

APR 20 2017
SPECIAL EDUCATION
SERVICES

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

STUDENT¹,

Student,

Case No: 2017-0292

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer


School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 12-year-old, male who is currently in his second year of 3rd grade. He qualifies for special education services under the disability category of autism. The Student currently attends PES, a District general education elementary school. (IHO Exhibit 1.)

The District filed the Due Process Complaint Notice (DPCN) on March 1, 2017 on an expedited basis seeking to remove the Student from PES and place him in a therapeutic day school due to escalating behaviors including biting, head butting, punching, kicking, spitting, cursing, head banging, aggression toward staff and self-injurious behaviors. (IHO Exhibit 1.)

¹ Personal identification information is provided in Appendix A.

The Parties participated in mediation on March 20, 2017 but were unable to resolve the outstanding issue. Based upon this, the 20 school day timeline for this Hearing Officer to conduct the hearing began to run on March 1, 2017 with April 5, 2017 being the 20th school day. The 10 School- Day deadline for this Hearing Officer to render a decision is April 20, 2017. (IHO Exhibit 9.)

A prehearing conference was held on March 30, 2017. The Parties agreed to the following hearing dates: April 3 & 4, 2017. (IHO Exhibit 11.)

The Parent opted for a closed hearing. The Due Process Hearing was held on April 3 & 4, 2017. [REDACTED]s and [REDACTED] of [REDACTED], [REDACTED] represented the District. [REDACTED], Superintendent, was the District Representative. The Parent was unrepresented by counsel. [REDACTED] was present as Parent's advocate. The parties' presented individual and joint witnesses.² The District presented the following Exhibits: District Exhibits # 2-4, 6-29, which were introduced into evidence. The Parent presented the following Exhibits: Parent Exhibits #1-4, 9-10, 12-13, which were introduced into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-15. Both parties submitted oral, closing statements followed by a written outline of same and any case law relied upon.

ISSUES

The issues raised by the District for determination by this Hearing Officer are:

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

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

² Witnesses are identified in Appendix A.

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

The District requests that this Hearing Officer determine that the Student is substantially likely to injure himself or others if his current educational placement is maintained. The District further requests that this Hearing Officer order a change of placement to a therapeutic day school setting as an interim alternative educational setting for not less than forty-five (45) school days.

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

FINDINGS OF FACT

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

1. The Student is a 12-year-old, male who is currently in his second year of 3rd grade. He qualifies for special education services under the disability category of autism. The Student currently attends PES, a District general education elementary school. (Testimony of Parent, JW³, CB⁴; SD 6.)
2. The Student's current educational placement is a general education, 3rd grade classroom with a one-to-one aide. (Testimony of JW, Parent; SD 6.)

³ JW holds a Bachelor of Arts Degree in elementary education and a Master's Degree in curriculum and instruction. She also holds a professional educator's license through the Illinois State Board of Education. She has been employed by the District for twenty-five (25) years and has taught many students on the autistic spectrum in her classroom.

⁴ CB holds a Bachelor of Arts Degree in Elementary Education, Spanish, and Psychology and a Master of Science in Education – Educational Administration. She is CPI certified and her certification is current. She has been the Principal of PES for eleven (11) years. (SD 26.)

3. The Student is very sweet, caring, funny, and loves to sing. (Testimony of JW, SS⁵.)
4. His autism manifests itself with social emotional delays and needs, sensory needs, speech language deficits, academic delays, and social skill deficits. (Testimony of JW, SS, Parent.)
5. Beginning in mid-November 2016, the Student began displaying significantly increasing physical aggression toward himself, staff, and other students. (Testimony of JW, SS, PP1, CB.)
6. The Student's aggressive behaviors included biting, kicking, head-butting, punching, hitting, throwing objects, screaming, hysterical laughing, spitting, and head banging on walls, tables, and windows. (Testimony of JW, SS, PP1, CB, PP2, PP3.)
7. JW is the Student's general education teacher. The Student has been in her 2nd – 3rd grade loop classroom for the past four years. JW provides a highly structured classroom environment. The Student had never physical aggressed toward JW until March 22, 2017, when he hit her with a pencil. Based upon the aggressive nature of the Student's behaviors, JW was afraid for her safety and for safety of other students. (Testimony of JW.)
8. The Student physically aggressed toward SS, his case manager and special education teacher, several times resulting in bruises and bite marks on her body and an injury to her wrist which required medical attention and prohibited her from working with the Student for one week. (Testimony of SS; SD 14, 15, 22, 23.)
9. The Student physically aggressed toward PP1 on multiple occasions kicking her, hitting her in the head and chest with a closed fist. (Testimony of PP1; SD 19, 20, 21.) She required medical treatment after an incident in which the Student punched her in the head with a closed fist resulting in ringing in her ear and pain for an extended period after the incident. (Testimony of PP1; SD 17.)

⁵ SS holds a Bachelor of Science Degree and a Master's Degree with an endorsement in science and special education. She is a certified special education teacher through the Illinois State Board of Education and a certified grief counselor. She is CPI certified and her certification is current.

10. School staff documented six hundred (600) individual acts of aggression by the Student from mid-November 2016 through March 22, 2017. (Testimony of JW, SS, CB, PP1, SN, PP2, PP3; SD 9 – 25, 29.)

11. The Student was physically aggressive toward himself engaging in self-injurious behaviors on a daily basis including hitting himself in the head with a closed fist; poking himself with a pencil; banging his head on cement walls, glass windows, and tables; banging his wrists together. (Testimony of JW, SS, PP1, PP2, PP3, CB, SN.) These incidents of self-injurious behaviors were documented by District teachers and staff. (SD 24-25.)

12. The Student was physically aggressive toward other students yelling, cursing, and head butting. On two occasions the Student head butted another Student resulting in red marks and requiring treatment with an ice pack. (Testimony of Parent, SN, SS, JW.) The Student head butted another Student from behind while waiting in line to use the bathroom. After that incident, the Student smiled at teaching staff. (Testimony of JW, SS, PP1; SD 12, 24.)

13. From mid- November 2016 through March 2017, the Student's verbally and physically aggressive behaviors escalated in intensity, velocity, and duration. The Student was dysregulated, could not control his behaviors, and was unable to attend to classwork. (Testimony of JW, SS; SD 22-24.)

14. This Hearing Officer finds the testimony of JW, SS, PP1, PP2, PP3, CB, and SN to be credible and persuasive. The individual testimony of each of these witnesses corroborates that of the others and is well supported by the documentary evidence submitted into evidence at hearing. Further, this Hearing Officer had the opportunity to observe the demeanor of each of these witnesses during testimony. In addition, the testimony of these witnesses was uncontroverted.

Based upon these facts, this Hearing Officer finds their individual testimonies to be credible and persuasive.

15. As a result of the Student's escalating behaviors, the District has gradually added staff to attempt to manage those behaviors. The Student is currently maintained in an individualized self-contained conference room with four staff members: one special education teacher, two paraprofessionals to assist with maintaining safety, and one additional paraprofessional to gather data and assist to maintain safety when necessary. (Testimony of Parent, JW, SS, CB, BCBA1⁶, PP1, PP2, PP3.)

16. From mid-November 2016 through March 2017, the Student has only been able to remain in the general education classroom setting for four days in total. (Testimony of Parent, JW, SS, CB.)

17. The Student has been unable to make academic progress in his current placement since mid-November 2016 due to his behavioral difficulties. He has been unable to remain calm for a period of time long enough to be able to attend to academic tasks. (Testimony of JW, SS, BCBA1; SD 23.)

18. In February 2017, all academic and non-preferred task demands were removed from the Student in an attempt to assist him in controlling his behaviors. As demands were gradually reintroduced, the Student's self-injurious behaviors began to increase. (Testimony of BCBA1, SS; SD 8.)

⁶ BCBA1 holds a Bachelor of Science in Education with a major in special education. She holds a Master of Science Degree in psychology with an emphasis in Applied Behavior Analysis. She holds an Illinois Type 10 (LBS1) license and is a Board Certified Behavior Analyst. She has worked with children with autism for fourteen (14) years. As part of her previous employment, she created two classroom for autistic students in another school district. (Testimony of BCBA1; SD 26.)

19. The Student's current placement, in a self-contained conference room classroom with a 4 to 1 staff to Student ratio, is very restrictive and does not allow the Student to interact with peers. (Testimony of Parent, JW, SS, CB, BCBA1, BCBA2.)

20. Based upon the testimony and documentary evidence presented, this Hearing Officer finds that the Student's current educational placement is not appropriate. The Student's behavioral difficulties have not subsided despite the District's efforts to add staff and craft a self-contained conference room for him and he continues to be unable to attend to academic tasks and make educational progress. Further, the current 4 to 1 staff to Student ratio is too restrictive and does not allow for peer interaction. In addition, after all academic and non-preferred task demands were removed from the Student and then gradually reintroduced, the Student's self-injurious behaviors increased. He remains unable to reintegrate into the general education environment.

21. During the period mid-November 2016 through March 22, 2017, the Student's IEP team convened approximately six times, with three of those meetings extending beyond one day in length, in order to discuss the Student's escalating behaviors and to find strategies to minimize the behaviors. (Testimony of Parent, JW, SS, CB, SW, BCBA1, BCBA2; SD 2-8.)

22. JW attended a meeting in Parent's home, outside of school hours, to meet with Parent's in-home BCBA. The purpose of the meeting was to discuss strategies to manage the Student's behaviors across settings, at both home and school. JW attended this meeting with Parent and BCBA2 and implemented as many of the strategies recommended by BCBA2 as she could in her classroom. These strategies included longer processing time for the Student and the "silly minute" which Parent used at home. However, the Student did not like the "silly minute" at school. (Testimony of JW, Parent.)

23. Additional recommended interventions of the home team BCBA2 were the use of cue cards, a visual schedule, allowing additional motor and sensory breaks, positive reinforcements, use of mouth tools and fidgets, and the use of an alternative location. JW and SS implemented these interventions in their classrooms. The Student was provided with three strikes, due to inappropriate classroom behavior, before being removed to the motor room. In the motor room, the Student was able to walk, jump on a trampoline, use “flippies” (fidgets or manipulatives that the Student enjoyed and which met his sensory needs) in order to assist him to de-escalate and to be able to return to the classroom. The Student was also provided with frequent, positive reinforcements, such as iPad time every time he met an expectation. (Testimony of JW, BCBA2, SS.)

24. The Student’s classroom and staff team including SS, JW, CB, and the Student’s paraprofessionals, met on a daily basis, prior to the start of the school day to assess the Student’s needs based upon the prior day’s behaviors and to brainstorm strategies and interventions for the school day ahead. (Testimony of SS, JM, CB.)

25. Parent requested that SS implement a technique called the Zones of Regulation to track and manage the Student’s aggressive behaviors. SS was familiar with, but had not used, the zones of regulation, as it is not commonly used in the school setting. However, SS conducted independent research on the technique and learned how to implement it correctly in order to assist the Student. (Testimony of SS, Parent; SD 23.)

26. The data SS collected using the zones of regulation technique reflected the Student cycling through all four behavioral zones within approximately ten (10) minutes. In order to attend to classwork, a student needs to be in the “green zone” displaying a calm voice and body and working and following directions for an extended period to time. The Student cycling

through all four zones within such a rapid period indicated that the Student was dysregulated and unable to control his behaviors. (Testimony of SS; SD 23.)

27. The Student received six separate suspensions over a total of ten (10) days from mid-November 2016 through early February 2017 due to his aggressive verbal and injurious physical behaviors toward staff and other Students. (Testimony of CB; SD 9-21.)

28. In response to this, the District added additional staff to support the Student. The Student had previously had one paraprofessional aide. Over the mid-November 2016 to early February 2017 period, the District gradually increased from one paraprofessional aide supporting the Student to three paraprofessional aides supporting the Student. This was to maintain safety and assist in the collection of behavioral data. (Testimony of SS, CB, JW, BCBA1, PP1, PP2, PP3.) After early February 2017, the District ceased suspending the Student for his behaviors due to the increased supports. (Testimony of CB.)

29. The District hired an outside BCBA, BCBA1 to assess the Student, provide recommendations for supporting him, and to conduct a Functional Behavior Analysis (FBA) and to draft a Behavior Intervention Plan (BIP). (Testimony of CB, BCBA1.)

30. BCBA1 recommended that all academic and non-preferred task demands be removed from the Student and that positive reinforcements be increased. She also recommended that his schedule be modified to allow for frequent breaks. She further instructed school staff to honor any and all communication from the Student requesting breaks. (Testimony of BCBA1, SS, JW, CB.)

31. School staff implemented BCBA1's recommendations and BIP. (Testimony of SS, JW, CB.)

32. After the removal of all academic demands, BCBA1 recommended the gradual reintroduction of academic demands. SS reintroduced math tasks with the Student in the self-contained motor room environment. Math was a preferred task for the Student. However, when math was reintroduced, the Student's self-injurious behaviors increased. He was only able to attend to a math task for approximately two minutes before requiring a break. His self-injurious behaviors included hitting his wrists together, and stabbing his neck and hands with a pencil. (Testimony of SS, CB, BCBA1.)

33. When moving the Student through the school building, the staff used "linking arms" to safely transport him and to prevent elopement. (Testimony of SS, CB, PP1, PP2, PP3.)

34. School staff eliminated their proximity to the Student when he was in the self-contained conference room in order to reduce the opportunity for physical contact when the Student was displaying physically aggressive behaviors. SS used visual signs, such as blue lines on the floor and "Stop" signs on the wall, in order to assist the Student to manage his behavior and to keep staff at a safe distance. (Testimony of SS, CB, PP2, PP1.)

35. The IEP team agreed to shorten the Student's school day in December 2016 in an attempt to manage his aggressive behaviors. (Testimony of SS, CB, Parent.)

36. SW provided direct services to the Student during the November 2016 to March 2017 period. She provided more direct minutes of services to the Student due to his behavioral crisis. (Testimony of SW, SS, CB.)

37. Parent was provided with daily notes regarding the Student's behavior. (Testimony of SS; SD 22.)

38. Despite the interventions attempted by the District, the Student's verbally and physically aggressive behaviors continued and the Student continued to display self-injurious behaviors

such as wrist hitting, head banging and stabbing his neck and hands with a pencil. (Testimony of JW, SS, CB; SD 23.)

39. This Hearing Officer finds the testimony of JW, SS, CB, PP1, PP2, PP3, SW, BCBA1 to be credible and persuasive regarding the interventions implemented by the District to maintain the Student in his current placement. The testimony of these individual witnesses is corroborated by the testimony of the others. The testimony is supported by the documentary evidence introduced into evidence at hearing and is uncontroverted. Further, this Hearing Officer was able to observe the demeanor of these individuals at hearing. Upon these bases, this Hearing Officer finds their respective testimony to be credible.

40. The Student requires the following based upon his disability, behavioral, and educational needs: a highly structured environment with a staff team to help him distinguish his behaviors and assist him with managing his aggressive, injurious behaviors; imbedded social work and occupational therapy services; social/emotional support throughout his school day; an environment with additional, trained staff to assist him with managing his behaviors; a calming/safe/time out room with mats on the walls and floor. A calming/safe/time out room would allow complete removal of staff attention, allow staff to back away from the Student, and would allow the Student more space and a safe area which would reduce the risk of harm to himself or others. This type of educational environment is not present in public schools and is usually found in a therapeutic day school setting. (Testimony of SS, BCBA1; SD 8.)

41. Both SS and BCBA1 previously worked in therapeutic day schools. SS worked at TDS3. BCBA1 created classrooms for autistic students in another school district. (Testimony of SS, BCBA1; SD 26.)

42. The IEP Team's recommended placement for the Student, pursuant to the January 31 and March 8, 2017 IEP, is a therapeutic day school placement. (SD 7-8.)

43. The District provides self-contained special education programs at the elementary school for student who require additional academic supports throughout the day. (Testimony of CB.)

44. The District provides self-contained special education programs at the middle school level for students who require additional support in language arts and math. These are partial-day self-contained programs. There are no full-day self-contained classrooms at the middle school. (Testimony of CB.)

45. The District currently does not have a full-day self-contained special education classroom for students with behavioral needs at either the elementary or middle school level. (Testimony of CB.)

46. This Hearing Officer finds that the Student requires a therapeutic day school environment to meet his behavioral and educational needs, given his disability. This is based upon the testimony of SS and BCBA1 and the documentary evidence introduced at hearing. This Hearing Officer finds the testimony of SS and BCBA1 to be credible and persuasive. Based upon the education, training, and experience of SS and BCBA1, as well as the demeanor of both witnesses at hearing, this Hearing Officer finds their testimony and recommendation of a therapeutic day school placement for this Student to be credible and persuasive.

47. This Hearing Officer finds that the District is unable to provide an appropriate educational placement for the Student at this time. Based upon the testimony of CB, this Hearing Officer finds that the District does not offer a full-day, self-contained, special education classroom for students with behavioral needs such as those of this Student. Based upon CB's position as elementary school Principal, this Hearing Officer finds her to be in the best position

to know what the District offers on the continuum of educational placements. This Hearing Officer finds CB's testimony to be credible based upon the observation of her demeanor at hearing and further finds her testimony to be uncontroverted.

48. At some point during the mid-November 2016 through March 22, 2017 time period, the District provided Parent with the names of three therapeutic day schools for the Parent to consider. (Testimony of Parent.)

49. TDS1 is approximately forty-five (45) minutes, one-way, from the Student's home. Parent toured this facility. TDS1 advised Parent that it was not a forty-five (45) day educational placement and that most students remained there for eighteen months to two years before being transitioned back to a general education setting. It is unknown whether or not TDS1 would be able to implement the Student's IEP. Social work services at TDS1 are provided by an independent contractor, not a school staff member. (Testimony of Parent.)

50. TDS2 is approximately one hour, one way, from the Student's home. TDS3 is approximately two hours, one way, from the Student's home. Parent did not tour either TDS2 or TDS3 due to the distance from the Student's home. (Testimony of Parent.)

51. This Hearing Officer finds the testimony of Parent to be credible. The Hearing Officer had the opportunity to observe Parent's demeanor at hearing and found her to be candid and truthful in her answers to this Hearing Officer's questions regarding the potential therapeutic day school placement for her Student.

52. The District did not present any testimony or documentary evidence from any therapeutic day school programs regarding the services and supports required to be provided to the Student in order to prevent his aggressive behaviors.

53. The District did not present any testimony or documentary evidence from any therapeutic day schools regarding the ability to implement the Student's IEP.

54. This Hearing Officer finds, based upon the testimony of SS and BCBA1, that, while both had previously worked in therapeutic day school settings, neither provided testimony nor documentary evidence regarding a specific or several specific therapeutic day schools and the ability of those schools to implement the Student's IEP or to provide services and modifications designed to prevent this Student's undesired behavior from recurring. The District provided no other evidence on this point.

CONCLUSIONS OF LAW

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

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

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

- (b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:
 - 1.) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current

placement of the child is substantially likely to result in injury to the child or to others;

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

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

Factors of be considered:

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

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

The testimony and documentary evidence presented at hearing reflects the following: The Student's current placement is a general education, 3rd grade classroom with a one-to-one aide. (FF #2.) From mid-November 2016 to March 2017, the District gradually increased staff in order to assist the Student with his behavioral difficulties. He is currently being maintained in an individualized self-contained conference room with a 4 to 1, staff to Student ratio. (FF #15.) Since mid-November, the Student has engaged in increasingly aggressive behaviors toward staff and other students on a daily basis including: biting, kicking, head-butting, punching, hitting,

throwing objects, screaming, hysterical laughing, and spitting. (FF #6, 10.) These behaviors have resulted in injury to school staff and other Students. (FF #7-9, 12.) During the same period, the Student has also engaged in self-injurious behaviors including: hitting himself in the head with a closed fist; poking himself with a pencil; banging his head on cement walls, glass windows, and tables; banging his wrists together. These incidents were all well documented and the written evidence thereof was admitted into the record at hearing. (FF #11.) Further, this evidence was uncontroverted by Parent. School staff members repeatedly expressed concerns for the safety of themselves, this Student, and other students. (FF #7.) The Student's daily aggressive behaviors have continued despite additional staff being added to assist the Student in controlling his behaviors and the Student has been unable to remain in the general education setting for more than four days during this four month period. (FF #16.)

Based upon the above, this Hearing Officer finds that the District has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the Student, in a general education setting with a one-to-one aide or in a self-contained conference room, in a general education elementary school, with a 4 to 1 staff to Student ratio, is substantially likely to result in injury to the Student or to others. As shown, the Student has engaged in increasingly aggressive behaviors toward staff and other students on a daily basis. These behaviors have resulted in injury to school staff and other Students. This Hearing Officer further finds that the District has met its burden with respect to this factor.

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

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

The testimony and documentary evidence presented illustrate that the Student's current placement is not appropriate. The Student has failed to make educational progress both academically and behaviorally in his current placement. His continued behavioral difficulties prevent him from attending to academic and non-preferred tasks. (FF #15-18 .) The current placement has evolved from a general education classroom with a one-on-one aide to a self-contained conference room with a 4 to 1 staff to Student ratio. This setting is too restrictive and does not allow the Student to interact with peers. (FF #19.) Even after all academic and non-preferred task demands were removed, then gradually reintroduced, the Student's aggressive behaviors did not subside. (FF #18, 20.) The Student is unable to reintegrate into the general education setting. (FF #20.) This Hearing Officer finds that continued placement of the Student in his current educational setting would be inappropriate and would not meet the Student's academic and behavioral needs. (FF #20.) This Hearing Officer further finds that the District has met its burden with respect to this factor.

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

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

The testimony and documentary evidence presented at hearing illustrate that the District made reasonable efforts to minimize the risk of harm in the Student's current placement. During the mid-November 2016 through March 22, 2017 period, the Student's IEP team convened approximately six times in order to discuss the Student's escalating behaviors and to find strategies to minimize those behaviors. (FF #21.) The Student's general education teacher met with Parent's home BCBA, BCBA2, to discuss strategies to implement across settings to help support the Student in the general education environment. JW implemented as many of

BCBA2's suggested strategies as she could in her classroom. (FF #22) Additional recommendations of BCBA2 were also implemented including the use of cue cards, a visual schedule, allowing additional motor and sensory breaks, positive reinforcements, use of mouth tools and fidgets, and the use of an alternative location. (FF #23) The Student's classroom team met on a daily basis to assess the Student's needs and brainstorm strategies and interventions for the school day ahead. (FF #24) SS independently researched implementation of the zones of regulations, at Parent's request, so that she could implement this strategy to assist the Student in managing his behaviors. (FF # 25-26.) The District gradually increased paraprofessional support to the Student, increasing from one to three paraprofessional aides in order to maintain the safety of this Student, other students, and staff. (FF # 27-28.) The District hired BCBA1 to assess the Student and provide recommendations to support him. BCBA1 also conducted an FBA and drafted a BIP at the request of the District. BCBC1's recommendations were implemented by the Student's teachers and staff in order to attempt to assist the Student in regulating his behaviors. (FF #30-32.) Staff used "linking arms" to transport the Student safely through the school building and between classroom, motor room, and conference room. (FF # 33.) In addition, daily notes were provided to Parent regarding the Student's behaviors, the Student's school day was shortened for several weeks in December, increased direct social work minutes were provided to the Student, and staff eliminated their proximity to the Student in order to attempt to maintain safety. (FF #34-37.)

Based upon the above, this Hearing Officer finds that the District made reasonable efforts to minimize the risk of harm in the Student's current placement, including the use of supplementary aids and services. This Hearing Officer further finds that the District has met its burden with respect to this factor.

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

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

The IEP Team recommends that the Student be placed in a therapeutic day school. As stated above, this Hearing Officer finds that the Student's current placement is unable to meet his behavioral and educational needs. (FF #40, 46-47.) This Hearing Officer further finds that a therapeutic day school placement is the most appropriate setting in which to provide the Student with the behavioral and academic supports he requires, given his disability and unique educational needs, in a safe environment. (FF #46.) However, the District has failed to meet its burden regarding the fourth factor required. The District has presented no evidence that the interim alternative educational setting it seeks is able to implement the Student's IEP and includes services and modifications to prevent the undesired behaviors from recurring. (FF #48-43.) While the District put forth three possible therapeutic day school placements for Parent to consider, the services and supports that these programs can provide are not in the hearing record, as no one from any of the facilities came to testify nor was there any attempt made to provide evidence of what those facilities can provide for this Student. (FF # 52-53.) Parent credibly testified that TDS1 is not a 45 day interim alternative educational setting but rather a longer term program. Further, the extent to which TDS1 is able to implement the Student's IEP, if at all, is unknown. (FF #49.) Both SS and BCBA1 stressed the importance of imbedded social work services within the Student's school day. (FF #40.) However, as social work services are provided by an outside contractor at TDS1, this Hearing Officer is left to wonder whether or not TDS1 could in fact provide the social work services required for this Student. (FF #49.) No evidence was presented at hearing regarding the programming offered at TDS2 and TDS3 and it

is unknown whether or not TDS2 and TDS3 could implement the Student's IEP and provide the services and supports required to prevent the Student's aggressive behaviors from recurring. (FF #50-53.)

The District put forth several arguments in favor of its position that it has in fact met its burden. First, the District argues that IDEA no longer requires that the four factors considered above, and provided in the Illinois Administrative Code, need be met in order for it to remove a student to an interim alternative educational setting. However, this Hearing Officer finds to the contrary. While consideration of these factors may have been removed from IDEA, they remain in effect under the Illinois Administrative Code. Thus it appears that the Illinois legislature intended to provide Parents of disabled students additional protections in situations in which a district sought to remove a student to an interim alternative educational setting for 45 days or less on the basis that the student is substantially likely to injure himself or herself or others. In addition, interestingly, the District argued the four factors required to be considered pursuant to 23 Illinois Administrative Code §226.655 in its closing argument to support its contention that it had met its burden.

The District next contends that this Hearing Officer need only look to the March 8, 2017 IEP which recommends a therapeutic day school placement, and which the District alleges is written to be implemented in such a setting, in order to find that the fourth factor has been met. However, this Hearing Officer does not agree. There is no evidence in the record which provides this Hearing Officer with a basis to order placement of the Student in an interim alternative educational setting which will permit full implementation of the Student's IEP, if such an IAES even exists. To order this would require this Hearing Officer to impermissibly abrogate her responsibility to another body, such as the IEP team or the District, to determine the brick and

mortar establishment whose programming would meet this Student's unique educational needs. The IDEA and Illinois Administrative Code simply do not allow for this. *See Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005); *M.S. v. Utah Schools for the Deaf and Blind*, 67 IDELR 195 (10th Cir. 2016).

This Hearing Officer finds that the District has only met its burden with respect to three of the four factors required. As all four factors required by 23 Ill. Admin. Code §226.665 have not been met, the hearing officer cannot order a "change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days." That said, it is very apparent and this Hearing Officer has found that the District cannot provide this Student with an appropriate educational placement, on the continuum of placements, which will meet his behavioral and educational needs. It is this Hearing Officer's sincere hope that the Parent and District will work collaboratively to achieve that end and to provide this Student with the supports and services he requires to obtain an educational benefit.

Therefore, this Hearing Officer determines that:

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

District's request is hereby denied.

ORDER

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

The District's requested relief to change the Student's placement to an appropriate interim alternative educational setting, a therapeutic day school, for not more than 45 school days is denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard

to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: April 20, 2017

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

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

APPENDIX A

[REDACTED] v. [REDACTED]
Case No: 2017-0292

Child	[REDACTED] (Student)
Attending School	[REDACTED] (PES)
Child's Parent(s) (Mother)/Petitioner	[REDACTED] (Parent)
Witnesses (Joint):	
General Education Teacher	[REDACTED] (JW)
Special Education Teacher	[REDACTED] (SS)
Paraprofessional 1	[REDACTED] (PP1)
Principal	[REDACTED] (CB)
District BCBA	[REDACTED] (BCBA1)
School Nurse	[REDACTED] (SN)
School Social Worker	[REDACTED] (SW)
Parent Witnesses:	
Paraprofessional 2	[REDACTED] (PP2)
Paraprofessional 3	[REDACTED] (PP3)
Occupational Therapist	[REDACTED] (OT)
Home BCBA	[REDACTED] (BCBA2)
TDS1	[REDACTED]
TDS2	[REDACTED]
TDS3	[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

Case No: 2017-0292

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on April 20, 2017, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: April 20, 2017

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

[REDACTED]
[REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]