 1. [REDACTED] ("[REDACTED]"), Behavioral Interventionist at District; 2. [REDACTED] ("[REDACTED]"), District special education teacher at [REDACTED] School ("[REDACTED]"); 3. [REDACTED] ("[REDACTED]"), District Social Worker at [REDACTED] school; 4. [REDACTED] ("[REDACTED]"), District Assistant Vice Principal; 5. [REDACTED] ("[REDACTED]"), special education coordinator at [REDACTED] School ("[REDACTED]"); 6. [REDACTED] ("[REDACTED]"), Social Worker at [REDACTED]; 7. [REDACTED] ("[REDACTED]") Principal at [REDACTED]; 8. Dr. [REDACTED] ("[REDACTED]") District expert, Clinical

<sup>1</sup> Each exhibit is identified by letter, P for parent, R for District, <sup>and</sup> JE for joint, exhibit number and specific page in the exhibit.

Director [REDACTED]; 9. [REDACTED] (“[REDACTED]”) special education teacher at [REDACTED]

After the completion of both parties’ testimony, admission of evidence, and closing arguments, the hearing was concluded.

No written transcript has been provided and this decision is based on the IHO’s personal notes and recollection and synopsis of testimony provided by both the District and the Parent for each witness. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties’ witnesses, the parties’ closing arguments, the parties’ suggested case law, as well as independent research. This decision is issued within ten (10) days after the hearing’s conclusion, as required by Illinois law.<sup>2</sup>

#### **ISSUE AND REMEDY REQUESTED**

This IHO certified the following issue, at the PHC, for adjudication at the due process hearing:

Does the District’s placement of the Student in a private therapeutic day school at public expense, in accordance with the October 27, 2016 IEP meeting, provide the Student with FAPE in the least restrictive environment?

**Parents’ position:** That the placement of the Student in a private therapeutic day school, at public expense, would deny the Student a FAPE in the least restrictive environment and whether the Student’s education in the District was/is satisfactory, and if not, whether reasonable measures can make it satisfactory.

**District’s position:** That the Student is unable to receive a satisfactory education in the current public school setting because the Student’s behaviors are interfering with her ability to progress academically, behaviorally and emotionally. That the District can provide no

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<sup>2</sup> 105 ILCS 5/14-8.02a(g55)(5)

additional supports or interventions which would allow the Student to receive a satisfactory education in the current instructional level special education setting.

REMEDIES REQUESTED: 1) An order providing that the Student shall remain within the public school education system in the District with additional supports and not be placed in a private day school; 2) The student be provided with a one-to-one aide dedicated solely to the Student; 3) The District be ordered to implement all directives in a BIP drafted by the District expert; 4) A behavioral therapist for two hours per week, throughout the school year; 5) in the event that a behavioral therapist is not available through the District, that the Student attend the District public school for one-half day and receive services through a private provider for the remaining one-half day.

### **BURDEN OF PROOF**

In a special education administrative hearing, challenging an educational placement decision, the party seeking relief has the burden of proof.<sup>3</sup> The Parent is seeking relief (in the form of a different placement) and therefore has the burden of proof on the issue.

### **FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of counsel, the IHO's Findings of Fact as are follows:

1. The Student is a seven-year-old female, in the second grade in an instructional classroom within a general education school. The District recommended at an IEP meeting on October 27, 2016, that the Student be transferred to a therapeutic day school.<sup>4</sup> On October 28, 2016, the Parent voluntarily elected to remove the Student

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<sup>3</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 531, 163 L.Ed.2d 387 (2005).

<sup>4</sup> Testimony of Mother, District Witness Molnar, Lofton, Capio, Robertson. JE16.

from the public school.<sup>5</sup> The District reaffirmed to the Parent that the Student was welcome at the District school while a private school placement was determined<sup>6</sup> and the Student is receiving homebound tutoring.<sup>7</sup>

2. The Student attended ██████████ during the 2014-2015 and 2015-2016 school years. At the Parent's request, the Student was transferred from ██████████ to ██████████ for the 2016-2017 school year. Both schools are located within the District.<sup>8</sup>
3. The Student participated in the District Early Childhood program. In May 2012, the Student received the first IEP and was found eligible under the category of developmental delay.<sup>9</sup> The Student has been eligible for services since this date.<sup>10</sup> In March of 2016, the Student's eligibility was modified to Autism.<sup>11</sup>
4. The witnesses agreed that the Student is academically bright with a lot of potential and who is at or above grade level.<sup>12</sup> ██████████ noted that the Student came into kindergarten already reading.<sup>13</sup> The Student is a happy child who enjoys interacting with her peers, however those interactions are very scripted and rote. Socially, the Student had preferred peers and nonpreferred peers.<sup>14</sup> The Student has relationships with her teachers and greets teachers and peers by name. The Student plays cooperatively with peers at recess.<sup>15</sup> The Parent testified that the Student was high functioning but very manipulative.<sup>16</sup> ██████████ described the Student as super affectionate, incredibly smart and articulate.<sup>17</sup> ██████████ thought the Student was bright.<sup>18</sup>

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<sup>5</sup> Testimony of Mother.

<sup>6</sup> Testimony of ██████████, R112.

<sup>7</sup> Testimony of Mother, Grandmother, and ██████████.

<sup>8</sup> JSF #2.

<sup>9</sup> Testimony of Mother.

<sup>10</sup> Testimony of Mother.

<sup>11</sup> JSF #3.

<sup>12</sup> Testimony of ██████████, JE5-23(Canika Prescott Summary); ██████████ testified that based on academic skills, if the Student is able to regulate her behavior she could function in a gen ed classroom. Testimony of Dr. ██████████ Student is bright with a lot of potential, when provided with structure she does very well. Testimony of ██████████

<sup>13</sup> Testimony of ██████████

<sup>14</sup> Testimony of ██████████.

<sup>15</sup> JE10-38.

<sup>16</sup> Testimony of Mother.

<sup>17</sup> Testimony of ██████████.

<sup>18</sup> Testimony of ██████████.

5. In September 2014, the Student started Kindergarten at [REDACTED]. The Student was in a special education instructional classroom<sup>19</sup> but had mainstream class opportunities in music, art, PE, Spanish, lunch and recess, and was invited to any parties held in the general education classroom.<sup>20</sup> The Student was placed in this classroom not out of academic need but to give the Student the support necessary to allow her to be in an emotionally regulated state and ready to learn.<sup>21</sup> However, the District's documentary evidence does not support this statement. JE 1-5 is a portion of the September 29, 2014 IEP meeting and includes a determination by [REDACTED]<sup>22</sup> that the Student will remain in the early childhood special education for the remainder of the 2013-14 school year and starting in August 25, 2014 will be in the instructional class, it states:

The purpose of today's meeting is to review present levels of performance, develop new goals and discuss placement for the 2014-2015 school year. The document discussed adapted physical education for the student. It indicates that the team will reconvene 30 school days into the new school year to discuss progress and to make modifications to the Student's day, **including mainstreaming in to Kindergarten** (emphasis added).

6. The first IEP meeting at [REDACTED] was convened on September 29, 2014. The purpose was to update the plan, and report on the Student's progress in the transition to Kindergarten. The September 2014 IEP did not include a BIP.<sup>23</sup> The IEP stated that the Student has great academic skills, has increased the amount of time that she participates in class, but does have a difficult time hearing "no" or following directions.

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<sup>19</sup> Instructional classroom is a structured environment with supports like a chill-out zone, break area, smaller class setting and is more individualized.

<sup>20</sup> Testimony of [REDACTED], [REDACTED]

<sup>21</sup> Testimony of [REDACTED]

<sup>22</sup> This document makes no mention of the Student's behavior as a component for placement in the instructional classroom.

<sup>23</sup> JSF #4, Testimony of [REDACTED], JE1.

The IEP indicated that the Mother hoped the Student would be in a mainstream classroom and requested that the Student be given more mainstream opportunities later in the school year.<sup>24</sup> Next to the statement, “behavior impedes student’s learning or that of others”, the box “No” is checked.<sup>25</sup>

7. During kindergarten, the Student started refusing work, hitting, kicking, and refusing to attend mainstream special classes. [REDACTED] notified the school support staff and the Parent of this behavior. [REDACTED] kept the Parent informed of the behavior and the two spoke frequently.<sup>26</sup> The Parent was involved in the Student’s education, attending meetings, PT conferences and volunteering to read to the class.<sup>27</sup>
8. [REDACTED] was the Student’s special education teacher in kindergarten and first grade. She credibly testified that the kindergarten class consisted of approximately 8 students, herself, two teacher aides for the classroom, and one teacher aide as a one-to-one for another student. The Student received academic instruction, primarily on a one to one basis, either with [REDACTED] or a teacher aide. However, the Student was not willing to engage in most of the academics in the classroom and [REDACTED] was unable to conduct academic assessments. The special education instructional classroom had built in structures and supports, the program was highly structured, a visual schedule was posted, the same routine was maintained from day to day (as much as possible), all students had individualized point sheets that track their behavior from day to day, resulting in an immediate reinforcement system as well as an opportunity make growth throughout the year. This structure was also present in the Student’s first grade classroom.

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<sup>24</sup> JE1-5-6.

<sup>25</sup> JE1-17.

<sup>26</sup> Testimony of Mother and [REDACTED]

<sup>27</sup> Testimony of Mother and [REDACTED]

9. ██████ testified that the Student eloped throughout kindergarten and the first 2/3rds of first grade<sup>28</sup>. When an elopement occurred, the Student would be given a 2-3 second leeway and would watch for an adult follower. The Student was not chased during these elopements, but was monitored for her safety. During ██████'s two years as the Student's teacher, she tracked a lot of data on the Student's behavior: eloping, aggression (toward peers and staff), throwing items (destruction of property), tipping chairs, climbing high and attempting to jump down.<sup>29</sup>
10. When the Mother was informed of the Student's behavior at ██████, the Mother requested the school provide the Student with meaningful consequences, including the withholding of the Student preferred activity, recess. The Mother testified credibly that she was told that withholding recess was not a viable option, it was "against the law" because students need exercise.<sup>30</sup> There was no FBA or BIP at this point, and the Mother was resistant to having a BIP attached to the IEP plan. The Mother participated in a couple of meetings regarding this issue.<sup>31</sup> Capio testified that, before the formal BIP was created, there were a lot of behavior plans going on, even though they were not formalized.
11. ██████ verified that before the implementation of the Student's first BIP (March 2015), the staff at ██████ were using informal behavior plans and a lot of supports that would normally be documented in a formalized behavior plan.<sup>32</sup> The District presented no tracking documentation for these informal plans and supports. In January 2015, the District implemented and started tracking a recess withholding plan, which was initially described as an all or nothing plan. Then in February 2015, after seeing the Student's behavior escalate using this plan, it was modified to a

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<sup>28</sup> There was no specific tracking evidence as to when the elopements started. There was no evidence of elopements prior to kindergarten.

<sup>29</sup> Testimony of ██████.

<sup>30</sup> Testimony of Mother.

<sup>31</sup> Testimony of ██████.

<sup>32</sup> Testimony of ██████.

cost/response plan.<sup>33</sup> Although she could not recall the specifics of the recess plan, [REDACTED] testified that there was not a decrease in behaviors using the recess plan and that Student displayed more aggression and escalation. [REDACTED] deemed this plan not effective.<sup>34</sup> [REDACTED] testified that withholding recess and the cost/response plan were implemented before there was an autism diagnosis. In retrospect, [REDACTED] admitted that this type of plan would not be implemented for a student with autism because it's a delay in consequence plan that the Student would not connect with the behavior, and that the delay produced a much more escalated Student, not a change or a reshaping of the behavior. <sup>35</sup>

12. On January 15, 2015, the Parent gave permission for the student to receive her 3-year re-evaluation for special education services, including development of an FBA.<sup>36</sup>
13. On March 19, 2015, an IEP Team meeting was held by the District to review Student's 3-year re-evaluation, annual review, and the FBA. In addition to the Parent and [REDACTED], certain elementary school staff members, and staff members from the District participated in the IEP meeting, including [REDACTED] (OT),<sup>37</sup> [REDACTED] (Social Worker), and [REDACTED] (Behavior Interventionist).<sup>38</sup> The team presented the Student's present levels of performance and evaluation data. Based on this information, it was determined that the Student continued to be eligible for special education services under the eligibility of Developmental Delay.<sup>39</sup> The FBA from March 15, 2015<sup>40</sup> was

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<sup>33</sup> Testimony of [REDACTED] R-3.

<sup>34</sup> Testimony of [REDACTED] R-3.

<sup>35</sup> Testimony of [REDACTED].

<sup>36</sup> JE3.

<sup>37</sup> JE5 contained an OT goal, testimony of [REDACTED].

<sup>38</sup> JE5-1

<sup>39</sup> JE5-5. (It is noted that the Student did not have an Autism diagnosis at this time.)

<sup>40</sup> JE 5, 41-45. It is noted that no testimony about the person who conducted the FBA or that their qualifications were presented. The FBA documented the Student's behaviors, verbal refusals, running, property destruction, hitting and screaming. These behaviors were noted to occur across all school settings and amidst preferred and non-preferred activities.

reviewed and the Student's first BIP was finalized.<sup>41</sup> The FBA and BIP were added to the IEP.<sup>42</sup> The BIP target behaviors were verbal refusals and tantruming. Those behaviors were selected because they were behaviors that prevented the Student from engaging in academic instruction. When the BIP was written, the Student exhibited between 3 and 20 verbal refusals per day, with an average of 10.<sup>43</sup> The BIP identified consequences, including time out, removal from class, loss of whole recess, loss of recess minutes, behavior ignored by adults, and loss of points/privileges. The BIP provided that the Student would be taught coping skills and it delineated intervention strategies and supports.<sup>44</sup>

14. [REDACTED] school has a two-tiered system for documenting behavior infractions, major and minor. Minor infractions are handled by the teacher and major infractions are handled by the administrators. A major infraction involves a Student being hurt or a major disruption to the learning environment.<sup>45</sup> Discipline is documented through a schoolwide program called SWIS. Teachers fill out office referrals and they are inputted into the SWIS system by Vice-Principal [REDACTED]. The Student had major infractions and physical management was used during the years at Longfellow.<sup>46</sup>
15. Discipline referrals for the Student's kindergarten year were not always documented in SWIS, and the Student had her own point sheet for day to day behavior.<sup>47</sup> Elopement

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<sup>41</sup> JE5 5, 41-45 and testimony of [REDACTED].

<sup>42</sup> JE5-2.

<sup>43</sup> Testimony of [REDACTED], JE5 -41,42 "When there is a change in routine, transition to task or unwanted teach request, Student verbally refuses (no thank you) and can escalate into a tantrum (throwing objects or her body, running, hitting, screaming) which is maintained by her need to obtain a preferred task/object/person and/or obtain control of her environment."

<sup>44</sup> J#5-44. It is noted that no Autism diagnosis was present at the time of the BHA was completed and the BIP was written. Previous testimony of [REDACTED] admits that the consequences provided in the BIP may not have been appropriate for a student with an autism diagnosis because of delay between action and consequence.

<sup>45</sup> Testimony of [REDACTED]

<sup>46</sup> Testimony of [REDACTED]. Testimony of [REDACTED] R4,R6,R10,R12, R17,R19, R21, R22,R23,R24,R25,R26,R28,R29,R30, documentation of staff injuries and physical management at [REDACTED].

<sup>47</sup> There were only 3 office referral forms filled out in Kindergarten because the behaviors were tracked on a daily point sheet. [REDACTED] testimony.

was highest in the Student's kindergarten year (2014-15),<sup>48</sup> but this behavior was still present during the first grade (2015-16).<sup>49</sup>

16. On June 5, 2015, the Student's IEP progress report reflects that the Student was demonstrating progress in the use of coping skills but that her progress was inconsistent.<sup>50</sup> Further, the Student's up and down behavior was preventing her from fulfilling her initiation and completion of tasks goal.<sup>51</sup>

17. In August 2015, the Student began first grade at [REDACTED] in [REDACTED]'s class.

18. [REDACTED] testified credibly that during the 2015-16 school year that she attempted to faithfully implement the Student's March 2015 BIP. Her classroom had a point sheet to keep track of a student's daily goals. A student would receive a sticker if the goals were met, and when a student got 4 stickers during the week they received a prize.<sup>52</sup>

[REDACTED] felt that the point sheet was meaningful to the Student in that she believed that the Student did earn prizes and was impacted when her peers were rewarded and she was not. Over time, this system appears to have had less impact and it became difficult to find a meaningful incentive that could be implemented in the classroom setting.<sup>53</sup>

19. At the request of the Mother, the Student would be denied bus privileges, riding the bus was a preferred activity, and the Mother would be called to pick up the Student. It was determined that this consequence did not immediately follow bad behavior and therefore did not meaningfully impact the Student.<sup>54</sup>

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<sup>48</sup> R1. Discipline referral from 11/7/14 elopement from school bus at outside function. Testimony of [REDACTED] and [REDACTED].

<sup>49</sup> Testimony of [REDACTED].

<sup>50</sup> JE6.

<sup>51</sup> Testimony of [REDACTED], JE6.

<sup>52</sup> Testimony of [REDACTED], [REDACTED] (when Student refused OT it was noted on her point sheet and Student would not get a sticker at the end of the day), and [REDACTED].

<sup>53</sup> Testimony of [REDACTED].

<sup>54</sup> Testimony of Mother.

20. During the fall of 2015, the Mother felt that the March 2015 BIP plan was not working and requested the opportunity to observe the Student in the classroom. There were three (3) different observation opportunities, two when the Student knew the Mother was present and one where the Student was observed secretly. The Student presented no behavioral problems when the Mother was present. The Mother also observed the Student on nine (9) different occasions when she was a volunteer classroom reader, and she did not witness any behavioral issues on these occasions.<sup>55</sup> The Mother did witness one incident, on an unspecified date, when she happened to be present at [REDACTED] meeting with Prescott. Following an elopement by the Student [REDACTED] was notified that the Student had destroyed the classroom. The Mother accompanied [REDACTED] to the classroom and observed that it was in disarray. She assisted the Student in cleaning up the classroom (approximately 10 minutes) and observed that the Student received no other consequences for this behavior.
21. In November 2015, the Mother requested that an independent behavioral therapist be brought in to assess the Student. The District requested permission to use Dr. [REDACTED] and the Mother agreed.<sup>56</sup>
22. Dr. [REDACTED] testified credibly that she does independent education evaluations, writes behavior plans and makes behavioral recommendations. She has worked for 22 years in some capacity with Autism and currently works for [REDACTED], as a consultant to School Districts, and is an associate professor and clinical director of the Autism Center. By agreement of the parties, she was qualified as an expert in autism. When conducting the Student's evaluation, she obtained a parent history, did a

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<sup>55</sup> It was unclear from the testimony whether these nine reading opportunities took place in kindergarten, first grade or a combination of both.

<sup>56</sup> Testimony of Mother.

developmental assessment (IQ test),<sup>57</sup> Autism Diagnostic Observation Schedule (ADOS), interviewed [REDACTED], and she personally observed the Student both at [REDACTED] and in her office. Following her evaluations, she made a diagnosis that the Student had Autism.<sup>58</sup> Dr. [REDACTED] determined that when the Student wants to do something, it is nearly impossible to get her back to a routine and that she has an internal drive to be in motion. The Student's ability to engage socially is limited, but she enjoyed the one-to-one attention of adults. Dr. [REDACTED] felt that the gen ed setting is a long-term goal for the Student, but that she was not ready and that the gen ed academic instruction seemed very dysregulating for the Student. Dr. [REDACTED] wanted the District to put more focus on the "learning to learn" skills before the maladaptive behavior becomes ingrained, which would prevent the Student from participating in the benefits of academic instruction. Dr. [REDACTED] was not directly involved in drafting the BIP, but spoke to the IEP team regarding development of the plan. Although Dr. [REDACTED] is not a board certified behavior analyst ("BCBA"), she stated that considering the totality of her education and experience she did have the qualifications in her background to assist in writing an appropriate BIP for a student.

23. The March 2016 [REDACTED] evaluation ("Report") noted: The Student has established problematic patterns of behavior at school and regularly defies adult instruction.<sup>59</sup> At this point, the Student would benefit from reestablishing expectations at school in order to rid her of entrenched patterns. Although it may seem a bit extreme, re-starting the Student has a better chance of improving behavior than making smaller changes within her current set up.<sup>60</sup> The Report recommended: 1) Student should

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<sup>57</sup> The Student's overall IQ was at the 14<sup>th</sup> percentile, however, Dr. [REDACTED] had concerns that this might be an underestimate of the Student's potential.

<sup>58</sup> JE8.

<sup>59</sup> JE8-7.

<sup>60</sup> Id. The goal of re-starting is to establish that there is a clear structure and organization to the day and that this structure is handed down from the adults. That is, the Student does not run the show. She is allowed some choice

complete the tasks on her schedule; 2) Teach and reinforce appropriate skills for requesting a break; 3) Student should be prevented from leaving the classroom (including modification of handles or locks on the door)<sup>61</sup>; 4) Use of clear positive language when providing directions or discussing expectations; 5) Staff was warned that the student will likely need to go through a period of “extinction burst”, during which the behavior will worsen and tantrums will be intense in a last ditch effort to produce the old results<sup>62</sup>; 6) Consistency across settings between home/school/private therapies; 7) Speech and language therapy goals; 8) Occupational therapy goals, with breaks that incorporate vigorous physical activity; 9) If the sameness routines do not improve after interventions are in place, a medication evaluation with Student and an adolescent psychiatrist with expertise in autism is strongly recommended.<sup>63</sup>

24. On March 3, 2015, an IEP Team meeting was held by the District, to review the [REDACTED] Report, hold the Student’s annual review, and to consider a change of eligibility. In addition to the Parent and a family member, Dr. [REDACTED], and [REDACTED], certain elementary school staff members, and staff members from the District participated in the IEP meeting, including [REDACTED] (OT),<sup>64</sup> [REDACTED] (Social Worker), and [REDACTED] (Behavior Interventionist).<sup>65</sup> The team presented the Student’s present levels of performance and evaluation data, and they reviewed the [REDACTED] report which identified autism as the Student’s primary disability. Based on this information, the Student’s educational eligibility was changed from Developmental Delay to Autism.<sup>66</sup>

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and flexibility, but there are clear limits to when and how choice is offered. Throughout her day the structure and organization will be clear.

<sup>61</sup> JE8-7.

<sup>62</sup> Je8-8.

<sup>63</sup> JE8-9.

<sup>64</sup> JE5 contained an OT goal, testimony of [REDACTED]

<sup>65</sup> JE5-1

<sup>66</sup> JE10-2. JE10-23.

25. The BIP provides that the Student's refusals, elopements and hitting be tracked and targeted for modification. The replacement behaviors were: 1) following an interactive visual schedule and corresponding task strip;<sup>67</sup> 2) planned breaks (working toward the Student requesting a break when necessary) with Student allowed break options at Student's choice.<sup>68</sup> The BIP provided that under restrictive disciplinary measures, when the Student is noncompliant, physical guidance will be used to ensure clear boundaries and compliance.<sup>69</sup> Further, if the Student elopes within the building, the responding adult will advise that Student that she needs to ask permission to be at the location, read a social story and return the Student to class without doing any fun activities or having any positive interaction in the area outside the classroom.<sup>70</sup>
26. ██████████, ██████████, ██████████ and ██████████ testified credibly about the Student's behavior at ██████████ (before the first BIP, during the first BIP and after the ██████████ BIP). The staff was clearly sympathetic to the student, appeared to like the student's company and was willing to risk personal injury to help implement the ██████████ BIP. The consensus was that by the end of the 2015-2016 school year the Student was making some progress.<sup>71</sup>
- a. Beginning in Kindergarten, ██████████ determined that the Student's biggest challenge was behavior. The Student exhibited: crying, eloping, throwing materials (scissors, pencils); elopement, climbing aggression. There was no determination as to the trigger for these behaviors. Simple behaviors, such as crying, would be ignored so that the behavior would not cause an attention response, the policy was to ignore to the point where the risk of not intervening outweighs the risk of intervening. The team took a hands-off approach to physical management. If necessary the room would be cleared of other students, ██████████ would wait out the behavior and consequence the Student to clean up the mess. To try and avoid property destruction, broken ipads, workbooks, papers, classroom library books, and glasses, ██████████ reorganized the classroom and removed items which could be thrown or damaged from the Student's area. These behaviors lead to the first BIP in

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<sup>67</sup> JE10-38

<sup>68</sup> JE10-40.

<sup>69</sup> JE10-43.

<sup>70</sup> JE10-43.

<sup>71</sup> JE12-23,24.

March of 2015. During the school year 2015-2016, the behavior continued to escalate. Dr. [REDACTED] was brought in to assess the Student and to assist with the development of a new BIP. The [REDACTED] BIP was implemented in March 2016 and its purpose was to restart the Student on her first-grade year. The team wanted to completely change the way the Student was functioning in school and set new behavioral expectations throughout the school day. The [REDACTED] BIP called for creating physical boundaries around a student to prevent avoidance of an unpreferred activity or elopement. It was anticipated that the Student would resist these changes. Creating restrictive boundaries resulted in injury to [REDACTED] and other staff.<sup>72</sup> However, [REDACTED] agreed to these restrictions because the Student is so capable and she needed this strict structure. The [REDACTED] BIP was updated in April, 2016 to restrict the Student's movements but put more space between the staff and Student to avoid injuries<sup>73</sup>, however even the less restrictive plan resulted in injuries.<sup>74</sup> By the end of first grade, the [REDACTED] BIP, as revised, reduced elopements to almost none and reduced aggression slightly<sup>75</sup>.

- b. [REDACTED] saw the Student mainly when the Student was in an escalated state. During these times the Student would elope, run from staff, crawl on furniture, throw items, scream and be physically aggressive. During the 2015-2016 school year, there were seven referrals, six (6) major referrals and one minor.<sup>76</sup> The purpose of the discipline referral forms is to document student behavior so the behavior team can review the data, look for patterns and build supports and interventions. Not all incidents were documented for students with an individualized plan, because those students would have a point sheet and IEP/BIP which would more accurately reflect this behavior. Not all elopements were documented if they did not result in a major disruption or injury. On good days, Student was invited to [REDACTED]'s office for a celebration. This happened several times.
- c. The IEP called for 30 SW minutes per week, [REDACTED] provided the SW services, mostly push in with a small group (3-4) students. Most of [REDACTED]'s time interacting with the Student was when there was crisis intervention. The Student was in crisis mode about three (3) times per week. [REDACTED]'s office was a safe place for the student. While in [REDACTED]'s office the Student would be allowed to color, or lay in a bean bag chair until she calmed down. These periods ranged between 15 minutes and two hours. As long as the Student could engage in a preferred task, she liked being in the SW office. Occasionally, the Student would re-escalate on the way back to the classroom.

<sup>72</sup> D21-3/8/16 (headbutts, kicked and pinched staff); D22-3/14/16 (leg bruising); D23-3/22/16 (biting); D24-3/23/16 (hit and kicked [REDACTED] repeatedly, physical management used).

<sup>73</sup> JE11-3. Testimony of [REDACTED].

<sup>74</sup> D25-4/18/16 (hit and kicked staff, climbed on a table, physical management used), D26-4/20/16 (attempted to hit another student with a chair-physical management used); D28-5/17/16 (hitting and kicking staff, physical management used); D29-5/18/16 (hitting and kicking staff, physical management used); D30-5/18/16 (physical injury to [REDACTED] while using physical management on Student). On an unspecified date the BIP tracking was revised so that multiple points of contact were recorded as just one incident.

<sup>75</sup> JE12-23,24. The Mother testified that she was told by [REDACTED] that between April 2016 and the end of the school year, [REDACTED] saw improvement in the Student's behavior.

<sup>76</sup> R8 & R9 (10/13/15 physical management and discipline referral); R11 & R12 (10/27/15-major referral, scratched teacher); R13 & R14 (10/28/15 -physical management form and major referral); R15 & R16 (11/10/15-1/2 day in school suspension for breaking glass, throwing tablets, hitting and kicking staff, classroom was cleared and six holds were used on student); R18 (1/6/16 broken ipad); R20 (3/1/16 broken ipad).

After the [REDACTED] BIP, the Student was kept in the classroom, sometimes this required other students to be removed to another location. The Student's tantrums did not stop but they did decrease and there were less CPI restraints.

- d. [REDACTED] provided OT services to address fine motor concerns and sensory processing concerns. John confirmed that the primary goal of the BIP was to keep the Student safe and try to de-escalate the Student. The OT goal specified in the IEP was the same from March, 2015 and March, 2016 due to the Student's refusal behaviors<sup>77</sup>, however the Student was making progress toward the goal. These behaviors were still present after the Lofton BIP but she did not recall whether there were more refusals during this time.

27. Near the end of the school year the Mother requested the Student be transferred from [REDACTED] to a new school. The Mother wanted a fresh start at a new school where the Student would not be judged by her prior behavior. The District assisted the Mother in reviewing possible school placements for the Student and the Mother selected Whittier a District primary school. Retrospectively, the Mother believes changing schools was not a good decision.

28. During the summer of 2016, the Student did participate in the extended school year (ESY) program at [REDACTED].<sup>78</sup> Prior to the first day of school, August 29, 2016, [REDACTED] sent the Student a welcome postcard and on August 27, 2016, [REDACTED] sent an email to the Mother with a story to share with the Student so that the Mother could help the Student become acquainted with the teachers at [REDACTED].<sup>79</sup>

29. On August 29, 2016, the Student began second grade in the special education instructional classroom at Whittier. There was no formal school transition plan in place. It is not clear whether [REDACTED] was aware of the Student's [REDACTED] BIP on the first day of school. She testified that she initially learned about the [REDACTED] BIP when [REDACTED] gave her a copy. The Student was in [REDACTED]'s classroom. The classroom initially had 9 students, and five adults- the teacher, two teacher aides ("TA") and two

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<sup>77</sup> This was not specified in the OT evaluation JE10-17(see achievement notes).

<sup>78</sup> Testimony of [REDACTED]. No other evidence was presented regarding the ESY program or the Student's behavior during this program.

<sup>79</sup> R99.

one-on-one aides (for other students). On or about September 15, 2016, one of the TAs from the classroom was assigned as a one-on-one aide to the Student.<sup>80</sup>

30. It was anticipated that, with the transition between schools, the Student's behaviors would exacerbate. During the first days of school, the Student began to elope, refuse, and tantrum (including physical aggression).<sup>81</sup>
31. ██████ testified credibly that she became the District special education coordinator at the start of the 2016-17 school year. One of her roles was to coordinate the Student's transfer between ██████ and ██████ and to ensure that the staff understood the Student's BIP and verify that the IEP supports were in place.<sup>82</sup> She became aware of behavioral concerns regarding the Student during the first week of school.
32. On September 2, 2016, ██████ testified that she, ██████ and the Mother spoke by telephone to review the behavioral concerns, including: refusal, elopement (including the building and school property), destroying items in the classroom resulting in the classmates being removed. It was agreed that the weekly social work component of the IEP would be increased to 60 minutes per week and that the Student could have the support of a one on one assistant.<sup>83</sup>

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<sup>80</sup> Testimony of ██████. It is noted that ██████ testified that initially there were only four (4) adults present until the Student received her one-to-one aide.

<sup>81</sup> Testimony of ██████ R31- 8/30/16 (refusal including kicking, physical management used); R32-9/2/16 (refused to attend gym, eloped, hitting and kicking, physical management used); R-33- 9/2/16 (separate incident)(elopement outside of building, kicking and hitting staff, physical management used); R-34 – 9/7/16 (elopement off school grounds, scratch breaking skin and biting staff) Mother notified ½ day suspension R-35); R36 9/9/16 (refusal, destruction of property) R37-later same day (destruction of property); R-38 -9/12/16 (refusal, hitting teacher and elopement); Testimony of ██████, R39- 9/12/16 (disruption of classroom, throwing materials, and exiting classroom); Testimony of ██████ R40- 9/26/16 (notification of in school suspension for property damage (breaking classroom items and an ipad), throwing property, hitting staff, elopement to playground). Testimony of ██████ 9/28/2017 (throwing materials, hit a peer, classroom cleared)

<sup>82</sup> Robertson acknowledged that the Student did not have the support of an ipad at the start of school acknowledging that it was not received until the second week of school. No specific date was provided.

<sup>83</sup> JE14. The Mother's testimony contradicted this information, stating that at first a one to one aide was denied, because it was too restrictive.

33. ██████ met with the team to re-arrange the classroom to remove or relocate items which the Student could target (moveable bookcases) and to seat the Student closer to the teacher. She helped ██████ train the Whittier staff on the Student's ██████ BIP.<sup>84</sup>
34. Once the Student transferred to ██████, ██████ met with the IEP team and reviewed the ██████ BIP to ensure that the strategies were in place. ██████ testified that she did not tell the teacher's aides that they needed to hold a close proximity to the Student, because beyond early childhood you don't need that proximity. ██████ visited the classroom to verify that the TAs were trained in the Student's BIP. ██████ modeled the procedures for the ██████ team, and added the one-to-one TA for the Student in order to support the September, 2016 IEP modification.<sup>85</sup>
35. ██████ was new to ██████.<sup>86</sup> ██████ testified credibly that she did not get a lot of time to build a regulated relationship with the Student because she was the crisis responder in the building. The social work component of the IEP was increased to 60 minutes per week because the Student's need was more than the IEP reflected. She was spending about an hour a day in the classroom with the Student. ██████ witnessed the Student's behavior, including defiance (picking up materials and throwing them, going to an area of the classroom where she did not belong and leaving the classroom and the school building). ██████ testified that as part of the plan there was physical "touch" and that staff would go hand over hand to help the Student complete the tasks (no testimony about physical proximity boundaries), and firm directives. ██████ would take the Student's hand and say it looks like you need a walk and took the Student out of the classroom (no testimony about offering the student options for a break activity). ██████ testified that the Student would start her day with a walk, social stories, visuals,

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<sup>84</sup> Testimony of ██████.

<sup>85</sup> ██████ testimony. Documentary evidence shows that the one-to-one aide was added on September 15, 2016, JE16 39-43.

<sup>86</sup> R100-2.

and the Student was allowed to go to the motor room (or start the day in the motor room). The Student was allowed to sit in the hallway and work there; at times, the Student was physically moved to the third floor Social Work office to complete work. [REDACTED] tracked the Student's behavior. On September 13, 2017, she created a special tracking program in an attempt to track the Student's triggers and present better data.<sup>87</sup> This tracking form indicated the date, time, person responding, time in class/time out of class (in minutes), physical management (nonhold but blocking), physical management (CPI hold), running, redirection prompt, triggers, and additional notes. [REDACTED] recorded twenty-one incidents (some were multiple incidents on the same date), The tracking form shows that there were no CPI holds used, physical management was used during three (3) incidents, the Student ran during thirteen (13) incidents, showing a total of 490 out of class minutes (8.1 hours)<sup>88</sup>. [REDACTED] testified that she and others were hit by the Student and that the Student's TA had been bitten.<sup>89</sup> The Student's main consequence was receiving a thumbs down on the classroom point's chart. [REDACTED] testified that they were following the [REDACTED] BIP by using a visual schedule and social stories.

36. Molnar testified that the school team met frequently to be sure the BIP was being carried out as written. (There was no testimony from any witness regarding staying in close physical proximity to Student, forcing the Student to remain on task, and prevent elopement from the classroom per [REDACTED] BIP as modified at [REDACTED]); [REDACTED] testified that the team created a comprehensive BIP with [REDACTED] (this did not happen

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<sup>87</sup> R47.

<sup>88</sup> JE16-6 shows that over 11 days the Student required the support of a CPI trained staff for 582 minutes or 9.3 hours. These discrepancies were not explained.

<sup>89</sup> No documentary evidence was provided regarding these incidents and it was not noted on R47.

until October 27, 2017); ██████ did not know the date the aide was assigned to the Student.<sup>90</sup>

37. ██████ testified that the ██████ team expected that there would be a transition period, but felt that if they could not get traction within 3-4 weeks, in terms of the Student's physical behaviors, that the team needed to meet and have a conversation. ██████ did not testify when Dr. ██████ was called to consult on the Student's behavior.

38. There was no clear evidence provided of when Dr. ██████ was initially contacted by the ██████ staff or the District. Dr. ██████ testified that because students with autism need a period to adjust, that it is likely that she was contacted earlier in the school year but that she waited until October 6, 2016 to do the observation. The documentary evidence shows that Dr. ██████'s associate observed the Student on October 6, 2016 and that this observation was incorporated into a Behavior Consultation Report ("BCR").<sup>91</sup> Not including any excused absences, the Student was in school for twenty-eight days when the observation took place. Dr. ██████ testified credibly that her assistant observed the use of some of the supports recommended in the ██████ BIP, but that there were other times when the Student was not given choices and just allowed to do whatever she wanted or when the Student's demands were given into by the staff. Dr. ██████ based part of her recommendation, that the Student be moved to a therapeutic day school, on the fact that the ██████ BIP had an extreme restart of the Student's behavior, with a lot of supports in place, and that the Student was continuing to have aggressive behaviors and was not participating in instruction. ██████ felt the day school was appropriate because the Student needed a level of consistency and follow through in her BIP that was difficult, near impossible, to get in a non-

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<sup>90</sup> It is noted that ██████ testified that the aide started on 9/14/16.

<sup>91</sup> JE15.

therapeutic setting. She testified that the school could improve on the implementation of the BIP. [REDACTED] made additional recommendations:

- a. *To support Student's behavior and learning, it is important to balance positive, preventative strategies that support success and develop skills with clear structure and expectations that are enforced.*
- b. **As noted in the previous Report**<sup>92</sup> (emphasis added), the Student needs a classroom with a low student-to teacher ratio to allow for more frequent interaction with instructors, a classroom environment with appropriate supports (e.g. visual schedules), explicit instruction in new skills and opportunities for generalization of skills across contexts, and opportunities for social interaction and facilitation of social relationships in structured and supervised activities.
- c. The Student is expected to progress and is not expected to require a therapeutic placement for long. It is important now to master "learning to learn" skills and be able to participate in school. The longer term goal for the Student should continue to be return to general education.
- d. Given the Student's difficulties with social communication, it is recommended that she continue to receive school-based speech therapy focused on building social communication skills including initiating and sustaining social interaction, engaging in reciprocal conversations, and improving cooperative play skills. Comprehension of spoken language should also be a focus of her school based therapy.
- e. It is also recommended that the Student receive school-based occupational therapy to help her develop self-regulatory skills to make her more available for learning.
- f. Specific classroom recommendations: **In addition to recommendations from the previous Report** (emphasis added), the following recommendations based on this year's observation should be considered:

Breaks: Limit the level of choice the Student has during her day-specifically, limit her control over her schedule and when she gets to task breaks/for how long; Set timers for breaks, making them as short as possible and staying close to the classroom to prevent elopement attempts; Do not reinforce negative behavior with breaks, the Student is likely trying to escape academic demands, and by throwing things/yelling/lying on the floor, she "earns" a break and escapes demands.

Behavioral Cueing: Set timers for tasks/activities and be sure to preview what comes next. When the time sounds, the activity should stop, regardless of the Students desire to do something different; limit positive, 1-1 attention after negative behaviors; the Student should be praised for any academic task completion in order to discourage task avoidance; expectations should be clearly communicated and strictly held;

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<sup>92</sup> No explanation for why this information needed to be reiterated.

Schedules: The Student should engage with a visual schedule throughout the day. If something is on the schedule, she should not be allowed to choose to miss it. If she no longer attends specials, they should not be on the schedule<sup>93</sup>.

39. [REDACTED] testified that she has visited several private day schools and that she is generally familiar with the Rush day school. She has had other students who did transition back to the neighborhood school and provided one example. She was not aware of what academics or social interaction opportunities were provided to students at [REDACTED]
40. On October 27, 2016, an IEP Team meeting was held by the District to review the Student's IEP, [REDACTED] BCR and to consider a modification of the IEP, Lofton BIP and change of placement. In addition to the Parent, [REDACTED] (Parent's BCBA), Dr. [REDACTED], [REDACTED], certain elementary school staff members, and staff members from the District participated in the IEP meeting, including [REDACTED] (Principal), [REDACTED] (Coordinator), [REDACTED] (SW), [REDACTED] (Behavioral Interventionist).<sup>94</sup> The team presented the Student's present levels of academic performance<sup>95</sup> and functional performance<sup>96</sup>, and also reviewed the [REDACTED] BCR. The team concluded that the [REDACTED] school placement was no longer appropriate and the Student should be placed into a therapeutic day school. The Mother voiced her objection.
41. [REDACTED] credibly testified that she was engaged by the Mother to assist the Student less than one week prior to the IEP meeting on October 27, 2016. [REDACTED] testified that the [REDACTED] BIP was not written by a BCBA. Although [REDACTED] did not question this at the IEP meeting, she did testify that she questions whether a BIP not written under the

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<sup>93</sup> JE15-4,5.

<sup>94</sup> JE16-1,2.

<sup>95</sup> JE16-3, under Student's strengths, it was noted that the Student enjoyed engaging in learning on the computer for reading and math. The present levels of academic achievement in reading were determined using an online program, Lexia. JE16-4 the Student uses the online Zearn math program and works with a 1:1 aide.

<sup>96</sup> JE16-5. Noted that the Student benefits from the support of a visual schedule to navigate the day and that she receives this schedule through the use of an interactive IPAD application.

direction of a BCBA is appropriately written.<sup>97</sup> [REDACTED] requested and was granted permission to observe the Student in the classroom. She observed the Student on 10/28/16, which was the Student's last day in class. When she arrived at the classroom, the Student appeared to be using an iPad. [REDACTED] then observed the Student insist on continuing in a ticket counting activity and when the Student was told it was not possible, the Student was allowed to continue the activity without consequence. The Student swiped at another student disrupting the class, then left the classroom (unattended), and made her way to the Psychologist's office. The Student returned ten minutes later with the Psychologist. The Student did not receive any consequences. There was no one-to-one aide present during this observation. In Butler's opinion the Student was not provided with the required consequences, lacked one-to-one attention and the elopement was preventable. [REDACTED] now supervises behavioral therapy to the student at home through the [REDACTED].

42. Sa'd is the Student's line therapist from the [REDACTED]. She works with the Student at home, three (3) hours per day, five (5) days per week. She credibly testified that she has seen a reduction in elopements to zero. The Student still refuses and there are still tantrums approximately 2-3 times per week, but that the length of the tantrums has reduced to 1-2 minutes. The Student's behavior spikes when changes are implemented. She has not witnessed throwing behavior.
43. [REDACTED] has been working with the Student since January 28, 2017. She is present 3 days per week, one and one-half hour per day. She stated the first three days were difficult, with the Student displaying refusals and kicking behavior. She stated that there have been at least four (4) continuous weeks without incident.

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<sup>97</sup>The March 2015 BIP was not discussed, it is not known whether this BIP was written by a BCBA. The Parent did not argue that the [REDACTED] BIP was not appropriate.

44. [REDACTED], [REDACTED], the Mother and Dr. [REDACTED] presented testimony regarding the [REDACTED] therapeutic day school program. Dr. [REDACTED] is not directly connected to the Rush therapeutic day school program ("Rush") and could not testify from direct knowledge about the behavioral, academic or social components of a day school program. [REDACTED] admitted that it was possible for the Student to pick up maladaptive behaviors from other students at the school. [REDACTED], [REDACTED] and the Mother saw a classroom, with an academic schedule posted, the lunchroom and the seclusion room (no handles on the inside door). They did not observe any classes in progress. The Mother testified that she would not allow the Student to attend any school where the Student could potentially be locked in a windowless room with no way to exit. [REDACTED] testified in generalities that she thought [REDACTED] could implement the Student's IEP and BIP. Butler discussed talking with the teacher, nursing staff, principal and [REDACTED] director, it was her opinion that the Student would regress in academic skills and pickup additional bad behaviors from other students. There is no BCBA therapist at Rush.

### **CONCLUSIONS OF LAW**

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

The IDEA ensures that children with disabilities are provided with a free appropriate public education ("FAPE") and related services that meet their unique needs and prepare them for future education.<sup>98</sup> A FAPE is defined as: [s]pecial education and related services that: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA; include an appropriate preschool, elementary school, or secondary

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<sup>98</sup> 20 USC §1400 (d)(1)(A)

school education in the State involved; and are provided in conformity with the individualized education program (IEP)<sup>99</sup> There was no challenge presented by the Parent to the District's IEP. FAPE is not an issue.

In addition, to ensure that the educational needs of a child are met during the pendency of any proceedings conducted pursuant to the IDEA, the IDEA's "stay-put" provision mandates that the child remain in his current educational placement, unless the education agency and the parents otherwise agree. 20 U.S.C. §1415(e)(3). The testimony shows that after the team's recommendation to place the Student in a therapeutic day school, the Parent voluntarily, and with notice to the District, chose to keep the child at home. There is no stay put violation alleged. The District provided a homebound academic tutor. The Parent did not allege that providing only a homebound tutor constituted a FAPE violation and therefore this potential issue will not be addressed. The sole issue is placement.

The IDEA requires participating States to educate handicapped children with non-handicapped children whenever possible.<sup>100</sup> 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.<sup>101</sup> The school district has an obligation to educate a student with disabilities to the greatest extent appropriate with his or her nondisabled peers.<sup>102</sup> This is known as mainstreaming. The Statute specifies that "special classes, separate schooling, or other removal of children with disabilities from the regular educational environmental can occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids

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<sup>99</sup> 20 USC §1401(9); 34 CFR §300.17

<sup>100</sup> Rowley, 458 US at 202

<sup>101</sup> 105 ILCS 5/10-22.41; 23 Ill Admin. Code 226.240.

<sup>102</sup> 20 USC §1412(a)(5)(A); Board of Education of Township High School District no 211 v. Ross, 486 F. 3d 267, 277 (7<sup>th</sup> Cir. 2007).

and services cannot be achieved satisfactorily.<sup>103</sup> The concept of least restrictive environment (LRE) requires districts to educate students in the regular classroom settings with the student's nondisabled peers to the maximum extent appropriate.<sup>104</sup>

The Seventh Circuit held in *Board of Education of Community High School District No. 218, Cook County, Illinois v. Illinois State Board of Education*, 103 F.3d 545, 548-549 (7<sup>th</sup> Cir. 1996), that neither the IDEA nor the Federal Regulations define the term "placement", so that identifying a change in placement is something of an inexact science. The Seventh Circuit has adopted a fact driven approach. *Id* at 549. The determination as to whether a change in placement has occurred must be made on a case-by-case basis. Whether a transfer constitutes a change in placement will turn on whether the child's educational goals and needs are similarly met in the new placement. *John M. v. Board of Educ. of Evanston Twp. High Sch. Dist. 202*, 502 F.3d 708, 48 IDELR 177 (7<sup>th</sup> Cir. 2007).

The Seventh Circuit, unlike other circuits, has declined to adopt any sort of multifactor test for assessing whether a child must remain in a regular school<sup>105</sup> Per *Board of Education of Township High School District No 211 v. Ross*, 486 F3d 267, 277 (7<sup>th</sup> Cir. 2007), the question is whether the education in the conventional school was satisfactory and, if not whether reasonable measures would have made it so.<sup>106</sup>

In *Lachman v. Illinois State Board of Education*, 852 F2d 290, 297 (7<sup>th</sup> Cir 1988), the Seventh Circuit held that a school district is entitled to determine what reasonable methodology would be "most appropriate" in educating a student. Moreover, when a district's decision as to the LRE is connected to implementing a reasonable methodology for educating the student, the hearing officer's deference should extend to the district's LRE determination, as long as the

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<sup>103</sup> *Id.* 20 USC 1412(a)(5)(A); 34 CFR 300.114 (a)(2)(ii).

<sup>104</sup> 34 CFP §300.114(a)

<sup>105</sup> *Ross, supra* and *Beth B. v. Van Clay* 282 F.3d 493,499 (7<sup>th</sup> cir 2002).

<sup>106</sup> *Ross supra*.

district considered methodologies based on less restrictive programs.<sup>107</sup> The Parent in this case does not take issue with the methodology. In fact, the Parent wants the methodology required by the ██████ BIP to be implemented. The Parent argues, that the ██████ BIP was being implemented in the ██████ program but that there was a failure to implement the Lofton BIP at ██████. The Parent argues, based on the testimony of ██████, that the Student's behavior was being ignored, that it appears as though the March 2015 BIP was the one that was implemented rather than the ██████ BIP, and that ██████'s testimony did not address any of the extreme consequences provided for in the ██████ BIP. ██████'s BCR, from October, 2016 verified that the consequences her BIP requested for the Student were not being carried out and that the Student was being allowed to do whatever she wanted. Parent argues that ██████, in recommending a therapeutic day school, was not aware that the ██████ team chose not to follow her recommendations in the ██████ BIP and ██████ mistakenly believed that her recommendations had been followed unsuccessfully. ██████'s recommendation was therefore based on faulty data presented to her by the ██████ team.

The Parent argues that the staff at ██████ failed to properly implement the ██████ BIP and that this failure caused the Student's behavior to regress. The District argues that it implemented the ██████ BIP at ██████ without success and that the Student could not obtain educational benefit as a result of being unavailable to learn, due to her behavior. If a child's placement does not confer a "meaningful benefit" to the student and requires a more restrictive program that is likely to provide such benefit, the IDEA requires placement in the more restrictive program.<sup>108</sup> Placements that require "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment is allowed only

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<sup>107</sup> Beth B. *supra*.

<sup>108</sup> DW v. Milwaukee Public Schools 526 Fed appx.672 (7<sup>th</sup> Cir. 2013)

when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily<sup>109</sup>

### DISCUSSION

For the reasons discussed below, the IHO finds that the placement of the Student in a therapeutic day school is not the least restrictive environment for the Student.

The IDEA regulations specifically restricts removal of children with disabilities from the regular educational environment only to situations in which the nature or severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.<sup>110</sup> Initially, it is noted that the Student, with the Mother's full knowledge and approval, was not being educated as part of the general education population. The Student was being educated in an instructional special education classroom with opportunities to be mainstreamed in classes like art, Spanish, PE, lunch and recess. All students in the [REDACTED] and [REDACTED] instructional classrooms appear to have some type of disability, although no testimony was offered regarding the other student's educational needs. This is not a removal from the general education classroom case. This case involves the removal of the Student from the instructional classroom to a segregated therapeutic day school environment.

[REDACTED] testified that her instructional classroom had built in supports for students and that the teacher/student ratio was so low that the Student did not need a one-to-one aide. Although the instructional classroom does not contain any general education students, the IDEA anticipates that students may need to be removed to more specialized classrooms in order to

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<sup>109</sup> Board of Education of Township High School District No 211 v. Ross, 486 F3d 267, 277 (7<sup>th</sup> Cir 2007) quoting 20 USC §1412(a)(5)(A).

<sup>110</sup> 34 CFR §300.114(a)

obtain benefit from their education. The regular educational environment encompasses regular classrooms and other settings in schools, such as lunchrooms and playgrounds in which children without disabilities participate.<sup>111</sup> Since the Parent did not object to this placement, the implementation of the Student's IEP in the instructional classroom, within a general education building, appears to meet the requirements of the least restrictive environment. In distinguishing this case from the legal precedent suggested by the District, it is important to consider that this Student is already in a more restrictive environment. Cases like *Beth B. v Van Clay*, 282 F. 3d 493,498 (7<sup>th</sup> Cir. 2002) and *Board of Educ. of Township High School Dist. No. 211 v. Ross*, 486 F. 3d 267 (7<sup>th</sup> Cir. 2007), dealt with children with severe disabilities being educated alongside their peers in a general education setting and proposed removal to a special education setting. This is not the situation presented in this case.

The District was aware that the Student had a disability since the early childhood education program. The District did not identify the disability as autism until March of 2016 (the Student's first grade year). The delay in receiving the autism diagnosis, caused a BIP to be implemented in March of 2015 which had consequences that were inappropriate for a student with autism and resulted in escalated behavior from the Student. The implementation of the March 2015 BIP meant that for an entire school year, the Student's behavior was being inappropriately (albeit unintentionally) managed by the District staff. This mismanagement resulted in the reinforcement of the Student's maladaptive behaviors and effected her ability to be prepared to learn. In the fall of 2016, the Parent requested additional testing be completed. The District timely complied with this request and with the approval of the Parent, the District brought in an expert, Dr. [REDACTED] to evaluate the Student. Dr. [REDACTED] completed a

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<sup>111</sup> 71 Fed. Reg 46,540, 46585 (Aug 14, 2006), in discussing whether a change should be made regarding "regular educational environment to 'regular classroom', it was determined that Section 300.114(a)(2) (ii) follows the specific language in section 612 (a)(5)(A) of the Act and reflects previous regulatory language. This requirement is longstanding. We do not believe the language should be revised...because regular educational environment encompasses regular classroom and other setting in schools such as lunchrooms and playgrounds in which children without disabilities participate.

thorough evaluation of the Student and diagnosed the Student as being Autistic. Based on [REDACTED]'s evaluation and under her guidance, the District scrapped the March 2015 BIP and wrote an entirely new BIP, which was intended to restart the Student's behavior program as though the previous behavior plan had not existed. The Parent expressed no objection to the [REDACTED] Plan and the record shows she approved of this very restrictive plan being implemented for the Student. The [REDACTED] BIP made substantial modifications to the way the Student's behavior would be managed. These changes to the BIP were so drastic, that the team decided not to implement the BIP until the first day of school, April 4, 2016, after the spring break. The team wanted a clear delineation to the Student between the [REDACTED] BIP and the March 2015 BIP. The [REDACTED] BIP included close physical proximity to the student, forcing the student to remain on task, not rewarding poor behavior by allowing the student to retreat to a preferred activity (coloring) or location (SW office), and preventing elopement or consequencing elopement with a return directly to the classroom. It was anticipated that the [REDACTED] plan would not be easily accepted by the Student. It was expected that the Student's behaviors would increase as she fought against the [REDACTED] BIP and that the school should expect to see "extinguish bursts". [REDACTED] approved of the plan and made an all-out effort to see that it was implemented impeccably, even at risk to herself and other staff members. After one month, she did request a slight modification in the physical proximity requirement of the BIP to avoid injury, but otherwise continued to implement the plan as written. By the end of the school year, May 27<sup>th</sup> 2016, the elopements had decreased to almost none and it appeared that there was a reduction in refusals and aggression. This testimony and evidence suggests that after the [REDACTED] BIP had been implemented and carried out for only 40 school days, the Student appeared to be starting to respond. The Parent argues that this minor success, in a short period of time, indicates that the services the [REDACTED] BIP requires can be satisfactorily implemented in the instructional classroom with the use of supplementary aides and services.

At the end of the school year, the Mother's request to move the Student to another school was approved by the District. There was no evidence to show whether the Mother understood the ramifications of this request at the time, (as a student with autism, the Student thrived on routine which would be clearly disrupted by a change of environment and change in staffing-not just once but twice (ESY and fall classes) in a relatively short period of time), and it appears that she may have focused on the "fresh start" portion of the Report, believing that a new school would provide a fresh start. The Mother admitted this was a mistake and that she failed to take the Student's diagnosis or feelings into consideration when making this request.

The Student's March 2016 IEP did provide for extended school year ("ESY") and the Student did participate in ESY at [REDACTED]. Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 34 CFR 300.320 through 34 CFR 300.324, that the services are necessary for the provision of FAPE to the child. ESY services generally are necessary only if the student faces a significant risk of having the gains of a school year jeopardized if the student is not provided with ESY services. *Alamo Heights Independent School District V. State Board of Education*, 790 F.2d 1153 (5<sup>th</sup> Cir. 1986). Regression or recoupment problems trigger the need for ESY services when it is anticipated that a child will suffer an inordinate or disproportionate degree of regression during the summer break, and it will take an inordinate or unacceptable length of time for the child to recoup the lost skills upon returning to school.<sup>112</sup> No evidence was presented on how this transition was implemented or was handled during the ESY. No evidence was presented on whether the ESY caused a regression in the Student's behavior. Although there was no testimony presented regarding the ESY, it can be inferred, from the inclusion in the IEP, that it was anticipated that the Student would experience some regression and that ESY services were necessary. What regression, this Student experienced during the summer of 2015-2016 is unknown.

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<sup>112</sup> *Id.*

██████████ was the new special ed coordinator at ██████████ and became aware of the Student during the first week of school. ██████████ testified that it was her job to make sure the Student's IEP, services and supports were transferred to the Student's new school and make sure everything was in place and the staff are aware of the Student's BIP. ██████████ knew that students with autism have a difficult time with transitions. ██████████ did not explain why she failed to implement a transition plan for the Student. By her own testimony she admitted she was made aware of the Student's behavior issues by ██████████ during the first week of school. It appears that the only transition assistance the Student received was a post card and social story from ██████████. Additionally, for a minimum<sup>113</sup> of two (2) weeks after school started, the Student did not have access to an iPad, which the Student required for her visual schedule and academics. No testimony was offered as to how the transition to a new school environment, new teachers, new staff and failure to have access to a critical learning device effected the Student or her behavior. Conflicting testimony was presented by ██████████ and ██████████ regarding the one-to-one aide for the Student. ██████████ testified that based on her experience at ██████████ she requested the one-to-one aide, and ██████████ and ██████████ testified that during a conversation with the Mother on September 2, 2016, they requested permission to give the student a one-to-one aide. How many days the Student was in the classroom without proper adult support is important, ██████████ testified, that during the two (2) years the Student was at ██████████, a one-to-one aide was not provided because it was not necessary as there was sufficient adult support for the classroom. Clearly, the need for a one-to-one aide for the Student, approximately five (5) days into the school year, indicates that this was not true at ██████████. The ██████████ team did amend the IEP to provide for a one-to one aide, who was assigned to the Student on or about September 15, 2016. ██████████ testified that she learned about the Student's BIP when ██████████ gave her a copy, it is unclear when this took place and why she did not receive a copy from either ██████████ or ██████████. The testimony confirms that

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<sup>113</sup> ██████████ testified that it was 2-3 weeks after school started.

the [REDACTED] BIP was likely not in place on the first day of school and, because of the lack of iPad, could not have been fully implemented until at least the second week of school. How the [REDACTED] staff's confusion surrounding the Student's transition, IEP and BIP affected her behavior is unknown.

While [REDACTED] testified that the [REDACTED] BIP was implemented at [REDACTED] "with fidelity", it is clear from the record that this was improbable. We know that 1) [REDACTED] was not present to transition the Student and ensure that all IEP and BIP requirements were in place on the first day of school; 2) the Student did not have access to an individualized visual schedule (no iPad); 3) no evidence was presented about the student being given choices for breaks; 4) the testimony presented was that the staff was not instructed to stay in close physical proximity to the student; 5) minimal evidence was presented that the student was forced to remain on task; and 6) evidence was presented that the student was allowed to elope from the classroom and was offered a preferred activity after elopement. Further, Dr. [REDACTED]'s assistant stated that when the Student presented maladaptive behaviors, the Student was not given choices and just allowed to do whatever she wanted or the Student's demands were given into by the staff.

No evidence was presented on which date Dr. [REDACTED] was initially requested to do a further consultation of the Student. Dr. [REDACTED] testified that she was aware that the transition period would be difficult and that it is likely that she waited a couple of weeks before sending out her associate to observe the Student. The observation took place on October 6, 2016, which means that it is likely that Dr. [REDACTED] was called upon to reassess the Student's behavior during the third week in September. This allowed for an autistic student, who has difficulty with transitions, who was provided little or no transitional support, and who did not receive a required device (iPad), a mere seventeen (17) days to adjust to the new classroom environment, new peers, new building, new teachers, new support staff, new social workers, and new therapists before Dr. [REDACTED] was called. I have considered that [REDACTED] testified that the school could improve on some aspects of implementation of the [REDACTED] BIP, and that the extent of her

BHA recommendations would be difficult to follow precisely in a general education setting. However, the testimony presented shows that there was little or no effort made by the Whittier team to implement the [REDACTED] BIP. The [REDACTED] team knew or should have known how difficult this transition would be for the Student and failed to assist the Student with the transition to the new school. The team spent a lot of effort tracking the Student's behaviors, but this evidence merely serves to confirm that the [REDACTED] BIP was not being properly implemented. The [REDACTED] team allowed the Student to control the classroom in direct contravention of the [REDACTED] BIP.

The testimony of the Mother, Grandmother, [REDACTED] and [REDACTED] indicates that the Student is currently being educated at home and the Student's maladaptive behaviors have been reduced. The tutor testified that the Student has gone four weeks without incident. [REDACTED] admitted that there are still challenging days, but that elopements have subsided, the Student is working on refusal behavior and tantrums last for only a couple of minutes. The IHO notes, however, that [REDACTED]'s experience with the Student is one to one and does not include working in a classroom with other similar students. However, if the Student is provided with the one-to-one aide, provided for in the IEP modification from September 2016, the Student will experience the same level of adult attention as she experiences with S'ad.

During the course of the hearing, there was no evidence presented by the District that the Student's placement in [REDACTED], or any other therapeutic day school would be appropriate. [REDACTED] testified that she accompanied the Mother and [REDACTED] to the [REDACTED] therapeutic day school. The Mother expressed her concerns about whether the school could fulfill the Student's academic needs. [REDACTED], the Mother and [REDACTED] did not see an academic classroom in session, they an academic schedule on the wall and academic work on the walls. This is not evidence of an appropriate academic program. [REDACTED] testified that they spoke to the Director and got some answers, but did not elaborate either on the questions or the answers. [REDACTED] testified that she believed that [REDACTED] could implement the Student's IEP. Her testimony, however, was general in nature and did not address specific behavior strategies,

academic strategies or social strategies used at [REDACTED] or how those strategies would assist the Student, implement the IEP or the [REDACTED] BIP. Dr. [REDACTED] testified that it was possible that the Student might pick up additional maladaptive behaviors from other students at [REDACTED]. [REDACTED] was present on the [REDACTED] tour and determined after seeing the classrooms, and talking with the teacher, nursing staff, principal and director that the Student would regress in her academic skills and pick up additional behaviors from other students. [REDACTED] questioned that there were no BCBA therapists on staff at Rush and reiterated that she believed only a BCBA would be qualified to draft a BIP for the Student.

The burden in this case is on the Parent to prove that the Student's IEP and BIP could be implemented in a less restrictive environment than a therapeutic day school, and that the Student's prior IEP placement, an instructional classroom with supports, within the District would be the LRE. However, it is also imperative that the District present evidence that the Student's placement in a therapeutic day school would be the LRE and would accommodate not just the Student's behavioral but academic and social needs. In fact, the record in this case suggests that the Student is academically bright, and socializes with peers, but has in school behaviors that have not been appropriately addressed because of an inappropriate BIP (March, 2015) and the failure to properly implement the [REDACTED] BIP.

### CONCLUSION

The District has argued that the District may properly remove a student to a more restrictive setting along the continuum when: 1) the student is not receiving a satisfactory education in the current setting; and 2) no further supports would enable the student to receive a satisfactory education, citing *Beth B v. Van Clay*, 282 F. 3<sup>rd</sup> 493, 499 (7<sup>th</sup> Cir. 2002), and *Board of Education of Tp.High School Dist. No 211 v. Michael R.*, 2005 No. 02 C 6098 (N.D. Ill. August 15, 2005). Both of these cases involve a District's request to remove a student from a general education setting to a highly structured, self-contained setting with strong behavioral supports - in effect from a general education setting to an instructional special education

classroom. *Michael R.* involves a student afflicted with Rett syndrome suffering from slowed brain and head growth, seizures and mental retardation, who was being educated in a general education setting at a high school. The *Michael R.* court considers 20 USC § 1412(a)(5)(A) which does allow for students to be removed from the regular education environment only when the nature or severity of the disability of a child is such that education in regular classes (emphasis added) with the use of supplementary aids and services cannot be achieved satisfactorily. *Beth B. v. Van Clay*, 282 F. 3<sup>rd</sup> 493 (7<sup>th</sup> Cir. 2002), also involves a student with Rett syndrome, who was non-verbal and being educated in general education classrooms for fifty (50%) percent of the school day. The district argued that she was only receiving a modicum of developmental achievement in the general education classroom, and should be placed in a special education classroom. The court agreed with this placement, so long as it includes reverse mainstreaming opportunities as well as time spent with nondisabled peers in nonacademic classes, during special projects, lunch and the like, which would be an acceptable point along the “continuum of services” between total integration and complete segregation, and satisfies the requirement that Beth be mainstreamed to the maximum extent appropriate *id.* at 499. The case before me involves the potential removal of a Student, with academic potential, an ability to socialize with peers and a behavioral disability from an instructional classroom to the completely segregated environment of a therapeutic day school, with minimal evidence of the possibility of academic development and no evidence of reverse mainstreaming opportunities or the opportunity to socialize with nondisabled peers. The District’s proposed placement is not an acceptable point along the “continuum of services”.

The evidence has shown that at [REDACTED] School, the District did implement the [REDACTED] BIP with fidelity and that after forty (40) days, the implementation of the [REDACTED] BIP appeared to be producing results. The argument that the staff at [REDACTED] properly implemented the [REDACTED] IEP is disingenuous in light of the testimony showing the District’s failures to properly transition the Student, provide the Student with necessary technology, and properly train the

██████████ staff in the requirements and implementation of the ██████████ BIP. After consideration of the witnesses' testimony, the Exhibits admitted into evidence, the arguments of counsel and case law, I find, by a preponderance of evidence, the Parent has met that burden of proving that the implementation of the October 2016 IEP recommending placement of the Student in a therapeutic day school setting will not provide the student with FAPE in the LRE. The evidence has shown that the District, at the ██████████ School, did implement the ██████████ BIP, and with the implementation of the ██████████ BIP, the Student appeared to be showing results. The Parent has successfully shown that the staff at ██████████ did not properly implement the ██████████ BIP. The District has not been proven that the Student has a disability, of such nature and severity, that the Student cannot be satisfactorily educated in the special education instructional class within the District and must be segregated from interaction with nondisabled peers in a therapeutic day school. The record supports that the LRE for this student is in the District instructional classroom with supports as provided in the September 2016 IEP and the ██████████ BIP, as modified in April 2016, and the ██████████ BCP recommendations of October 2016 (not including therapeutic day school provisions).

#### **ORDER**

1. The IEP team, which will include District staff, proposed District school staff, District homebound tutor, Parent, and Student's current behavioral therapist (at option of and with cost to Parent), shall meet by March 22, 2017, to determine an appropriate physical location of services for the Student which can implement the accommodations and services required by this order and to develop a plan to collect data on the Student's current academic, behavioral, functional and social skills and to discuss a transition plan for the return of the Student to an appropriate instructional program within the District on or before April 17, 2017.

2. On or before April 5, 2017, the IEP team shall meet to review all collected data and to draft and implement a transition plan for the return of the Student to an appropriate instructional program within the District on or before April 17, 2017.
3. Based on the transition plan developed in paragraph 2 above, by April 7, 2017, the IEP team shall review the [REDACTED] BIP of March 2016, as previously modified in April 2016, and the [REDACTED] BCP recommendations of October 2016 (not including therapeutic day school provisions), and shall modify the BIP to consider the Student's current behavioral level and anticipated escalated behavior levels during the transition. The team shall devise a method to collect and track all behaviors addressed in the BIP, on a daily basis. All staff members anticipated to interact with the Student shall be trained to ensure that the [REDACTED] BIP as modified is implemented. The team may fine tune the BIP in thirty (30) day increments, based upon the Student's behavioral needs.
4. The District shall provide proof of compliance with this order to the Illinois State Board of Education by May 15, 2017.

#### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILCS 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: March 16, 2017

/s/Mary Jo Strusz

Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]

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

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█ a minor, by and through  
his/her Parent(s),  
Student

v.

Case No. 2017-0193

█ School  
District █  
District.

Mary Jo Strusz  
Impartial Hearing Officer

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**CERTIFICATE OF SERVICE**

I, Mary Jo Strusz, certify that on March 16, 2017, copies of the FINAL DETERMINATION AND ORDER were served upon the following persons in the manner indicated:

**Sent Electronically Via Email**  
**Sent via United States cert mail**

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**Sent Electronically Via Email**  
**Sent via United States cert mail**

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**ILLINOIS STATE BOARD OF EDUCATION**  
**Sent Electronically Via Email Only**

Andrew Eulass  
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Wanda Schoneweis  
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Dated: March 16, 2017

Mary Jo Strusz  
Impartial Hearing Officer

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█